

TEAM CODE:

KLE LAW COLLEGE 4th NATIONAL MOOT COURT COMPETITION

**BEFORE THE HON'BLE
SUPREME COURT OF INDICA**

WRIT PETITION NO. ____/2023

FILED UNDER ARTICLE 32 OF THE CONSTITUTION OF INDICA

IN THE MATTER OF

ASTITVA..... PETITIONER

v.

UNION OF INDICA.....RESPONDENT-1

TREE OF LIFE RESPONDENT-2

ON SUBMISSION TO THE HON'BLE SUPREME COURT OF INDICA

MOST RESPECTFULLY SUBMITTED

COUNSELS APPEARING ON BEHALF OF ASTITVA

WRITTEN SUBMISSION ON BEHALF OF PETITIONER

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TABLE OF ABBREVIATIONS AND SYMBOLS

ABBREVIATION	DEFINITION
@	Alias
&	and
AIR	All India Reporter
Anr.	Another
Art.	Article
CrLJ	Criminal Law Journal
Ed.	Edition
HC	The High Court
Hon'ble	Honorable
i.e.,	That is
ILR	Indian Law Reporter
Ltd.	Limited
No.	Number
Ors.	Others
P.	Page
Pb.	Publication
S.	Section
SC	The Supreme Court of India
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
ss.	Sections
u/s	Under Section
UK	The United Kingdom of Great Britain
UOI	The Union of India
v.	Versus
Vol.	Volume

STATEMENT OF JURISDICTION

The Hon'ble Supreme Court of India is competent to adjudge this case by the virtue of **Article 32** of the Constitution of India, 1949 and Article 32 reads as follows-

Remedies for enforcement of rights conferred by this Part:

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.*
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.*
- (3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)*
- (4) The right guaranteed by this Article shall not be suspended except as otherwise provided for by this Constitution.*

Further, Article-32 empowers this Hon'ble Court to hear the case and grant the appropriate relief under the Constitution of India, 1949.

STATEMENT OF FACTS

- [¶1] Indica is a federal, democratic, and republic that upholds the separation of powers and upholds the rule of law. Since time immemorial, Marriage is considered as a most sacred relationship for every Indican. It is regarded as a moral duty and ‘Samskara’ (sacrament) for every Indican to lead the life of a householder. Indica has, therefore, developed a pattern for guiding marriages. Being committed to one’s partner in the course of marriage is the basic tenant of marriages in Indica.
- [¶2] Prostitution in Indica initially manifested itself as illegal love relationships or extramarital liaisons in antiquity. Since then, there has been an upsurge in the prostitute industry. The primary piece of law created in response to the trafficking and solicitation of women in Indica was the *Immoral Traffic Prevention Act, 1956*. Prostitution is a grey area, when it is performed alone and in private as the Act does not make it illegal to do so.
- [¶3] Both the legalization of prostitution by the government and the demands of the sex industry have been the subject of ongoing discussion. The Indican Government thought that bringing prostitution under the legal domain will make it easier to control criminal activity and also to regulate it as a profession. A large population engaged in this activity. However, due to a lack of adequate legislation, usage has reached an all-time high in Indica. The Liberal Party won the general election and 312 out of 500 seats in the 2020 Indican elections.
- [¶4] In the General Elections, it received 45% of the total votes cast. The *Indica Commercial Sex Workers Act, 2021* is a gender-neutral law that the Indican Parliament just passed to legalize prostitution as a legitimate profession. All genders are now subject to the legislation, which makes it necessary to register and get a license in order to engage in commercial sex. It has granted complete freedom for engaging in commercial sex in exchange for payment on registration, which requires the written consent of the spouse to the married persons. It also prescribed offences & penalties for engaging in specific acts.
- [¶5] It has generated ample revenue for the government as income tax is levied on the profession. Although the law was passed in response to the class of sex workers demands, many other individuals have applied to register under the Act. Due to the Act's legalization of “prostitution” under the guise of commercial sex, married men and women have voiced their strong objections and concerns. There is a widespread outcry since it undermines the moral principles held by Indicans and the foundation of marriage in Indican society. There is a lot of uproar in the community because married women are hounded by their husbands for providing their permission so they may work in this field and make money. The ladies experience domestic abuse and mental cruelty. There is a registration of fake licenses.
- [¶6] Before the Supreme Court of Indica, a civil society group under the name of “Astitva” challenged the constitutionality of the Indica Commercial Sex Workers (Protection and Regulation) Act, 2021. The petition was accepted by the Supreme Court. An interim petition was filed by an NGO called “Tree of Life” on behalf of the commercial sex workers. The same was allowed, and a final hearing has been scheduled for the case.

ISSUES RAISED

ISSUE-1: WHETHER SECTION 3 OF THE INDICAN COMMERCIAL SEX WORKERS (PROTECTION AND REGULATION) ACT, 2021 IS VIOLATIVE OF RIGHT TO PRIVACY?

1. THAT SECTION 3 OF THE ACT VIOLATES THE RIGHT TO PRIVACY UNDER ARTICLE 21 OF THE CONSTITUTION OF INDICA.
2. THAT BY COMMERCIALIZATION OF PROSTITUTION DEFEATS THE PURPOSE OF THE SUPPRESSION OF IMMORAL TRAFFIC OF WOMEN AND GIRLS ACT, (SITA) 1956.

ISSUE-2: WHETHER THE REQUIREMENT OF SPOUSAL CONSENT VIOLATES THE SANCTITY OF MARRIAGE AS ESPOUSED BY THE INDICAN SOCIETAL VALUES AND MORALITY?

ISSUE-3: WHETHER THE INDICAN COMMERCIAL SEX WORKERS (PROTECTION AND REGUALATION) ACT, 2021 IS AGAINST THE PUBLIC HELATH, SAFETY AND MORALITY AND IS LIABLE TO BE STRUCK DOWN?

SUMMARY OF ARGUMENTS

ISSUE 1: Whether Section-3 of the Indican Commercial Sex Workers (Protection and Regulation) Act, 2021 is violative of Right to Privacy?

The Counsel on behalf of the Petitioner respectfully submits that Section 3 of the Indican Commercial Sex Workers (Protection and Regulation) Act, 2021 invariably strikes at the heart of Right to Privacy enshrined under Article 21 of Indican Constitution, obtaining personal information from sex workers for the purpose of registration infringes on their Right to Privacy by invading their personal space and subjecting them to stigmatization and harm. Further, the classification of non-commercial sex workers and commercial sex workers under the impugned enactment apparently violates Article 14 of the Indican Constitution as the said classification of sex workers doesn't meet the mandatory pre-requisite of reasonable classification propounded by the Hon'ble Supreme Court of Indica. Further the Act defeats the purpose of ITPA and SITA.

ISSUE 2: Whether the requirement of spousal consent violates the sanctity of marriage as espoused by the Indican societal values and morality?

The Counsel on behalf of the Petitioner respectfully submits that Section 3(vii) of the impugned Act mandates the requirement of spousal consent in the case of a married person is a flagrant violation of the sanctity of marriage as contemplated in Indican society. In the Society of Indica the social institution of marriage is looked with high esteem treating the spouses as indissoluble members. The idea of the "sanctity of marriage" is deeply ingrained in the cultural and societal values of Indica. Marriage is seen as a sacred and lifelong union between two individuals, with a strong emphasis on the roles and responsibilities of each partner. Section 3(vii) of the impugned Act implies that one spouse has more power or control over the other, creating an unequal power dynamic within the marriage in which one partner may feel coerced or pressured to give consent. This can lead to resentment, mistrust, and even abuse within the relationship, which ultimately undermines the very foundation of the marriage.

ISSUE 3: Whether the Indican Commercial Sex Workers (Protection and Regulation) Act, 2021 is against the public health, safety and morality and is liable to be struck down?

The Counsel on behalf of the Petitioner respectfully submits that Indican Commercial Sex Workers (Protection and Regulation) Act, 2021 is conspicuously in contravention to the public health, safety, and morality. Because, the commodification of sex work can lead to exploitation and abuse of sex workers, including physical and sexual violence, human trafficking, and forced labor. This can have negative consequences on the health and safety of sex workers, as well as the public. Furthermore, the commercialization of sex work can contribute to the spread of sexually transmitted infections and other diseases such as *HIV/AIDS*, *syphilis etc.*, which can increase the risk of transmitting diseases to their clients and the wider community. Commercializing sex work can be detrimental to social and moral values. Sex work is a form of exploitation and objectification of women and that it undermines the dignity and worth of individuals involved in the industry. This can have negative consequences on the moral fabric of society and may be viewed as a threat to public morality. Hence, the Act is liable to be struck down.

ADVANCED ARGUMENTS

ISSUE-1: WHETHER SECTION 3 OF THE INDICAN COMMERCIAL SEX WORKERS (PROTECTION AND REGULATION) ACT, 2021 IS VIOLATIVE OF RIGHT TO PRIVACY?

- [¶1.] It is most humbly submitted before this Hon'ble Supreme Court of Indica that Prostitution in Indica is seen as a black spot. In ancient period, prostitutes were referred to as "Veshya" at first and then "Beshya," which means one who can be touched by anybody¹. In Indica, prostitution took its form first in ancient times with the emergence of illicit love affairs or extra martial affairs². Prostitution is not only carried by women but in modern era it is being carried by men and Transgenders also. Prostitution According to a **BBC report**³, the number of male prostitutes in Indica is rapidly increasing. It also states that when there are no female customers, they sell sex to male customers. Male prostitutes are referred to as gigolos.
- [¶2.] It is submitted that **Section 2(f) of The Immoral Traffic (Prevention) Act, 1956** defines the term prostitution. It says that "*prostitution*" means the sexual exploitation or abuse of persons for commercial purposes, and the expression "*prostitute*" shall be constructed accordingly. The Supreme Court of Indica has defined the term "**prostitution**" in many landmark cases. In "**Gaurav Jain v. Union of India**"⁴, 'Prostitute' means a woman who engages in sexual intercourse for money. It may also mean a man who engages in such activity, especially in homosexual practices. In "**Razia v. The State**"⁵, the expression 'prostitute' means a woman who offers her body to indiscriminate sexual intercourse, especially for hire. Such a person would answer the description of a public prostitute also. In "**A. Narasamma v. A. Dharmaraju**"⁶, a 'prostitute' is a person who is a harlot or whore having sexual intercourse indiscriminately with different persons ordinarily for hire.
- [¶3.] It is submitted that "**Henry Campbell Black**" defined the term prostitution in his dictionary as, "Common lewdness of a woman for gain; whoredom; the act or practice of a woman who permits any man who will pay her price to have sexual intercourse with her"⁷. If we observed the definitions of the prostitution as mentioned above the term prostitution was defined

¹ Soham das and Ritika Ghosh, Prostitution in India: Protection of human rights of Sex Workers in India, Volume 3, International Journal of Law Management & Humanities.

² Fact sheet, para no. 2.

³ Gigolos speak out in Conservative India, Published at- BBC News. Available at: http://news.bbc.co.uk/2/hi/south_asia/7159759.stm

⁴ AIR 1997 SC 3021

⁵ AIR 1957 All. 340

⁶ AIR 1926 Lah 461

⁷ Black's Law Dictionary, 4th Edition, The Publisher's Editorial Staff.

“Negatively”. The terms “sexual exploitation”, “abuse of persons”, “lewdness” & “whoredom” indicates the negative approach to the public. Moreover, *The Indica Commercial Sex workers (Protection and Regulation) Act 2021* doesn’t define the term prostitution. Which clearly shows that prostitution is a black spot to the morality of the public since from the time immemorial.

[¶4.] It is respectfully submitted that the impugned Section 3 of the Act is flagrant violation of the individual Right to Privacy vouchsafed by the Constitution of India. Ours is a country wherein since time immemorial a woman has been accorded a glorious position equated with goddess and in fact treated as an adorable person. The preamble of the Indian Constitution lays down to the effect that of “Assuring the dignity of individual”. It is quite obvious that the system of governance in the country guided by the constitution ideology and the values should give due importance in respect to the individuals. In the light of constitutional framework and its zealously to sustain the dignity and ensure gender justice to each and every individual in India.

[¶5.] It is submitted that as per Section 3⁸ of the impugned Act every commercial worker to be a lawful beneficiary of this legislation should register the name of the commercial sex worker failing which wrath of Section-9 of the Act will be incurred and section-9 lays down that ***“Any Person who carries on Commercial sex work without a Registration and license as Provided in section-3 of the Act shall be punished with an imprisonment which may extend to 2 years or with fine or both.”***⁹

[¶6.] It is submitted that the law though enacted on demand of the sex workers, has resulted in many other citizens making applications for registering under the Act¹⁰. The registration of sex workers is that it can create a black market for fake licenses. The registration process requires sex workers to provide personal information and undergo health checks, which can be expensive and time-consuming. This creates an opportunity for criminal organizations to exploit sex workers by offering fake licenses at a lower cost. These fake licenses may not be recognized by authorities, and sex workers who use them may be subject to arrest, fines, or other penalties.

[¶7.] It is submitted that the impugned **Section 3 of, *The Indica Commercial Sex Workers (Protection and Regulation) Act, 2021***¹¹ glaringly suffers from the clarity that the Act prima facie observed as **“vague”**.

⁸ Section-3 of The Indian Commercial Sex workers (Protection and Regulation) Act, 2021.

⁹ Section-9 of The Indian Commercial Sex workers (Protection and Regulation) Act, 2021.

¹⁰ Fact sheet Para No. 5

¹¹ Section-3 of The Indian Commercial Sex workers (Protection and Regulation) Act, 2021

- a. **Section 3(1)** states that “every commercial sex worker”, even before the registration designated the sex workers as “Commercial Sex Workers”.
- b. **Section 3(1)(vii)** states that “written consent of the spouse in case of being married” that there is no specific procedure prescribed by the legislation to verify the proof of consent by the spouse.
- c. **Section 3(1)(viii)** states that “such other particulars as may be prescribed”, where the impugned Act does not prescribe any of such particulars for the purpose of registration.

[¶8.] It is humbly submitted that in the case of *City of Cincinnati v. Schill*¹², the Court defined the term Vague as “*indefinite*”. And, in the *Weliska's Case*¹³ the court held that “*Vague and unsatisfactory testimony is that which is dim and shadowy and fails to relieve the mind of the trier of facts from doubt or uncertainty*”. Moreover, in the cases of *The State of Madhya Pradesh & Anr. v. Baldeo Prasad*¹⁴, *K. A. Abbas v. The Union Of India & Anr.*¹⁵, *Shreya Singhal v. U.O.I*¹⁶, *Kartar Singh v. State Of Punjab*¹⁷, *Franklin v. State*¹⁸, *Papachristou v. Jacksonville*¹⁹, *Hoffman Estates v. The Flipside*²⁰ the Hon’ble Courts had admitted that in certain circumstances vagueness makes a statute void. Section 3 of The Commercial Sex Workers (Protection and Regulation) Act, 2021 is vague, indefinite and uncertain.

1.1 That Section 3 of the Act Violates the Right to Privacy under Article 21 of the Indian Constitution.

[¶9.] It is respectfully submitted that the impugned **Section 3 of The Act**²¹, invariably strikes at the heart of Right to Privacy, which was recognized by this Hon’ble Court in many landmark judgements. It is humbly submitted that **Article 21** of *The Constitution of India* contemplates that “*No person shall be deprived of his life or personal liberty except according to procedure established by law*”²².

[¶10.] It is submitted that Right to Privacy is also recognized as a basic Human Right under **Article-12**

¹² 125 Ohio St. 57, 180 N.E. 545,547

¹³ 125 Me. 147, 131 A.860,861

¹⁴ AIR 1966 SC 1593

¹⁵ AIR 1971 SC 481

¹⁶ (2013) 12 SCC 73

¹⁷ 1994 SCC (3) 569

¹⁸ 887 So. Sd 1063 (Fla. 2004)

¹⁹ 405 U.S. 156 (1972)

²⁰ 455 U.S. 489 (1982)

²¹ Section 3 of The Indian Commercial Sex workers (Protection and Regulation) Act, 2021

²² Article 21 – Indian Constitution, 1949

of the **Universal Declaration of Human Rights Act, 1948**²³, which states, “*No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attack upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks*”. **Article 17 of the International Covenant on Civil and Political Rights Act, 1966**²⁴ to which Indica is a party also protects that right and states, “*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence nor to unlawful attacks on his honor and reputation.*”

[¶11.] It is submitted that however, our Indican judiciary has, at present, carved out a distinctive precinct regarding privacy and an upshot of that is Right to Privacy, it is, now, recognized as a Fundamental Right, which is intrinsic under Article 21. And also, in the case of **Peoples Union of Civil liberties (PUCL) v. Union of India**²⁵ the Supreme Court held that “*Right to Privacy is a part of the Right to ‘Life’ and ‘Personal Liberty’ enshrined under Article 21 of the Constitution. The said right cannot be curtailed “except according to procedure established by law” and the procedure must be just, fair, and reasonable.*” In the cases of **K.S. Puttaswamy v. Union of India**,²⁶ **R. Rajagopal v. state of Tamil Nadu**²⁷ and **Govind v. State of Madhya Pradesh**²⁸, the Hon’ble Supreme Court held that “*the Right of Privacy is implicit in the Right to Life and Liberty guaranteed to the citizens of Indica by Article-21*”.

[¶12.] It is submitted that in the case of **State of Maharashtra v. Madhukar Narayan Mardikar**²⁹ was held that “*for the proposition that even a woman of easy virtue is entitled to privacy, and no one can invade her privacy as and when one likes*”. She is entitled to protect herself if there is an attempt to violate it against her wish and is equally entitled to the protection of law. As every citizen in Indica has Right to Privacy. But by registering under Section 3 of impugned Act³⁰ there Right to Privacy is violated.

[¶13.] It is submitted that in the case of **Om Kumar v. Union of India**³¹ the Supreme Court held that “*the courts are entitled to consider the proportionality of restrictions*”. It means that restrictions should not be arbitrary or beyond what is required for achieving the object.

²³ Article 12- Universal Declaration of Human Right Act, 1948. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

²⁴ Article 17 – International Covenant on Civil and Political Rights Act, 1966. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

²⁵ AIR 2004 SC 456

²⁶ AIR 2017 SC 4161

²⁷ AIR 1995 SC 264

²⁸ AIR 1975 SC 1378

²⁹ AIR 1991 SC 207

³⁰ Section-3 of The Indican Commercial Sex workers (Protection and Regulation) Act, 2021

³¹ 2001 (2) SCC 386

Legislation that arbitrarily or excessively invades the fundamental rights cannot be said to be reasonable. Further, the restriction must have a direct or proximate nexus with the object which the legislation seeks to achieve. The impugned act violates Right to Privacy without any reasonableness on restriction. By registering as a sex worker under Section 3 of impugned Act, which asks for personal information and other health related information clearly violates the Right to Privacy.

[¶14.] It is submitted that the Counsel on behalf of the Petitioner contends that, Right to Privacy is considered as a Right to Life and Personal Liberty under Article 21 of the Constitution of India, it is to be said that the registration of the sex workers violates their Right to Privacy. Because *registration of sex workers can result in stigmatization, discrimination, and marginalization of individuals who are engaging in sex work*. Registering as a sex worker can lead to social ostracism, discrimination, and exclusion from the broader society. Registration requires sex workers to disclose their personal information, including their name, address, and other details to government authorities. Such forced disclosure of personal information can be a serious invasion of privacy.

[¶15.] In case of *K.S. Puttaswamy v. Union of India*,³² Justice *D.Y. Chandrachud* made several notable points with regard to privacy violations by the Aadhaar project and Aadhaar Act, 2016. He held that the legislative passage of Aadhaar Act as a Money Bill was unconstitutional. Section 57 of the *Aadhaar Act, 2016* allowed Government entities, body corporates and individuals to use the Aadhaar number for establishing the identity of an individual for any purpose, pursuant to any law or contract. The Supreme Court held that the phrase '*any purpose*' is not *proportionate*, too wide and susceptible to misuse. The possibility of collecting and using Aadhaar numbers for authentication pursuant to a contract was disallowed since this may result in individuals being forced to give their consent in the form of a contract for an *unjustified* purpose. The Supreme Court laid down that the contract has to be '*backed by law*' and private entities are not permitted to use Aadhaar numbers for the purpose of authentication, on the basis of a contract with the concerned individual, since it would enable commercial exploitation of an individual's biometric and demographic information by private entities. He further held that Aadhaar violated the principles of informational privacy, informational self-determination, and data protection. He reiterated the point that Aadhaar bore the risk of creating a surveillance state and stressed the additional risks of commercial profiling of individuals and potential swaying of elections. He further asserted that the Aadhaar Act violated Article 14

³² AIR 2017 SC 4161.

because it lacked an independent regulatory and oversight structure that offered strong safeguards for data protection.

[¶16.] It is humbly submitted that the constitution Bench in the judgement of **Puttaswamy V. Union of India**³³ held that Right to Privacy is a Fundamental Right enshrined under Article 21 of the Indian Constitution, any restriction on such Fundamental Right has been held to be valid when it passes the muster of three-fold test –

- (i) The existence of law.
- (ii) A legitimate State interest and.
- (iii) Such law should pass the test of proportionality.

The impugned Act does not satisfy 2 tests i.e., A legitimate state interest and the test of proportionality out of threefold test prescribed by the Hon'ble court. The Act to be valid, Legitimate goals should be proportionately pursued. However, there is no rational connection between the objects and the means used to achieve them in the challenged Act. The Act fails to achieve the intended goal of its enactment. The purpose of the Commercial Sex workers (Protection & Regulation) Act, 2021 is to regularise the commercial sex work as a profession by registering for the voluntary commercial sex. to regulate and protect the commercial sex workers as well as their children from trafficking and abuse and to control the compelling of involuntary sexual activities. The impugned Act doesn't provide any mechanism to overcome above issues. further, the Act doesn't provide enough safeguards to protect the data of sex workers obtained through registration. The Act made no provision for safeguarding the sensitive data collected from sex workers. The proposed Act doesn't fulfil the objects of commercial sex workers in public interest. The Counsel on behalf of Petitioner humbly submits that the impugned Act is void as it does not fulfil the three-fold test given by the Hon'ble Supreme Court of India.

[¶17.] In the case of **Anivar A Aravind v. Ministry of Home Affairs and others**³⁴, the Karnataka High Court held that information privacy is a facet of the Right to Privacy. The bench of Chief Justices AS Oka and Justice Vishwajith Shetty passed an interim judgement restraining the Central Government and the National Informatics Centre (NIC) from sharing the response data given by users in the '***Aarogya Setu***' app with other government departments and agencies, without obtaining informed consent of the users. The court observed that sharing the responses of the users of the Aarogya Setu app without their consent will be a violation of the Right to Privacy.

³³ AIR 2017 SC 4161, Para 366.

³⁴ Anivar A Aravind V. Ministry of Home Affairs, (Karnataka High Court) WP No. 7483 of 2020.

[¶18.] It is further submitted that Registering as a sex worker can also expose individuals to a higher risk of abuse and exploitation, as their personal information is available to third parties who may use it for nefarious purposes. It is submitted that the Counsel on behalf of the Petitioners contends that the registration of sex workers violates the Right to Privacy under Article 21 of the Indian Constitution and may do more harm than good. It is important to consider these concerns when deciding on policies regarding sex work, and to work towards policies that respect individuals' privacy and human rights.

1.2 That by Commercializing the Prostitution defeats the purpose of the Suppression of Immoral Traffic of Women and Girls Act, 1956 (SITA).

[¶19.] It is submitted that the Counsel on behalf of the Petitioner states that “*The Immoral Traffic (Prevention) Act (ITPA)* is an Indian law that aims to prevent the sexual exploitation of women and girls, including prostitution. The Act criminalizes the solicitation of prostitution and running of brothels and provides for the rehabilitation of individuals involved in prostitution. Commercializing prostitution can defeat the purpose of the ITPA by **Encouraging exploitation** because Commercializing prostitution turns it into a business, where profits are the primary objective. This can lead to the exploitation of individuals, including trafficking of women and girls, who are forced into the sex trade against their will and also **Increases demand for prostitution**, which can create a market for traffickers and pimps to exploit vulnerable individuals and traffic them into the sex trade.

[¶20.] It is further submitted that India being a welfare state, all effort is underway to control and eradicate the curse of prostitution. Several laws were enacted to safeguard the interest of women. In 1956, Suppression of Immoral Traffic in Women and Girls Act was enacted under which it was declared a legal offence to keep brothels, to entice girls and women and use them for prostitution³⁵. It is submitted that **Immoral Traffic (Prevention) Act, 1956** specifically declares certain acts to be illegal including solicitation for prostitution, managing a brothel or allowing the usage of certain places as brothels (**Sec. 3**), living on the earnings of a prostitute's money (**Sec. 4**), seducing a person under custody for prostitution (**Sec. 8**) and carrying out prostitution within two hundred meters of any public place like schools, colleges, hospitals (**Sec. 7**) etc. whereas in the Commercial Sex Workers (Protection and Regulation) Act, 2021 contemplates that “*it is expedient to regulate the conditions of work and employment of commercial sex*

³⁵ International Research Journal of Social Sciences, Vol. 2(3), 31-39, March (2013) Int. Res. J. Social Sci

workers and prohibiting solicitation of commercial sex at residential hotels, theaters, other places of public amusements or entertainment and other establishment and for certain other purposes hereinafter". The impugned Act prohibits the solicitation of commercial sex workers at particular places only whereas in the Immoral Traffic Protection Act, 1956, prohibits the solicitation of prostitution itself.

[¶21.] It is respectfully submitted that **SITA** focuses on **penalizing the demand for prostitution, rather than the supply of sexual activities**. The law recognizes that individuals involved in prostitution are often victims of exploitation and seeks to protect them from abuse, violence, and trafficking. It is submitted that by overall, commercializing prostitution undermines the objectives of the **ITPA**, which seeks to protect women and girls from sexual exploitation and provide them with rehabilitation services. Instead of commercializing prostitution, efforts should be focused on preventing the demand for prostitution, promoting gender equality, and providing alternative livelihood to individuals involved in the sex trade.

[¶22.] It is submitted that, as we all know that **The Indian Penal Code³⁶, 1860** is a penal statute and describes various offences and few of them apply to the prostitution such as "**Section 354, Section 366, Section 372, Section 375, Section 497, Section 498**"³⁷. It is submitted that enacting the laws on prostitution has only made the life of sex workers difficult, vulnerable, and dangerous. This is absolutely a wrong way of tackling this profession, instead of making their life easy, the government has done exactly the opposite. No country has been able to regulate prostitution with legislation³⁸.

[¶23.] It is humbly submitted that Section 3 the impugned act is violating the dignity of workers. The one who recognized legally as commercial sex worker should necessarily furnish all the particulars referred to in Section 3 of the Act³⁹. Section 3 of the Act places the applicant in an embracing position where the sex workers has to voluntarily furnish the particulars sounding the intention of the applicant to be considered as a commercial sex worker, which in fact no commercial sex worker does such ignominious acts happily, voluntarily even though knowingly as such impugned provision Section 3 is liable to be struck down by Hon'ble court as unconstitutional being an invasion on Right to Privacy and inherent dignity of individual sex worker.

³⁶ The Indian Penal Code, 1860, Bare Act published by Law & Justice Publishing Co.

³⁷ Section 354, 366, 372, 375, 497, 498 of Indian Penal Code, 1860 - Universal's bare act of Indian penal code, published by LexisNexis.

³⁸ 64th law commission report

³⁹ The Commercial Sex workers (Prevention and Regulation) Act, 2021

ISSUE-2: WHETHER THE REQUIREMENT OF SPOUSAL CONSENT VIOLATES THE SANCTITY OF MARRIAGE AS ESPOUSED BY THE INDICAN SOCIETAL VALUES AND MORALITY?

[¶27.] The Counsel on behalf of the Petitioner respectfully submits that the mandatory requirement of spousal consent under Section 3(vii) of the impugned Act in the case of a married person is a flagrant violation of the sanctity of marriage. In the Society of Indica the social institution of marriage is looked with high esteem treating the spouses as indissoluble members. The idea of the “sanctity of marriage” is deeply ingrained in the cultural and societal values of Indica. Marriage is seen as a sacred and lifelong union between two individuals. The impugned enactment is quite repugnant to the Indican family system in vogue since time immemorial and is opposed to the Indican social and cultural ethos.

[¶28.] The Counsel on behalf of the Petitioner humbly submits that, the requirement of spousal consent for prostitution can be seen as a violation of the sanctity of marriage because it reduces the marital relationship to a transactional one, where one partner has the power to grant or deny permission for the other to engage in a particular activity. *The spousal consent implies that one partner has ownership over the other's body and sexual autonomy, which undermines the fundamental values of equality, respect, and trust that underpin a healthy and loving marriage.* Further, it is humbly submitted that, the requirement of spousal consent can also perpetuate gender-based power imbalances, where men are more likely to be granted permission by their wives to engage in prostitution, while women may not have the same agency or freedom to make the same choice. This can reinforce harmful patriarchal attitudes that view women as objects.

[¶29.] It is humbly submitted that the society has evolved on grounds of social morality. It has always been part of human culture to care about people. *According to sociological school of jurisprudence, many jurists believed that the law must evolve to meet the needs of society and must be based on the principles of social morality.*⁴⁰ Social Morality is a set of values and norms that exist in society. These are the rules that govern the members of a society on how they should behave with each other for their welfare and well-being. Social Morality depends upon the culture, beliefs, practices, traditions, or customs prevalent in society.⁴¹ The institution of marriage was also evolved on the grounds of social morality.

⁴⁰ Roscoe Pound: Jurisprudence, Vol.I, (1959)

⁴¹ Constitutional Morality in the Context of Indian Legal System', 3 International Journal of Law Management & Humanities 64-73 (2020).

[¶30.] In cases of Ranjit D. Udeshi v. State of Maharashtra⁴², Chandrakant Kalyandas Kakodar v. State of Maharashtra⁴³, Aveek Sarkar v. State of West Bengal⁴⁴ The courts observed that ‘obscenity has to be judged in the context of contemporary and current socio-moral attitude of the people and the prevalent norms of acceptability/susceptibility of the public in order to ensure morality and public decency’. As contemporary & current socio moral attitude of the people, Commercial sex work defeats the sanctity of marriage and is against social morality and public decency.

[¶31.] In cases of Choga Lal v. Piyari & Anr.⁴⁵, Parul Bala Chandra v. Jamuna Bala⁴⁶ the court held that the consideration or object of which is illegal, immoral or opposed to public policy, is not a contract under the Indian law. A landlord who knowingly lets a room to a prostitute to carry on prostitution there, cannot either recover rent or evict such a tenant in a court of law. The rule which is applicable to the matter is "*ex turpi causa non oritur actio*" which means ‘no action can arise from an illegal act’. The courts impliedly considered prostitution as illegal, immoral, and opposed to public policy. It can be inferred that prostitution is considered as immoral.

[¶32.] In cases of Smt. Kamla Bai and Anr. v. Arjan Singh and Ors.⁴⁷, Husseinali Casam Mahomed v. Dinbai⁴⁸, Gherulal Parakh v. Mahadeodas Maiya and Others⁴⁹ the Hon’ble courts observed that ‘a contract which is made upon an immoral consideration or for an immoral purpose is unenforceable and there is no distinction in this respect between immoral and illegal contracts. It can be impliedly inferred that prostitution is considered as sexual immorality’.

[¶33.] It is humbly submitted that the constitutional moralities are originated from societal moralities. The Societal moralities always prevail over any other moralities. the constitution buttresses the importance of Societal morality, which is manifested in Articles 19⁵⁰, 25⁵¹ and 26⁵²etc. in case of Constitution of India, 1949. In case of State of Bombay v. R. M. D. Chamarbaugwala⁵³. The Hon’ble court has observed that constitutional morality is ‘based on shifting and subjective notions of right and wrongs of the society’ in the case of Suresh Kumar Koushal v. Naz

⁴² AIR 1965 SC 881

⁴³ 1969 (2) SCC 687

⁴⁴ (2014) 4 SCC 257

⁴⁵ (1909) ILR 31 All 58

⁴⁶ (CAL)-1970-2-22

⁴⁷ AIR 1991 MP 275

⁴⁸ (1923) 25 BOMLR 252

⁴⁹ AIR 1959 SC 781

⁵⁰ Article 19 of Indian Constitution, 1949.

⁵¹ Article 25 of Indian Constitution, 1949.

⁵² Article 26 of Indian Constitution, 1949.

⁵³ AIR 1957 SC 699

Foundation⁵⁴ the Hon'ble court gave emphasis to social morality over constitutional morality.

[¶34.] It is submitted that Section 3(vii) of the impugned Act induces that one spouse has more power or control over the other, creating an unequal power dynamic within the marriage in which one partner may feel coerced or pressured to give consent. This can lead to resentment, mistrust, and even abuse within the relationship, which ultimately undermines the very foundation of the marriage.

[¶35.] It is humbly submitted that the requirement of spousal consent violates the Sanctity of marriage. According to **John Lyly**⁵⁵ "Marriage is a destiny made in heaven" – Marriage in a simple way of understanding is the legally or formally recognized union of two people as partners in a personal relationship. According to **Merriam Webster**⁵⁶, "marriage is the state of being united as spouses in a consensual and contractual relationship recognized by law". Marriage is considered as a permanent social and legal contractual relationship between two people that is based on mutual rights and obligations among the spouses.⁵⁷

[¶36.] It is submitted that Hindus have idealized marriage in a big way. In the patriarchal society of Rig Vedic Hindus, marriage was considered as a sacramental union. In the Shastric Hindu law, marriage has been regarded as one of the essential samskaras (sacrament for every Hindu). "Women were created to be mothers, and men to be fathers." For a Hindu, marriage is essential, not only for begetting a son to discharge his debt to the ancestors, but also for performance of other religious and spiritual duties. *The institution of marriage is considered sacred even by those who view it as a civil contract.*

[¶37.] It is most respectfully submitted that **Satvir Singh and ors v. State of Punjab and ors.**⁵⁸ the Supreme Court held that "Mahabharata emphasized in unmistakable terms that those who live in their family life will attain highest fulfilment of the human existence. Unequivocally the solemnization of marriage is the spinal cord of the body of a family life. Solemnization of marriage is an important social function among the followers of all religions and classes. In India marriage has more social significance in addition to its natural individual significance because it forges a relationship not only between two people but also between two families."

[¶38.] It is submitted that the Supreme Court in various judgements expressed the view "*that prostitution is a social evil that can have a harmful effect on the institution of marriage and*

⁵⁴ (2014) 1 SCC 1

⁵⁵ Famous English writer, playwright, courtier, and parliamentarian.

⁵⁶ Merriam Webster, Merriam Webster's Dictionary of Law, (Goyal Publishers & Distributors Pvt. Ltd. 1st Indian edn., 2005)

⁵⁷ Sanctity of marriage – Liberal vs Conservative view by Barkataki and Titikhya

⁵⁸ AIR 2001 SC 2828.

family". In case of **Budhadev Karmaskar v. State of West Bengal**⁵⁹, the Supreme Court observed that "*prostitution violates the dignity of women and is incompatible with the basic values of a civilized society.*" The court also noted that prostitution can lead to the breakdown of family and social values. The Hon'ble bench cautioned that the prostitution effects the institution of the marriage.

[¶39.] It is submitted that the Supreme Court of India has delivered several judgements regarding the sanctity of marriage as espoused by Indian societal values and morality. In the case of **Gaurav Jain v. Union of India**⁶⁰, the Supreme Court stated that *prostitution is a form of exploitation and violation of human rights*. The Court held that ***prostitution violates the dignity of women and is against the sanctity of marriage.*** It is humbly submitted that in the case of **Saroj Rani v. Sudarshan Kumar**⁶¹ the Hon'ble court held that '*Marriage is a sacred union of two people that is not only limited to the sexual relationship but also draws mutual understandings towards each other so that they can live happily at their matrimonial home*'. Whereas the Section 3 of the impugned enactment dilutes the mutual understanding between the couple.

[¶40.] In the case of **V. Bhagat v. D. Bhagat (1994)**⁶² the Supreme Court held that "*the Hindu Marriage Act recognizes the sanctity of marriage as a sacrament and that the parties to a marriage have a duty to live together.*" The State has made a legislation which would directly affect the sanctity of marriage and in the case of **Smt. K. Srinivas Rao v. D.A. Deepa (2013)**⁶³ the Supreme Court held that "*the institution of marriage is an important social institution and that the courts should be careful in granting divorces so as not to undermine the sanctity of marriage.*"

[¶41.] It is submitted that According to the Indian Journal of Applied Research⁶⁴ 63% majority of women involved in sex work are married and only 24% of the women involved in this activity were unmarried. It is imperative from the above-mentioned statistics that the Act of prostitution tampering the ethos of marriage and the sanctity of sexual relationship between the married couple is diluted.

[¶42.] It is humbly submitted that Section 3(vii) of the impugned Act contradicts the concept of spousal relationship, which requires matrimonial fidelity and loyalty to each other. The impugned

⁵⁹ AIR 2011 SC 2636

⁶⁰ 1990 SCC 709

⁶¹ AIR 1984 SC 1562

⁶² AIR 1994 SC 710

⁶³ 2013 (5) SCC 226

⁶⁴ S. Lidia Susan and Dr. RM. Sam Deva Asir, A study on life satisfaction among female sex workers, Volume 4, Pg no: 22.

provision allows the unscrupulous husband to coerce the wife into consenting to be a commercial sex worker against her will and conscious. As a result, if the enactment is allowed to continue with validity. There will be prostitution laced with impurity, leaving helpless wives with no option but to satisfy their husbands.

[¶43.] Further it is humbly submitted that Prostitution induces deception, coercion, and exploitation that can cause emotional and physical harm to those individuals involved in it. This can also jeopardize the sanctity of marriage by making it more difficult for people to trust one another and feel secure in their relationships. Prostitution can be seen as undermining the sanctity of marriage by reducing the value and importance of sexual intimacy within committed relationships. The Act destroys the sanctified relationship for begetting legitimate children.

ISSUE-3: WHETHER THE INDICAN COMMERCIAL SEX WORKER (PROTECTION AND REGULATION) ACT, 2021 IS AGAINST THE PUBLIC HELATH, SAFETY AND MORALITY AND IS LIABLE TO BE STRUCK DOWN?

[¶44.] The Counsel on behalf of the Petitioner humbly submits that ***The Commercial Sex Workers (Protection and Regulation) Act, 2021*** is against Public Health, Safety and morality and is liable to be struck down. Legalizing the Commercial sex leads to increase in prostitution. Due to the discrimination, women in sex work have been denied safety, proper healthcare, education etc. It is submitted that Human rights violations are common throughout Indica, they are particularly prevalent in the lives of people involved in prostitution and sex work. Discrimination against sex workers in Indica is as much an issue as the discrimination faced by other marginalized groups along lines of class, caste, race, or religion⁶⁵. Sex work is not treated as work, but as a dirty and immoral lifestyle threatening to taint the “innocent” public. Women cannot access good healthcare and are often subject to abuse, violence and exploitation by police and government officials, while their children face harassment in schools and the workplace.

[¶45.] It is humbly submitted that ***The Commercial Sex Workers (Protection and Regulation) Act, 2021*** is against Public Health *as the Act did not provide any provisions for safeguarding the health of the sex workers*. Commercializing sex work leads to increase in prostitution as everyone starts registering as sex workers. Prostitution can increase the spread of STIs such as ***HIV/AIDS, syphilis, and gonorrhea***.⁶⁶ Recent data show that prostitutes are responsible for no

⁶⁵ GLOB. NETWORK OF SEX WORK PROJECTS, *Sex Work as Work* 1–2 (2017), [https://perma.cc/YWS3-ETT4].

⁶⁶ AMERICAN SOCIAL HEALTH ASSOCIATION, TODAY'S VD CONTROL PROBLEM 54 (1974). There are an estimated three to four million cases of gonorrheal infection per year in the United States. Williams, Diagnosing Disseminated Gonorrhea, MED. ASPECTS HUMAN SEXUALITY, May 1977, at 57.

more than five percent of all venereal disease.⁶⁷ The increase in venereal disease appears to be due to the increase in sexual activity among the young.⁶⁸ Prostitutes may have unprotected sex with multiple partners, increasing the risk of transmitting or contracting these diseases.

[¶46.] It is submitted that in case of **Fishermen care registered association, Old Pallavaram, Chennai v. Union of India and others**,⁶⁹ the court held that “*Right to Safety is the Right guaranteed under Art. 21 i.e., Right to Life and Personal Liberty.*” Every citizen has a Right to Safety of health and security. The impugned Act may increase the risk of safety and security to the neighbors who reside in the locality where the sex workers reside and in case of **P.N. Krishnalal and others v. Government of Kerala**,⁷⁰ the Supreme Court held that “*no citizen has a Fundamental Right to carry on any trade or business in activities which are inherently vicious, pernicious, criminal in propensity, immoral, obnoxious and injuries to health, safety and welfare of the general public.*” The impugned legislation by allowing commercial sex may damage health and welfare of public in large and also shows a very negative impact on the younger generations.

[¶47.] It is submitted that in the case of **Society for Un-aided Private Schools of Rajasthan v. U.O.I. and Another**⁷¹ the court held that “Rights guaranteed under Article 19(1)(g) can also be restricted or curtailed in the interest of public imposing reasonable restrictions on the exercise of rights conferred under Article 19(1)(g). It is submitted that in the cases of **State of Gujarat v. Mirzapur Moti Kureshi Kasab Jamat**⁷², **Narendra Kumar v. Union of India**⁷³ and **Madhya Bharat Cotton Association Ltd v. Union of India**⁷⁴ the Supreme Court has held that *the expression in the interest of ‘general public’ in Article 19(6) has wide importance comprehending public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution.* The state has a responsibility to protect the public order, health, and morals. State cannot pass any legislation which are against the objects mentioned in Part IV of the Constitution.

[¶48.] It is submitted that emotional exhaustion among female sex workers is comparatively high in amount⁷⁵, dealing with high emotional tension and cope up with privation, Workers are

⁶⁷ Felman, VD Prophylaxis via Drugs, MED. ASPECTS HUMAN SEXUALITY, May 1977, at 100.

⁶⁸ L. SAXTON, THE INDIVIDUAL, MARRIAGE, AND THE FAMILY 86 n.30 (1972); Chang, Quiz: Gonorrhea and Sexual Behavior, MED. ASPECTS HUMAN Sexuality, April 1977, at 48, 50; Fuser, Introduction to EDUCATIONAL Broadcasting Corporation, VD BLUES 12 (1972).

⁶⁹ W.P. No. 29512 of 2017

⁷⁰ 1995 (2) SCC 187

⁷¹ (2012) 3 MLJ 993

⁷² AIR 2006 SC 212

⁷³ AIR 1960 SC 430

⁷⁴ AIR 1960 MP 330

⁷⁵ Vanwesenbeeck I. Burnout among Female Indoor Sex Workers. Archives of Sexual Behavior, 2005; 34(6): 627-639.

vulnerable to addict in narcotics. Sex worker selling of helplessness and depressive thought complexes leads in suicidal tendencies⁷⁶, most prostitutes are exclusively vulnerable to mental health issues⁷⁷. Unpleasant experience which met in childhood likely being raped and victimized in sexual violence has been led to Post-traumatic Stress Disease (PTSD) condition and resulted in entering prostitution⁷⁸. Psychological distress like anxiety, depression and hostility are much common⁷⁹.

[¶49.] It is further submitted that Commercializing prostitution is often considered immoral for several reasons. Commercial sex is allegedly morally wrong per se because it involves the alienation of the body to the will of another, Commercializing prostitution treats human beings as commodities to be bought and sold for sexual pleasure. and thus undermines the ultimate roots of the integrity of moral personality⁸⁰. This view reduces individuals to mere objects for the satisfaction of others, denying their intrinsic worth as human beings. It is submitted to the Hon'ble court, in the case of **Gaurav Jain v. Union of India (2017)**⁸¹ The Court noted that prostitution is immoral and can lead to the exploitation of women, and that any attempts to legalize it would be against the country's moral fabric.

[¶50.] It is submitted that prostitution is often associated with the spread of sexually transmitted infections (STIs) and other health risks. Commercializing prostitution can further increase the risks of STIs and other health issues as it can lead to lower standards of hygiene, protection, and healthcare for sex workers. Prostitution is often linked with criminal activity, including human trafficking, drug abuse, and violence. Commercializing prostitution can encourage such criminal activities, leading to harm to individuals and society. Commercializing prostitution goes against the principles of morality as it treats human beings as commodities, exploits vulnerable individuals, poses health and safety risks, and can lead to harmful practices in society. In this regard, legalizing commercial sex work goes against public health, safety, and morality.

⁷⁶ Flowers RB. 1998. The Prostitution of Women and Girls. Jefferson: McFarland.

⁷⁷ Seib CH, Fischer J, Najman JM. The Health of Female Sex Workers from Three Industry Sectors in Queensland, Australia. *Social Science and Medicine*, 2009; 68(3): 473-478.

⁷⁸ Carr SV. The Health of Women Working in the Sex Industry – a Moral and Ethical Perspective. *Journal of Sex and Marital Therapy*, 1995; 10(2): 208.

⁷⁹ Faugier J, Cranfield S, Sargent M. Risk Behaviours and Healthcare Needs of Drug-using Female Prostitutes (Part II). *Journal of Substance Misuse for Nursing, Health, and Social Care*, 1997; 2(4): 203-209. El-Bassel N, Schilling RF, Irwin KL, Faruque S, Gilbert L, Von BJ, Serrano Y, Edlin BR. Sex Trading and Psychological Distress among Women Recruited from the Streets of Harlem. *American Journal of Public Health*, 1997; 87(1): 66-70.

⁸⁰ See C. FRIED, RIGHT AND WRONG 142-43 (1978); I. KANT, LECTURES ON ETHICS 162-71 (L. Infield trans. 1963) (first delivered 1780).

⁸¹ 1990 SCC 709

PRAYER

Wherefore in the light of the issues raised, arguments advanced, and authorities cited, it is humbly prayed that this Hon'ble Court may be pleased to adjudge and declare:

1. That the petition is maintainable on the grounds of public health, safety, and morality as this Hon'ble court has competent jurisdiction over the matter.
2. That the Commercial Sex workers (Protection and Regulation) Act, 2021 is unconstitutional as it is violative of Right to Privacy.
3. That the requirement of spousal consent under Section 3(vii) of the Commercial Sex Workers (Protection and Regulation) Act, 2021 violates the sanctity of marriage as espoused by the Indian societal values, culture and morality which are bedrock of Indian Society.

And pass any order, direction, or relief that this Hon'ble Court may deem fit in the interests of justice, equity, and good conscience.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL DUTY BOUND EVER
PRAY

COUNSELS FOR THE PETITIONER