

## APPRAISAL OF PROSTITUTION AS A COMMERCIAL WORK OR SOCIAL MENACE IN NIGERIA

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### Abstract

*This paper appraises prostitution in Nigeria and considers whether it should be accepted as lawful commercial activity or seen as a social menace. The aim of this paper is to examine the laws which provide for the regulation or otherwise of prostitution. The paper takes a cursory look at the historical background of prostitution and notes attitudinal change in its acceptance. The paper examines classes of prostitutes. The paper examines the extent to which the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Criminal Procedure Code 2004 and the Penal Code 2004 provides for the administration of justice relative to prostitution. The paper also appraises the nature, forms, causes and challenges of prostitution in Nigeria. The paper considers some factors promoting and or disposing persons to participate in sex trade. The paper appraises prostitution as a commercial activity and considers the functionalist theory, social psychological theory and feminist theory of prostitution. The paper also appraises prostitution as a social menace with myriad negative impact on society. The paper concludes that lacuna exists in the legal framework dealing with prostitution in Nigeria and makes recommendations for better regulation of sex trade in Nigeria having found that it cannot be wished away or eradicated.*

### 1.0 Introduction

Prostitution is considered one of the world's oldest<sup>1</sup> professions and has been the subject of intense debate and controversy for centuries. On one hand, some view it as a form of work and a means of financial support for those who engage in it. On the other hand, others see it as a social menace that contributes to the spread of sexually transmitted diseases and other health and societal problems, including exploitation of vulnerable populations. In this paper, we will explore both sides of the argument, and try to gain a better understanding of this complex issue. However, there seem to be different approaches to the issue of prostitution, each approach with its merits and demerits. Some jurisdictions have taken a moralistic approach and have therefore sought to prohibit the practice altogether, while others have adopted a more permissive approach, allowing the trade to thrive with regulation. As we begin our foray into this discuss,

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<sup>1</sup>A.J Ringdad, *Love for Sale: A Global History of Prostitution*, (Grove Press, 2009)

it is necessary to point out that in different climes, depending on their approach, legislative provisions have been made to either prohibit or regulate prostitution. Notwithstanding these provisions, the trade is alive and well.

### 1.1 Historical Outlook of Prostitution as a Sexual or Professional Activity

According to historical findings, prostitution has been practiced throughout ancient and modern times. Prostitution has variously been described as the world's oldest profession; it is however doubtful that prostitution is the oldest profession as farming and fishing have existed as long as man has existed. Temple Prostitutes that provided sexual services for priests and others was a common feature in ancient Mesopotamia<sup>2</sup>. In ancient Greece there were houses of prostitution (legal brothels) that serviced political leaders and common men alike. Prostitution was also common in ancient Rome and even in Old Testament times, it was practiced. In the Canaan region, a significant portion of temple prostitutes were male. Sacred prostitutes and other similar categorizations also existed in India, China and Japan. During the Middle Ages and through the 19<sup>th</sup> century, prostitution was tolerated as a necessary evil, as legal brothels operated in much of Europe and were an important source of tax revenue. As the dangers of venereal diseases became known, some cities shut down their brothels while other cities regulated their operations. It is pertinent to note that prostitution crosses class lines. From the poor streetwalker with stereotyped drug habits, to the high-class brothel and escort service worker with designer clothes and fancy apartments. The race is on.<sup>3</sup>

Suffice it to say that the situation is not much different in Nigeria. Prostitution is also prevalent in Nigeria. With the rising economic importance of Lagos as a Seaport and then capital city, the landscape of the city changed and the prevalence of commercial sex work was one of those changes. As elsewhere in the world, prostitution, which was previously regarded as immoral and exploitative, soon became tolerated. Vices that were previously labeled as offences against morality have become commonplace. In major streets of Abuja, Lagos, Enugu, Port-Harcourt and other cities, young ladies in scanty clothing are seen parading themselves in the evening looking for sex buyers (customers). One major problem that flow from prostitution is that with the harsh economic realities in Nigeria and many youths seeking to “*Japa*”, so many Nigerian females constitute a reasonable percentage of prostitutes in Europe and Asia. Various reports indicate that the largest group of prostitute from sub-Saharan Africa is from Nigeria. Nigerian prostitutes are operating in many nations of the world; some of these include Italy, Spain, Germany, Belgium, Austria, United Kingdom, Norway, Netherlands and Lebanon. It becomes imperative therefore that Nigeria must take pragmatic steps in addressing the question of prostitution (sex work). Whilst the argument continue to rage and opinions remain divided, prostitution continues to thrive in Nigeria. According to statistics given by the United Nations Interregional Crime and Justice Research Institute, about 8,000 to 10,000 Nigerian women

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<sup>2</sup>*ibid.*

<sup>3</sup>R. Weitzer, *Legalizing Prostitution from Illicit Vise to Lawful Business*, (NYU Press JSTOR, 2012)

practiced prostitution in Italy between 2000 and 2009. Back home in Nigeria as earlier mentioned, in most big cities across the nation, street sex workers are seen openly plying their trade. Corporate sex work is also said to be thriving, so also is graduate and undergraduate prostitution (aka Aristo Girls).

## 1.2 Conceptual Definitions

The following are the keywords and concepts that will enable a better appreciation of this paper. Meanings are ascribed to them in line with the purpose of this paper.

**1.2.1 Prostitution:** For the purpose of this paper, some working definitions of Prostitution is proffered. Prostitution is defined as the practice or occupation of engaging in sexual activity with someone for payment, in general the person with whom this sexual activity is engaged is neither a spouse nor partner. Others have defined prostitution from a moral perspective. Merriam- Webster Dictionary defines prostitution as - *the act or practice of engaging in promiscuous sexual relations especially for money*. Legal Dictionary defines Prostitution as *the profession of performing sexual acts for money*. Sociologically, prostitution is defined as an occupation in which an individual sells sex in a promiscuous and emotionally indifferent manner. In the end, the common thread that runs through the definitions is money. However, some have been said to go into prostitution to express their sexual liberties and curiosities. Prostitutes may be male or female or transgender, and prostitution may entail heterosexual or homosexual activities, but historically, most prostitutes have been women and most clients men.<sup>4</sup> It is interesting to note that even in bible times male prostitutes operated. It is important to state here that the Right Activists on prostitution prefers the term “sex work” rather than prostitution which is considered as derogatory. In this paper, sex work and prostitution are used interchangeably.

Prostitution can be simply defined as the selling of sexual services. Sexual services could be offered for immediate cash or for other economy benefits. Prostitutes may be female, male or transgender and prostitution may entail heterosexual or homosexual activities. Historically however, most prostitutes have been and remain women and their customers also are men<sup>7</sup>.

Perceptions of prostitutes are mostly based on culturally determined values that defer within societies. In some societies, prostitutes are viewed as members of a recognized profession, in others, they are shunned, reviled and punished with stoning, imprisonment or even death. Only few societies have exercised similar severity towards customers. On a general, customers suffer few if any legal repercussions. In some cultures, prostitution has been required of young girls as a means of acquiring a dowry and some religions have temple prostitutes.

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<sup>4</sup> Encyclopedia Britannica, <https://www.britannica.com/topic/prostitution> Accessed 16 February 2023

**1.2.2 Lawful Business:** Lawful business refers to commercial activities that are allowed or permitted by law. A lawful business is allowable or permissible within the context of the law in the particular jurisdiction.

**1.2.3 Social Menace:** In this paper, it is been considered whether prostitution is an activity that is detrimental and harmful to society. Is prostitution of negative impact to human society and the general good of man? Does prostitution pose a threat to the moral fabric of the society? Therefore, whatever is considered a social peril or public threat is termed a social menace.<sup>5</sup>

## 2.0 Classes of Prostitution

In contemporary times, prostitutes may be classified into six broad categories based on their mode of operation. These categories are: independent call girl /escort, brothel employee, escort agency employee, window worker, bar or casino worker and street walker.

- a. **Independent Call Girl / Escort:** Independent Escorts work for themselves in hotels and private houses. They mostly advertise their services online and are usually contacted by phone. This category generally keep their profits themselves.
- b. **Brothel Employee:** Brothels (whorehouses) are dedicated locations where people can pay for sex and include saunas and massage parlors. Their prices are moderate and they endure a measure of exploitation. In jurisdictions where prostitutions is legalized, brothels are licensed.
- c. **Escort Agency Employee:** like independent call girls, employees of escort agencies also work in private places and hotels. They also charge relatively high prices. They are employed by an agency which usually exploits them.
- d. **Window Worker:** This type of prostitution is peculiar to certain jurisdictions. For instance in Amsterdam, prostitutes commonly entice prospective customers by displaying themselves through the window. Their charge is moderate to low. Almost all of Amsterdam window rooms are single occupancy, separating workers from each other. The workers spend much of their time by themselves in front of the windows.
- e. **Bar or Casino Worker:** These sex workers make initial contact with men at a bar or casino and then have sex at a different location. The pay is moderate to low.
- f. **Street Walker:** This appears to be the least paid category of prostitutes and are very vulnerable to exploitation. Street walkers are also considered as notoriously endangered and dangerous.<sup>11</sup>

## 3.0 Legal Framework

There is usually a connection between any occupation and the law within the jurisdiction where the occupation is practiced. That is to say that occupational activities are carried out within the

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<sup>5</sup> Power thesauruses <http://www.powerthesaurus.org> accessed 20th February 2023

precinct of the law.<sup>6</sup> In jurisdictions where sex work is criminalized, sex workers do not openly ply their trade, but are usually in the background and therefore forced to sometimes operate under life threatening conditions. There is no federal enactment that expressly prohibits prostitution in Nigeria, it is therefore arguable whether prostitution is a crime in Nigeria. Whilst some may consider prostitution as an unclean business that negatively impacts the moral fabric or society, for some others “na work”. Suffice it to say however that the law and morality are two different things. It is trite that the state in enforcement of the law is only concerned with acts or omissions that are illegal.<sup>7</sup> The principal penal laws in Nigeria are the Criminal Code Act which is applicable in the southern states, and the Penal Code Act applicable in the northern states. Those two Acts as earlier said have not expressly prohibited prostitution. This paper shall proceed to examine the extent to which our laws have regulated sex work.

#### **a. Constitution of the Federal Republic of Nigeria 1999 (as amended)**

The constitution is the grundnorm in Nigeria, therefore, it is necessarily from there that we begin our foray into the legal framework for prostitution in Nigeria. The constitution being the grundnorm is also the supreme law. It is the fundamental and organic law that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers and guarantees individual civil rights and liberties. The case of AG Lagos. V. AG Federation clearly elucidates the supremacy of the constitution of the Federal Republic of Nigeria 1999 as amended.

The provision of section 34 (1) of the constitution<sup>8</sup> guarantees every person no matter his or her occupation, background, lifestyle or gender to be entitled to respect for the dignity of his or her person. The right to the dignity of the human person is a right that guards against torture and other forms of inhumane and degrading treatments. The right to human dignity as guaranteed by the constitutions is also to the effect that every Nigerian has a right not to be subjected to torture or degradation. Human dignity is inviolable. It therefore means that both the physical and mental integrity of the individual must be respected and protected. The sex worker, being a citizen is also entitled to this right.

The constitution also provides for right to privacy. The right of privacy<sup>9</sup> entails the exclusion of public eye from prying into the personal affairs of an individual. It is a constitutional limit on the powers of the state; a right to be let alone.<sup>10</sup> Another crucial aspect of the right to privacy entails the right to protect one’s image and personality and have unfettered access to control one’s zone of exclusivity, space and confidential information<sup>11</sup>. The right to privacy lies within

<sup>6</sup> Bari-IkaVite 'Is Sex Work Really Workin Nigeria? Motivations, Dimensions and policy implications' *International Journal Of Africa Society, Cultures And Traditions*, Vol. 10

<sup>7</sup> S.C Edeh “Is prostitution a crime in Nigeria”, Bschorlarly, available online at <http://www.bschorlafly.com> accessed 20<sup>th</sup> January 2023

<sup>8</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>9</sup> *Ibid*, S. 37

<sup>10</sup> Yinka Olomolobi, “Right to Privacy in Nigeria”, available online at <http://papers.ssrn.com/SO13/papers.cfm?abstract=19306203> accessed 20<sup>th</sup> February 2023

<sup>11</sup> *Ibid*

the realm of self-ownership. It is a moral liberty of doing what an individual deems fit within his or her individuality and keeping others out of the sphere of self-ownership.<sup>12</sup> In upholding this constitutional right to privacy, the Federal High Court sitting in Abuja and presided over by Justice Binta Nyako, in *Constance Nkwaocha and 15ors V Min. of FCT and 5ors* ruled that officials of the security task force contravened the law when they broke into apartments in suburbs of Abuja around 11pm in February 2017 to arrest women accused of being sex workers. While quoting section 37 of the 1999 constitution on right to privacy, the court ruled in favour of the sex worker applicants and stated that the arrest and detention was a violation of their constitutional rights.

The constitution (as amended) stipulates that no one should be subjected to discrimination<sup>13</sup>. The value of privacy however must be determined based on its importance to society and not in terms of individual rights. Privacy does not have a universal value that is the same on all contexts. The value of privacy in a particular context depends upon the social relevance of the activities it facilitates. The implication of this is that the rights to privacy and dignity are not absolute. Limitation to these rights exists to provide the balance between often-conflicting objectives of individual rights and public harmony. Therefore, limitations to these rights may arise for reason of public interest, public morality, public safety, public defense, etc.

It appears that where any of the rights guaranteed by the constitution conflicts with public interest, the public interest overrides that individual right and so the right of a sex worker even though guaranteed, can be curtailed on the grounds of public morality and overriding interest of the public which consequently stands as an inhibition to certain trades, like sex work which may be perceived as being against public morality and public policy.

### **b. The Criminal Code Act**

The Nigerian Criminal Code is the apex codified law in the southern region of Nigeria for criminal investigations, trial and punishment of criminals. It is derived from the Criminal code Act 1990. Section 223 of the Criminal Code Act deals with procurement of women or girls. Subsection 2 of the said section expressly mentioned prostitute. The section makes punishable with two years imprisonment, the act of procuring a woman or a girl in order to become a common prostitute.<sup>14</sup> Further in subsection 3 and 4 of the same 223, a person who procures a woman or girl to become a brothel inmate for the purpose of prostitution is punishable with two years imprisonment. Section 223 deals specifically with procurement of another for the purpose of prostitution. It follows logically therefore that as long as one does not procure another, there is no liability. Section 224 provides for procuring women by threats, fraud or by

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<sup>12</sup>*Ibid*

<sup>13</sup>Constitution of the Federal Republic of Nigeria (as amended), s 40

<sup>14</sup>E.S Chukwuemeka, "Is Prostitution a Crime in Nigeria?", see Applicable Laws and Punishment, available online at <http://bscholarly.com/prostitution-a-crime-in-nigeria/> Accessed 29th February 2023



administering drugs to them for the purpose of defiling them, and section 225 applies in the case of abduction for the said purpose. Furthermore, section 225(a) of the Criminal Code Act makes provision for trading in prostitution. The section punishes males who live on earning of sex workers or persistently solicits for immoral purposes in a public place, or a male or female who has control and influence over a sex worker in a manner suggesting that he is aiding, compelling or abetting them, and also the use of one's premises for sex work. Running a brothel is punishable under section 225(b). The exercise of control of the movements of a prostitute is made punishable under section 225 which deals with rogues and vagabonds.

Although the Criminal Code Act criminalizes procuring and related offences, which may be related to sex work, however they are not the same as prostitution.<sup>15</sup> Even though all the provisions highlighted do not specifically prohibit sex work, allusions are usually made to these provisions in efforts to criminalize sex work. This lacuna in the criminal code has subsequently occasioned the ineffective regulation of sex work in Nigeria and in particular southern Nigeria. It would appear from the foregoing, that a woman who prostitute herself has not committed an offence under the Criminal Code Act. This argument can be strengthened by the fact that there is no known judicial precedent on a woman being convicted for prostituting herself.

It is pertinent to note at this juncture that section 231 of the code makes provision for indecent act, upon which a woman may be arrested. Unfortunately however, the Act failed to define what qualifies as indecent Acts. It is therefore unclear whether prostitution qualifies as such.<sup>16</sup> It is needful for the National Assembly to rise to the occasion and amend the Criminal Code Act to clearly and unambiguously state that prostitution is a crime if that was the intendment of the law.

### c. The Penal Code Act

The Penal Code Act<sup>17</sup> is the operational criminal code in the northern states of Nigeria. It is the apex codified law for criminal investigations, trials and punishments in northern Nigeria. The Penal Code in section 405(d) prohibits the indecent or disorderly behavior of a common 'prostitute' in a public place, who persistently solicits for sex work, and makes it punishable with two months imprisonment.

The code provides that;

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<sup>15</sup>*Ibid*

<sup>16</sup>Temitope Odeyinka, "Prostitution As a crime in Nigeria, who is the offender", LinkedIn. Accessed 20<sup>th</sup> February 2023

<sup>17</sup> Cap C 8 LFN, 2004

An idle person shall include a common ‘prostitute’ behaving in a disorderly or indecent manner in a public place or persistently importuning or soliciting persons for the purpose of prostitution.

It further provides that;

the term ‘vagabond’ shall include any male person who knowingly lives wholly or in part on the earnings of a prostitute or in any public place solicits or importunes for immoral purposes, and whoever is convicted as a vagabond shall be punished with imprisonment which may extend to two years or a fine which may extend to four hundred and fifty naira or both.

Just like the Criminal Code Act, the Penal Code does not define sex work, nor does it adequately regulate the trade and practice of selling one's body for some economic gain. Allusions are merely made to prostitution without clear definitions of what is entailed. It is the view here that the Penal Code Act ought to define and make clear provisions for what constitute prostitution and also without ambiguity specify the punishment for breach. Therefore, just as the case with the Criminal Code Act, the Penal Code Act needs to be revisited to cure these ambiguities. More so, the constitution of the Federal Republic of Nigeria clearly states that a person shall not be convicted of a criminal offence except the act or omission constituting the alleged offence is defined in our laws and penalty prescribed for it.<sup>18</sup>

#### **4.0 Nature/ Forms / Causes and Challenges of Prostitution**

##### **4.1 Nature and Forms of Prostitution**

For most sex workers, “*Ashawo na work*” for them it is a means of livelihood. These category of sex workers approach the work with total professionalism, no emotional attachments. To a few however, ‘*Ashawo no be work, na management*’. To this second category, it is only a means of survival in the absence of a better alternative. For some others, it is a side hustle to supplement their income.

It is interesting to note that in some parts of Nigeria, notably Edo state, prostitution is an open secret. Every Edo citizen, home and abroad is said to have borne the humiliating stigma of wholesale accusation of being precursor of prostitution for ‘hailing from the land of prostitution’.<sup>19</sup> This tagging of Edo as the land of prostitution has long been entrenched and taken as the truth, and has remained like the chameleon feces that would not go away however hard you try to deodorize it.<sup>20</sup> The abhorrent practices of girl child abuse in relation to

<sup>18</sup> Construction of the Federal Republic of Nigeria, 1999, (as Amended), s 36(12)

<sup>19</sup> Erasmus Ikhide; Obaseki and Edi Prostitute [www.sunnewsonline.com](http://www.sunnewsonline.com) of 29th July 2022 accessed March 29, 2023.

<sup>20</sup> *Ibid*



prostitution in Edo state has a long-standing history. It is alleged that prostitution in Benin, Edo state is exalted to an abominable level where married couples agree for a wife to travel to Italy or other parts of Europe for prostitution to make money for the family. In the same vein, families are said to be known to sell plots of land to finance a daughter's trip to Italy or other parts of Europe for prostitution to make money and send to the family back home.<sup>21</sup> In the light of the foregoing and more, Edo state, Nigeria seems to be regarded as the head quarter of prostitution in sub-Saharan Africa.<sup>22</sup>

The forms of prostitution prevalent in Nigeria include the following;

1. Street prostitution: These are basically street hawkers that usually solicit for customers on the street
2. Brothel prostitute: These prostitutes operate in premises explicitly dedicated to providing sexual services. Provides better security than the streets.
3. Escort prostitution. Prospective customers contact the sex worker by phone or through hotel staff. It is mostly covert.
4. Bar, Club, Dancehall Prostitute: This category of sex workers mostly solicit customers in alcohol vending venues and provide the service right there or elsewhere.
5. Massage parlor sex workers: This category provide a range of sexual service alongside massage service.
6. Transport sex worker: Here, the sex worker boards vehicles to service the crew and passengers or to pick up customers at stations and terminals.
7. Survival sex worker: Here, the prostitute randomly offers sex for survival benefit in return for benefits not necessarily limited to money, and many other forms not particularly popular in Nigeria.<sup>23</sup>

#### 4.2 Causes/Factors Promoting Prostitution

Causative and promoting factors of prostitution include the following;

1. Poverty: Poverty appears to be one factor that drives sex work in Nigeria. Many families live on an income below \$2.50 per day.<sup>24</sup> Sex work therefore becomes a veritable source of income for the poor and unskilled.
2. Unemployment: The rate of unemployment in Nigeria is high. Thousands of young Nigerians graduate from the University year on year but cannot find employment. The Minister for Labour and Employment<sup>25</sup> recently said that the increase in the rate of unemployment in Nigeria was alarming. The unemployment was put at 23.1% and

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<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> . E. Daniel 'prostitution in Nigeria. The Christian Perspective', in religion and the Nigerian nation: Some topical issues (edo) Celestina O. Isiramen et al (Ibadan: En-joy press & books) 2010

<sup>24</sup> Ibid

<sup>25</sup> C, Ngige. "Unemployment Rate 33.5% by 2020," premium times, <http://www.premiumtimesng.com>news>, accessed 29the march 2023

under-employment at 16.6% by the National Bureau of Statistics (NBS) report of 2019. The Minister for Labour further said that the status of Nigeria as the global capital of poverty was worrisome; and concomitant high prevalence rates of crime and criminality, including mass murders, insurgency, militancy, robbery, kidnapping and drug abuse.<sup>26</sup> This unpleasant state of affairs encourages the sex trade.

3. Moral Degeneracy: Moral degeneration also plays a critical role in the seeming popularity of sex trade. It used to be the thing of shame for a member of one's family to be known to indulge in sex trade, but today families who have succeeded in sending wife or daughter to Italy, proudly flaunt the proceeds of the trade, making it alluring for others to follow the trail.
4. Peer pressure: Others engage in sex work out of peer pressure from their friends and peers already engaged.
5. Trafficking: Young girls are trafficked to big cities for sexual exploitation. This is usually under the guise of better employment opportunities. Parents may not know what their wards are taken into until it is too late.
6. Industrialization, urban migration and a rising wave of demand for sexual services also contribute in promoting sex work. Notwithstanding there are many prostitutes who intentionally and deliberately choose the sex trade.

### 4.3 Challenges of Prostitution

In Nigeria, there is a dearth of laws regulating sex work. As a result of this, sex workers are not adequately protected, and they are ill positioned to assert their fundamental human right. Sex workers are often victims of violence, including gender based violence perpetrated by customers, controllers and managers of the sex work establishment, law enforcement agents and other government officials.<sup>27</sup> These challenges have not deterred the sex worker. The sex worker rather develops strategies to circumvent these challenges and continue in business, which situation pre-disposes the sex worker to a myriad of social problems and risks. Even though there is no clear legislation criminalizing prostitution in Nigeria, sex workers are generally treated as common criminals. The so-called criminalization hampers the rights of a sex worker to live as a normal member of society.<sup>28</sup> The criminalization of prostitution makes the worker vulnerable to abuse and so the sex worker endures abominable treatment from society, including law enforcement agents and do nothing about it. The sex worker is also prone to risk of sexually transmitted diseases, especially HIV/AIDS. Stigmatization and whore shaming prevents the sex worker from seeking adequate medical attention and before long a sex worker gets terminally ill, that is not before spreading the virus or disease.<sup>29</sup> A sex worker

<sup>26</sup>Labour force statistics, Nigerian Bureau of statistics, 2010, achieved from original and accessed on 29th March 2023

<sup>27</sup> UNAIDS Guidance note on HIV and Sex work, UNAIDS guidance note on HIV and sex work (unfoa.org) accessed 29th March 2023.

<sup>28</sup> B Gogwana, 'challenges facing Sex workers: Briefing by sex workers education and advocacy Taskforce' challenges facing sex workers briefing by sex workers education and advocacy Taskforce PMG accessed 29th March 2023

<sup>29</sup> Ibid

in Nigeria faces an ever present risk of abuse, discrimination, harassment and is vulnerable to rape. The sex for bail saga in Abuja a few years ago is a clear example.<sup>30</sup>

Prostitution generally appears to reinforce low self-esteem, and even more so in Nigeria. This can be attributed to the socio-cultural environment that considers the sex worker from a mostly negative prism. Sex workers are generally considered as social misfits and so they seem to operate below the radar, which erodes their humanity and reinforces loss of or low self-esteem.

## 5.0 Theories behind Prostitution as a Commercial Activity

Different arguments exist in favour of considering prostitution as an acceptable commercial activity. This paper will consider this sub-issue from the point of view of the different theories of prostitution.

### 5.1 The Functionalist Theory

This theory is rooted in the work of Kingsley Davis,<sup>31</sup> and asserts that there are two major reasons why prostitution thrives. He wondered why a practice so thoroughly disapproved of yet flourishes universally. He opined that the vitality of prostitution is drawn from the features of inter-relational system binding prostitution to other institutions, especially those, involving sexual relations. He opined that there exist a system of sexual morality that ostensibly condemns prostitution, but has the unintended consequences of encouraging it.<sup>32</sup> The system of morality it is argued creates advantages for prostitution in two ways; dividing sex into "meaningful" with one's spouse and "meaningless" "with prostitutes. This has the effect of encouraging men to go to prostitutes when they want meaningless sex. Again, by defining certain sexual activities, i.e. oral sex as immoral, it places a demand on the prostitute when men want to express such basal fantasies, so there remains a demand for prostitute and of course, supply.<sup>33</sup> The second reason for the continuing existence of prostitution is ironic as it is claimed that prostitution functions to strengthen sexual morality. It acts as a contrast or center point that keeps the wives and daughters or the respectable citizenry pure. The sex industry encourages men to go to prostitutes for premarital sex, extra marital sex, or any other immoral sexual desire so that they do not pressure respectable women to engage in the same immoral sex. The point appears to be that preserving the morality of the larger number of conventional women, preserves the morality of society, whereas the provision of commercial sexual services by a handful of women only helps to maintain a social equilibrium. It in the same direction it was further argued that since a man has the option of commercial sex, he may choose to sustain the balance of his home/family, whilst paying for sexual fantasies that his wife may not provide for him. Davis' functional theory suggests therefore that prostitutes exist because of the moral

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<sup>30</sup> *Nkwocha 15 Ors v. Min. of FCT and 5 ors*, as per Hon. Justice Binta Murtala Nyako.

<sup>31</sup> Kingsley Davis, "The Sociology of Prostitution", (1937)(2)(5) *American Sociological Review*

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*

system of society, paradoxically encourages it, and in turn serves the important function of preserving feminine virtue.

## 5.2 Social Psychological Theory

This theory looks at a combination of Social and psychological factors that cause some women to become prostitutes. This theory considers the following;

- a. Predisposing factors such as parental promiscuity, parental neglect, child abuse or other traumatic events.
- b. Attracting factors such as the belief that a woman can have an easy and attractive life with lots of money as a prostitute, and
- c. Precipitating factors such as being unemployed, meeting a successful prostitute friend, or being pressured by a pimp to sell sex.<sup>34</sup>

Most psychologist emphasize the predisposing factors, suggesting that these leads to prostitution via feelings of loneliness, unworthiness, lack of self-control and inability to establish stable relationships. Sociologists do not agree with the assumption that prostitutes are abnormal, even if they have been abused. They argue that some women are more likely to become prostitute than others, because of their abused socialization that enables them to withhold emotions. The capacity for emotional detachment therefore predisposing them towards prostitution. They argue that where the disposing and precipitating factors coincide, it is most likely that such a woman will enter into prostitution.<sup>35</sup> So, prostitution remains an economic activity characterized by stigma, whose supply is based on the availability of other earning opportunities.

## 5.3 Feminist Theory

The feminist argue that society maintains a sexist view that only promiscuous women are a threat to the moral order, and this is why female prostitutes are far more likely to be arrested than their male customers. They argue that the men are not considered a threat because the moral system reflect a larger patriarchal, gender stratified system, which dominates, and exploits women. It is their assertion that the patriarchal system encourages prostitution and reinforces patriarchy. This is achieved by perpetuating beliefs that oppress women in many life domains. By selling their bodies as a commodity, prostitutes convey the message that women can be bought or used as object, reinforcing the prevailing patriarchal notion that "all women have a price". Hence, men continue to support the patriarchal structure of inequality, which in turn encourages prostitution.<sup>36</sup>

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<sup>34</sup> *Ibid*

<sup>35</sup> *Ibid*

<sup>36</sup> E.E Aloba, Addressing Prostitution Concerns In Nigeria: Issue, Problems And Prospects. (2014)(10)(14) *European Scientific Journal*, accessed 29<sup>th</sup> March 2023

The foregoing examination of the theories of prostitution, it is the opinion of this paper that as long as society remains, prostitution is likely to also remain. That being the case, arguments continue to rage on both sides; prostitution as an economic activity which should be regulated as such, vis-a-vis those that argue that prostitution is a terrible social menace that should be outlawed, criminalized and stiffly penalized. Those who consider prostitution as a form of commercial work argue that it is a legitimate profession that offers a means of livelihood to those engaged in it. They believe that individuals who engage in prostitution have a right to choose it as a career and should not be subjected to discrimination or criminalization. Prominent among the protagonist of this view are the Rights Advocates. They claim that sex work is real work and that people are entitled to make choices about their lives, and make different decisions depending on their current life circumstances and for many, sex work is a logical choice.<sup>37</sup> They blame discrimination and stigma against sex workers on the patriarchal order of society. They also hold feminist who seek to end sex work, and conflate sex trade with human trafficking responsible for some of the violence and stigma faced by sex workers.

Moreover, sex work advocate argue that criminalizing prostitution drives it underground, making it more dangerous for those engaged in it. They contend that legalization would provide a safer working environment for sex workers, as it would enable them work in regulated and monitored settings, which will in turn reduce the risk of exploitation and violence. It is the thought here that when sex work is regulated and well monitored, it could also be a revenue earner for government. Whorehouses can be well-taxed and healthy standards supervised and maintained. In countries where prostitution is legalized, sex workers are able to access benefits such as health insurance, workers compensation, and the right to unionize. Feminist are called to consider that advocating for sex workers rights is a fundamental contribution towards the battle to end violence against women.

## 6.0 Prostitution as a Social Menace

Protagonists of this view consider prostitution as a social menace that wears down the moral fabric of society and it should not be legalized or even regulated. For them, prostitution should be abolished and criminalized. The religiously inclined are morally outraged by its operation, viewing it as an affront to moral codes of scripture. Many feminist and women organization are opposed to prostitution because they see it as a form of exploitation of women. They condemn prostitution as an intolerable form of male violence.<sup>38</sup> Muslim communities in northern Nigeria react violently to prostitution. Women caught in the act are prescribed to be stoned or ostracized.<sup>39</sup> On the whole, negative narratives and stigmatization followed and substantially still follows the sex worker.

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<sup>37</sup>Nana DarkoaSekyiamah, How i became an advocate for sex workers' Rights. [www.open-democracy.net](http://www.open-democracy.net) accessed 29th March, 2023

<sup>38</sup>*Ibid*

<sup>39</sup>*Ibid*

The consequences of prostitution seems to be a major part of the reason for those against sex work. Feminist argued that prostitution is a social menace that perpetuate gender inequality and exploitation. They argue that legalization will lead to increase in demand and supply and therefore put more women and children at risk of exploitation. Without regulations, many sex workers still engage in unprotected sex for a quick turn over, with its attendant risks.

Critics of prostitution point to the negative health effects of the trade, which includes prevalence of sexually transmitted diseases and HIV/AIDS, unwanted pregnancies, low self esteem, and others. They argue that the sex industry fosters a culture of abuse and exploitation and that it reinforces harmful stereotypes and gender roles. Others have argued that in areas where prostitution is prevalent, it may damage the reputation and quality of life of the neighborhood and diminish the value of property.<sup>40</sup> Still, others argue that there is a concurrence between prostitution, drug abuse and sale of drugs and involvement in non-drug crimes, particularly property crimes.<sup>41</sup>

Another main argument in support of the perspective of prostitution as a social menace is that prostitution is viewed as an exploitation that preys on vulnerable individuals, particularly women and children. They argue that prostitution is often a result of poverty, drug addiction and coercion, and that it perpetuates problems rather than solving them. They also argue that the co-modifications of the body and the sexual exploitation of women perpetuates harmful cultural attitudes towards women, and this is particularly so in nations like Nigeria where gender equality is yet to be realized.

## 7.0 Conclusion

In conclusion, prostitution is a highly divisive and controversial issue, with individuals, groups and organizations taking divergent position on its legality and morality. Those who consider it a form of economic activity and commercial work argue that it should be legalized and regulated to provide a safer environment for sex workers, while those who consider it a social menace argue that it should be abolished to prevent exploitation and reinforce gender equality. Both sides have valid points, and both have the potential to have significant impact on the lives of those involved in the industry. Whilst the legalization of prostitution may provide benefits to sex workers, it may have negative consequences on the larger society. On the other hand, a ban or prohibition may help reduce exploitation and trafficking, but it may also have the unintended consequence of pushing the industry underground where it is even more difficult to monitor and therefore continue to negatively impact society.

It is the thought in this paper that since historically a ban on prostitution or the criminalization of sex work has not substantially minimized prostitution, then the time is now for Nigeria to join the committee of nations where sex work is regulated. This paper is not unmindful that the

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<sup>40</sup>*Ibid*

<sup>41</sup>*Ibid*



debate over legalization of prostitution is further complicated by the fact that there is no consensus about what approach is best. Nations like Netherlands and Germany have legalized prostitution and regulates it as an industry. Others, such as Sweden, have adopted the "Nordic Model" which criminalizes the purchase rather than the sale of sexual services. Still, others such as France and Canada are currently grappling with the issue and trying to determine their best approach.

The Nigerian justice system should take a comprehensive look at the laws and the sex industry to determine how best to tackle the issue. Law as a dynamic tool of social engineering must be adaptable for the good of society. Nigeria cannot continue with the status where it is uncertain what laws regulate sex work. More needs to be done to address the root causes and to ensure that those who choose to engage in prostitution are able to do so without posing a risk to society and to themselves.

## **8.0 Recommendations**

In the light of the foregoing, the following recommendations are proffered;

1. Since sex work cannot be eradicated, adequate and effective laws and policies should be put in place to regulate the sex industry in Nigeria.
2. Prostitution should be decriminalized. This will in effect radically reduce incidence of violence and exploitation of sex workers.
3. Government at all levels should address issues of poverty. A better welfare system should be adopted in Nigeria. Creating more jobs will clearly reduce the number of people who will go into prostitution because of poverty. Poverty alleviation schemes, better life for rural woman should be given adequate attention.
4. Existing and prospective health insurance schemes should necessarily accommodate those within the sex industry. This will serve the purpose of reducing incidences of transmission of Sexual diseases and HIV/AIDS.