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THE NEED TO REGULATE PROSTITUTION
IN ETHIOPIA: OPPRTUNITIES AND
CHALLENGES

DAWED KAMILE MOHAMMED

School of Law,
Bahir Dar University

August, 20

THE NEED TO REGULATE PROSTITUTION IN
ETHIOPIA: OPPRTUNITIES AND CHALLENGES

Thesis

Submitted in Partial Fulfilment of the Requirements for the
Degree of Masters of Law (LL.M.) in Criminal Justice and
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University.

By

Dawed Kamile Mohammed

Advisor

Alebachew Birhanu (LL.B., LL.M., MSc, Assistant Professor)

School of Law,
Bahir Dar University

August, 2018



Thesis Approval Page

The thesis titled “The Need to Regulate Prostitution in Ethiopia: Opportunities and Challenges” by Mr. Dawed Kamile Mohammed is approved for the degree of Masters of Laws (LL.M.)

Board of Examiners

	Name	Signature
Advisor	_____	_____
Internal Examiner	_____	_____
External Examiner	_____	_____

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Declaration

I, the undersigned, declared that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University and can also invoke criminal sanction from the state and civil action from the sources which have not been properly cited or acknowledged.

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Date

Acknowledgement

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Table of Contents

Table of Contents

Thesis Approval Page	ii
Declaration.....	iii
Acknowledgement	iv
Table of Contents.....	v
List of Abbreviations and Acronyms	viii
Abstract.....	ix
CHAPTER ONE	1
INTRODUCTION	1
1.1. Background of the Study.....	1
1.2. Statement of the Problem.....	4
1.3. Objectives of the Study.....	10
1.3.1. General Objective	10
1.3.2. Specific Objective.....	10
1.4. Research Questions	10
1.4.1. Main Research Question	10
1.4.2. Specific Research Questions	11
1.5. Significance of the Study	11
1.6. Research Design and Methodology	12
1.7. Types of Data Sources	13
1.8. Data Collection Tools	13
1.9. Methods of Data Analysis.....	14
1.10. Scope of the Study	14
1.11. Limitation of the Study	15
1.12. Ethical Considerations	15
1.13. Organization of the Study	16
CHAPTER TWO	17

CONCEPTUAL AND THEORETICAL FRAMEWORKS ON PROSTITUTION.....	17
2.1. Introduction.....	17
2.2. General Notion of Prostitution.....	17
2.3. Defining Prostitution.....	20
2.4. Prevailing Controversies on Prostitution	24
2.4.1. Prostitution and Feminism	24
2.4.1.1. Radical Feminism and Prostitution	24
2.4.1.2. Liberal Feminism and Prostitution.....	28
2.4.1.3. Marxist/Socialist Feminism and Prostitution	30
2.4.1.4. Existentialist Feminism and Prostitution	31
2.5. Legal Approaches in Regulation of Prostitution.....	32
2.5.1. Criminalisation Model	33
2.5.2. Decriminalisation Model.....	35
2.5.3. Legalisation/Regulation Model.....	37
CHAPTER THREE	40
LEGAL AND POLICY FRAMEWORKS ON PROSTITUTION.....	40
3.1. Introduction.....	40
3.2. International Legal Frameworks and Policies.....	40
3.2.1. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1950 (The Trafficking Convention)	41
3.2.2. Convention on the Elimination of All Forms of Discrimination Against Women of 1979 (CEDAW)	43
3.2.3. Declaration on the Elimination of Violence Against Women (DEVAW) (1993)	46
3.2.4. Beijing Declaration and Platform for Action (1995)	49
3.2.5. International Charter for Prostitutes Rights (ICPR, 1985).....	50
3.2.6. International Labour Organisation (ILO) and Its Policy	52
3.2.7. UN Secretary General’s Bulletin (2003).....	53
3.3. Domestic Legal Frameworks and Prostitution.....	54

3.3.1. The FDRE Constitution (1995).....	55
3.3.2. The Criminal Law Regime.....	57
3.3.2.1. The Criminal Code of 1995	57
3.3.2.2. Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation	59
CHAPTER FOUR.....	62
OPPORTUNITIES AND CHALLENGES OF LEGALIZING PROSTITUTION	62
4.1. Introduction.....	62
4.2. Brief Statement of Laws of States Chosen for the Study.....	62
4.2.1. German Law of Prostitution.....	62
4.2.2. Dutch Law of Prostitution.....	64
4.2.3. Segal Law of prostitution.....	67
4.3. Opportunities of Regulating Prostitution	68
4.4. Challenges of Regulating Prostitution	76
4.5. Criminalization?, Legalization?, or Decriminalization?: What is the Way Forward for Ethiopia?	81
4.5.1. Criminalization?.....	81
4.5.2. Decriminalization?.....	84
4.5.3. Legalization/Regulation?	86
CHAPTER FIVE	89
CONCLUSSION AND RECOMMENDATIONS	89
5.1. Conclusion	89
5.2. Recommendations.....	92
Bibliography	94

List of Abbreviations and Acronyms

Art.....	Article
ART.....	Antiretroviral treatment
FHAPCO.....	Federal HIV/AIDS Prevention and Control Office
AACAHB.....	Addis Ababa City Administration Health Bureau
HIV.....	Human Immune Virus
AIDS.....	Acquired Immune Deficiency Syndrome
WHO.....	World Health Organization
NSWP.....	Network of Sex Work Projects
ILO.....	International Labor Organization
UNSG.....	United Nation Secretary General
UN.....	United Nations
UDHR.....	Universal Declaration of Human Rights
CEDAW.....	Convention on the Elimination of All Forms of Discrimination Against Women
DEVAW.....	Declaration on the Elimination of Violence Against Women
ICCPR.....	International Convention on Civil and Political Rights
ICESCR.....	International Convention on Economic Social and Cultural Rights
UNESCO.....	United Nations Educational, Social and Cultural Organization
ICPR.....	International Charter for Prostitutes Rights
EU.....	European Union
FDRE.....	Federal Democratic Republic of Ethiopia
FHIE.....	Family Health International Ethiopia
Para.....	Paragraph

Abstract

Prostitution in Ethiopia was a field of engagement for numerous Ethiopian women since a long ago. Despite its prevalence in somehow a modern/settled manner since the medieval period, it was not legally addressed in an effective manner. For this reason, prostitution is highly blamed to be a source of problems like trafficking in persons, sexually transmitted diseases, violence against occupants of the field, public nuisance, and enhance child prostitution among others. Hence, the research focuses on studying the opportunities and challenges of regulating prostitution and determine the appropriate legal model to address the above problems based on Ethiopian lived realities.

To this end, the research adopts qualitative legal research methods. In doing so, international and domestic laws on the subject area and vast literatures on theoretical frameworks of prostitution, approaches of prostitution regulation and recognition, and opportunities and challenges of regulation are consulted. Besides, the researcher also had interviews with some selected Ethiopian Ministry of Health, Ethiopian Ministry of Women and Children, Ethiopian Women Lawyers Association, and Ethiopian Family Guidance Association officials and experts.

The main findings of the study are that regulating prostitution have both opportunities and challenges to Ethiopia. As an opportunity, achievement of an improved working conditions for prostitutes, reduction of incidences of human trafficking, avoiding street prostitution and public nuisance, increased income of prostitutes and government's tax revenue, and control of sexually transmitted diseases and as a challenge, increase cross boarder migration, inevitability of underground sex work, and stigma against prostitutes for it is considered immoral are identified. Nonetheless, the research had indicated in advance that these challenges could be eliminated. Henceforth, migration is identified as it would not be savior in Ethiopia for prostitutes from neighboring countries would not influx in to Ethiopia since they would not have a better economic advantage in Ethiopia and Ethiopia is in a geo political sphere where free flow of labor and goods is restricted. Underground sex work on the other hand could be eliminated through allowing police checkups and imposing responsibility on clients not to purchase cervices from illegal sex workers and public stigma against prostitutes could be done the same through public education.

Finally, the study concludes the regulation/legalization model of addressing prostitution is appropriate for Ethiopia compared to criminalization and decriminalization since the latter two are extreme models while regulation is a middle ground. As a result, the research recommends Ethiopia to consider existing legal frameworks so that it could be possible to introduce a comprehensive regulatory framework and to introduce some exit arrangements to allow the sector be occupied only by those engaged voluntarily.

CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

The word “prostitution” comes from a Latin term “*prostituta*” meaning “to set forth in public” or “to be exposed for sale”.¹ It is notoriously known as the world’s oldest field of engagement as old as human beings and continues to be a source of income for thousands of women since the beginning of human civilization.² Though it is hardly possible to accurately indicate the exact time and place in which prostitution started, it is for granted across numerous writings however, that it began in an organized manner together with human civilizations.³

The first signs of prostitution in human’s civilizations were started to be shown up during 2400 B.C. in Mesopotamia, among peoples called Sumerians.⁴ Sumerian’s theology taught that most powerful gods are male except the female god ‘Ishtar’⁵, the goddess of fertility.⁶ Accordingly, Ishtar is associated with prostitution and courtesan since she is with an erotic figure capable of arousing any man and believed to come to earth accompanied by prostitutes though had never married to anyone.⁷

The other most reliable evidence on the existence of prostitution as an earliest occupation was the code of Hammurabi. This code is claimed to have devoted special provisions for prostitution by naming different forms in its list of female occupants of the profession which included the female slave who could be sold for prostitution, the independent unwed prostitute, and the revered temple prostitute.⁸

¹ Tesla Carrasquillo , ‘Understanding Prostitution and the Need for Reform’, *Touro Law Review*, October 2014, Vol. 30 , No. 3, Art. 11, P. 701.[Here in after, Tesla Carrasquillo, *Understanding Prostitution and the Need for Reform*]

² *Id.*, P. 697.

³ *Id.*, P. 699.

⁴ *Ibid*

⁵ *Ibid*

⁶ *Ibid*

⁷ *Ibid*

⁸ *Id.*, P. 701.

The same as that of the ancient Mesopotamian civilization, the ancient Greek and Roman's were homes which had tolerated prostitution as part of everyday life.⁹ For instance in Greek prostitutes had their own class system; those that worked in brothels occupied the lowest class, just above the brothel prostitute in the class system was the streetwalker, above the streetwalker in the class system was the female entertainer who would prostitute herself for extra money and the highest class of prostitute was called 'Hetaera'¹⁰, an educated Greek women to attract prestigious guys.¹¹

Sex work/ prostitution have been known in Ethiopia since olden times although there are no exact data as to when and where commercial sex first appeared in the country. The history of modern prostitution in Ethiopia is traced back to early institutions which existed together with royal camps of the middle ages, the seventeenth century city of Gondar, later at commercial centers on the periphery of the empire, and subsequently development of Addis Ababa and other late nineteenth or early twentieth century towns witnessed the emergence of modern type prostitution.¹² The early life of Ethiopian rulers is characterized by a continual shift in their capitals for different reasons even till recently. Along with such shifts, there were enormous numbers of prostitutes working towards pleasuring the community of the camp for exchange of money.¹³ Later the founding of Gondar in 1936 as a capital of Ethiopia had witnessed a permanent settlement.

This more permanent way of life style had changed traditional and moving types of previous camp professions in to a settled one. Thus, prostitution started to be practiced in a modern and settled form comparatively in the 17th century Gondar.¹⁴ In the nineteenth century, women were found to travel to the coastal towns where there was a demand for sex workers from sailors, later returning to their villages with the money they had made to lead a settled life.¹⁵ During the Italian

⁹ *Ibid*

¹⁰ *Id*, P. 701

¹¹ *Ibid*

¹² Richard Pankhurst, 'The History of Prostitution in Ethiopia', *Journal of Ethiopian Studies*, July 1974, Vol. 12, No. 2, P. 159. [Here in after Richard Pankhurst, *The History of Prostitution in Ethiopia*]

¹³ *Ibid*

¹⁴ *Id*, P. 160.

¹⁵ *Id*, P. 164.

occupation, prostitution had started to grow. In Eritrea, there were numerous prostitutes in towns to satisfy sexual pleasures of colonizing troops. Surprisingly, even unwilling women have been forced by colonizing Italians to be tested for sexually transmitted diseases for sexual gratification by those powers with in selected brothels.¹⁶ From this time onwards it seems the growth of prostitution as an occupation had become immense throughout cities and towns of the country.

Starting from earliest time, prostitution as a means of livelihood is not taken as a primary choice. It is rather used as a last resort. Peoples often engage in to it after realizing that they have no any choice to otherwise support them or their dependents. Currently, however, especially in most developed countries, it is started to be taken as one profitable field of business which could empower those engaged in to the business. Besides, even at the ILO level, in 1998 the ILO published a report entitled “The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia”¹⁷. By this report, it is recommended for states to recognize prostitution as a field and extend minimum working conditions to employees of the field.

Recently, engagement of numerous numbers of peoples in the business and corresponding societal problems/issues arising from it had attracted different scholars with different views on how to legally respond practice of prostitution. Globalization now a day witnessed that movement of peoples from place to place is irreversible fact which played a fueling role in the expansion and growth of sex work across every corners of the world. Therefore, legally responding prostitution in almost every corner of the world remained a headache still not well addressed.¹⁸

¹⁶ Lorraine van Blerk, ‘AIDS, Mobility and Commercial Sex in Ethiopia: Implications for Policy’, K. Horschelmann et al. (eds.), *Contested Bodies of Childhood and Youth*, Palgrave Macmillan Publishers Limited, Palgrave, 2010, P. 233. [Here in after Lorraine van Blerk, *AIDS, Mobility and Commercial Sex in Ethiopia: Implications for Policy*]

¹⁷“Sex Industry assuming massive proportions in South East Asia ”, Available at: http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007994/lang-en/index.htm, [Accessed 10 March 2018], See also Gary Rhoda, *The Decriminalization of Prostitution in South Africa: Towards a Legal Frame Work*, A Mini-Thesis in Partial Fulfillment of the Requirements for the Degree of Magister Legum, University of the Western Cape, Faculty of Law, 2010, P. 56. [Unpublished] [Here in After Gary Rhoda, *The Decriminalization of Prostitution in South Africa: Towards a Legal Frame Work*]

¹⁸ Frances M. Shaver, ‘Prostitution: A Critical Analysis of Three Policy Approaches’, *Canadian Public Policy*, 1985, Vol. 11, No. 3, P. 493. [Here in after Frances M. Shaver, *Prostitution: A Critical Analysis of Three Policy Approaches*] See also Jean D’ Cunha, ‘Prostitution Laws: Ideological Dimensions and Enforcement Practices’, *Economic and Political Weekly*, 1992, Vol.

Though some states had effectively addressed the problem, there is no international consensus on the approaches to be used towards addressing it.¹⁹ However, nations like Germany, Sweden, Switzerland, Netherlands, Senegal, and England..... are the lists among which introduced a relatively comprehensive and effective legal regime in dealing with practicing of prostitution. Even today many states like South Africa and Zimbabwe are moving towards introducing a legal framework to address the issue effectively. The Ethiopian legal regime is neither able to avoid nor sufficient to adequately address the conduct of prostitution. Hence, the researcher is of interest to conduct a research on how to legally respond this widely practiced and a daily growing profession in Ethiopia very efficiently based on a comparative research analysis method.

1.2. Statement of the Problem

In Ethiopia like any other nations of the world, commercial sex work in the capital, Addis Ababa and other towns of the country takes place in bars, massage parlors, brothels, in main streets, hotels of all standards, pastry shops and small establishments that sell Araki (local brew) as a means to support livelihood.²⁰ So, sex work in Ethiopia is vast, diverse and conducted openly. In most towns apart from the above, sex workers are clustered in slum areas where sex work is practiced explicitly by most of the residents²¹. In 2010 the government agency for HIV/AIDS, Federal HIV/AIDS Prevention and Control Office (FHAPCO), had

27, No. 17, P. 34. [Here in after Jean D' Cunha, *Prostitution Laws: Ideological Dimensions and Enforcement Practices*]

¹⁹ Frances M. Shaver, *Prostitution: A Critical Analysis of Three Policy Approaches*, P. 439, Kakule Kalwahali, *The Criminalisation of Prostitution in South African Criminal Law*, LL.M. diss., University of South Africa, 2009, [Unpublished], P. 7. [Here in after Kakule Kalwahali, *The Criminalisation of Prostitution in South African Criminal Law*], Dr Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution*, New Zealand Ministry of Justice Crime and Justice Research Centre, October 2007, P. 11. [Here in After *International Approaches to Decriminalising or Legalising Prostitution*.

²⁰ In Ethiopia, everyone can witness that sex work is prevalent under those establishments listed above. Though it is made only in Addis Ababa, we can conclude the same across cities and towns too. Look in to, Family Health International Ethiopia (FHIE), Addis Ababa City Administration Health Bureau (ACAHB), *Mapping and Census of Female Sex Workers in Addis Ababa*, Addis Ababa, August 2002 [Here in after Family Health International Ethiopia (FHIE), Addis Ababa City Administration Health Bureau, *Mapping and Census of Female Sex Workers in Addis Ababa*]

²¹ Cheryl Overs, *Sex Workers, Empowerment and Poverty Alleviation in Ethiopia*, AIDS Evidence Report No 18, June 2014, P. 17. [Here in after, Cheryl Overs, *Sex Workers, Empowerment and Poverty Alleviation in Ethiopia*]. To list some, Chichinia in Addis Ababa, Enkoye Mesk in Gondar and Koshekosh in Bahirdar are examples of slummy areas in which numerous sex workers collectively operate.

assured that the size of the sex worker population is not known but it is suspected that the number of sex workers is growing. The Lonely Planet Guide book in support runs:

*'Almost 100 per cent of the women encountered in smaller bars, restaurants, hotels and nightclubs of the capital and other towns are prostitutes. Often it's very hard to distinguish them from ordinary women (...)[The previously existing stigma towards condemning prostitution in Ethiopia is drastically falling].'*²²

Prevalence of sex work and workers in Ethiopia is with no doubt²³ and even recognized by the government. In early 1980s, the Ethiopian Government started a rehabilitation program for sex workers which included vocational skills training and provision of work in various factories though failed due to lack of motivation and budgetary problems²⁴. Latter in 2012, the government's Social Protection Policy included sex workers as vulnerable groups to which recommended economic empowerment interventions such as microfinance services, skills training and conditional/non conditional social transfers should be available.²⁵

The increase in the number of sex workers across cities and towns of Ethiopia is accelerated by a numerous increase in the number of bars, pensions, and hotels.²⁶ Hotels and bars often inaugurated primarily to serve as business centers via selling

²² Linzee Gordon, F., *Lonely Planet Guide to Ethiopia, Eritrea and Djibouti*, Melbourne, 2000, P. 16.

²³ In A study undertaken by Family Health International Ethiopia and Addis Ababa City Administration Health Bureau in 2002, 8134 establishment-based sex workers, 9556 waitresses whom often provide sexual services for money, 258 street-based sex workers and unknown number of child sex workers along bars and red light houses were identified to exist solely in the capital. Besides, the WHO in its recent 2016 estimation had revealed the existence of 19305 commercial sex workers covering only major cities of the country across every region. A recent national study had also revealed that there are around 140 000 female sex workers in the country. For more information, read: Federal HIV/AIDS Prevention and Control Office(FHAPCO), *Strengthening Adolescent Component of National HIV Programs Through Country Assessment in Ethiopia*, Assessment Report, Addis Ababa, Ethiopia, July 2017, P. 20 ff. [Here in after Federal HIV/AIDS Prevention and Control Office(FHAPCO), *Strengthening Adolescent Component of National HIV Programs Through CountryAssessment in Ethiopia*]

²⁴ Family Health International Ethiopia (FHIE), Addis Ababa City Administration Health Bureau (AACAHB), *Mapping and Census of Female Sex Workers in Addis Ababa*, Addis Ababa, August 2002, P. 16.

²⁵ *Ibid*

²⁶ Tesfaye Getnet, 'Pensions, Bars Boom in the Capital', *The Capital Magazine*, Addis Ababa, 25 July 2017, Available at: <http://capitalethiopia.com/2017/07/25/pensions-bars-boom-capital/>, [Accessed 23 November 2018]. [Here in after Tesfaye Getnet, *Pensions, Bars boom in Capital*]. According to the report, 777 new pensions and guest houses were opened in the city the four months preceding the report. These Pensions are mostly used for sexual activities both by young couples and commercial sex workers.

of foods, alcohols, renting bed rooms and collecting female sex workers as their subsidiary means of income, but profitable alternative²⁷. Almost all bars and restaurants in Ethiopian towns and cities have sex workers employed in them. Practice of prostitution as a profession and engagement of numerous sex workers in to it in a certain country is not without problems to the country, the public and the sex workers themselves unless managed with an effective legal response.

Prostitution in most countries of the world is indivisible from trafficking. In many countries, especially those of poor ones, prostitution goes hand in hand with human trafficking. Every year a staggering four million people disappear, they are either sold into forced labor or prostitution.²⁸ The same works for Ethiopia too.²⁹

Apart from this, sex workers internationally and by national efforts are taken as groups/ populations at a high risk of HIV AIDS prevalence.³⁰ They are often described as a core group in which the infection is endemic and from whom it spreads to the general population.³¹ Though there is high decline in studying HIV prevalence nationally among sex workers in Ethiopia in the recent decade, consecutive studies conducted from 1989 to recent years on major urban areas of Ethiopia showed a remarkably high HIV prevalence among sex workers³²

²⁷ Tesfaye Getnet, *Pensions, Bars Boom in Capital*.

²⁸ *Ibid.*

²⁹ According to a number of the US Department of State's Trafficking in Persons Reports, girls from Ethiopia's rural areas are subjected to trafficking and exploited in domestic servitude and, prostitution. Even the current 2018 report had recommended Ethiopia to fight the highly prevailing internal trafficking for sex and labor exploitation. You can access those reports catalogued at <<https://www.state.gov/j/rls/tiprpt/>>, [Accessed 20 June 2018]

³⁰ Federal HIV/AIDS Prevention and Control Office(FHAPCO), *Strengthening Adolescent Component of National HIV Programs through Country Assessment in Ethiopia*, P. 8, Kloos Helmut, 'HIV/AIDS in Ethiopia: The Epidemic and Social, Economic, and Demographic Impacts', in the *International Conference on African Development Archives*, San Francisco, California, 2001, Paper 25, P. 3-5. [Here in After Kloos Helmut, *HIV/AIDS in Ethiopia: The Epidemic and Social, Economic, and Demographic Impacts*]. In 2006 the National Reproductive Health Strategy similarly recognized sex workers as one of the populations at high risk (Federal Democratic Republic of Ethiopia Ministry of Health 2006).

³¹ Federal HIV/AIDS Prevention and Control Office (FHAPCO), *Strengthening Adolescent Component of National HIV Programs Through Country Assessment in Ethiopia*, P. 8, DKT Ethiopia, *Study of Condom Use and Behavior Among Venue-Based Sex Workers and Their Clients in Major Urban Areas of Ethiopia*, Summary Report, October 2008, P. 8. [Here in after DKT Ethiopia, *Study of Condom Use and Behavior among Venue-Based Sex Workers and Their Clients in Major Urban Areas of Ethiopia*].

³² Federal HIV/AIDS Prevention and Control Office(FHAPCO), *Strengthening Adolescent Component of National HIV Programs Through Country Assessment in Ethiopia*, P. 8., DKT Ethiopia, *Study of Condom Use and Behavior Among Venue-Based Sex Workers and Their Clients in Major Urban Areas of Ethiopia*, P. 8. Even studies conducted between 1988 and 1991 by the

preceding even long vehicle drivers, mobile populations like soldiers and students and youngsters/adults groups.³³ Similarly, some recent studies on the same area in Africa found high HIV infection rates among those with high number of sexual partners, and sex workers.³⁴ In sum, prostitution was instrumental in highly affecting public health via spreading sexually transmitted diseases in general and HIV virus in particular. Especially, it was very acute at the early stage of the epidemic in Ethiopia and still plays an important role on its transmission.³⁵

As a study by World Health Organization on Ethiopia's statistical profile in 2012 reveals, lower respiratory infections and HIV/ AIDS are the top two major leading causes for the death of numerous Ethiopians respectively.³⁶ Among other factors, the highest share for causing the spread and transmission of HIV in the country is caused by commercial sex workers. World Health Organization in its recent 2016 estimation revealed that 710000 Ethiopians are living with HIV/AIDS and the prevalence rate of the disease among commercial sex workers accounts 24.3% which is among the highest worldwide.³⁷

The central government has not issued official or written policy on enforcement of prostitution laws but it appears that an unofficial policy is in place throughout the country to tolerate sex work and to limit law enforcement to where there are serious complaints, disturbances or abuse of minors even. For the absence of such

Ministry of Health in 23 major Ethiopian towns indicated the seriousness of both HIV and other sexually transmitted diseases among female sex workers.

³³Kloos Helmut, *HIV/AIDS in Ethiopia: The Epidemic and Social, Economic, and Demographic Impacts*, .P. 4, Federal HIV/AIDS Prevention and Control Office (FHAPCO), *Strengthening Adolescent Component of National HIV Programs through Country Assessment in Ethiopia*, P. 8.

³⁴DKT Ethiopia, *Study of Condom Use and Behavior among Venue-Based Sex Workers and Their Clients in Major Urban Areas of Ethiopia*, P. 8.

³⁵ Kloos, Helmut, *HIV/AIDS in Ethiopia: The Epidemic and Social, Economic, and Demographic Impacts*, P. 7. Even recent report of the WHO had revealed as HIV is reached epidemic in Ethiopia. The main vectors for this rate of transmission are sex workers in the front. Recent Data from (FHAPCO) also indicates that there are over 718,550 people living with HIV in Ethiopia alone, a little over 1.18% of the population. According to globally accepted consensus, if the total number of HIV infected people in a given country exceeds the one percent threshold of the population, that country is considered to be under category of “outbreak of the virus” (epidemic).

³⁶ “Ethiopia: WHO Statistical Profile-World Health Organization”, Available at: <<http://www.who.int/gho/countries/eth.pdf?ua=1>>, [Accessed November 20, 2017]

³⁷ “Ethiopia 2016 Country Factsheet”, at: [Www.UNAIDS., Global AIDS Monitoring \(UNAIDS/WHO/UNICEF\), Spectrum estimates \(UNAIDS/WHO\) and WHO HIV Country Intelligence Tool, 2017](http://www.unaids.org/global-aids-monitoring) , [Accessed 11 July 2018]. Even at one extreme, rates of HIV infection among women sex workers in Ethiopia had reached 60% which is very high compared to other states statistics.

clear law and policy, sex workers are victims of violence and exploitation.³⁸ Bar owners, sex venue operators and, to a lesser extent, clients have almost an absolute power over sex workers. Women's employment in such labor division is so poorly paid and women workers often badly treated. In Ethiopia almost all sex workers had experienced physical threat, assault, rape, and disputes about prices, payment, services, condom use and accusations of robbery.³⁹

High prevalence of prostitution on the other hand is viewed as a source of nuisance. The existence of poorly legally addressed both brothel (indoor) and street (outdoor) prostitutions are main signals of disturbances all to the prostitutes, the clients and the public at large.⁴⁰ On the client side, nuisance may take the form of kerb crawling, littering, urinating in public, yelling and honking while on the side of the prostitute, it takes aggressive touting of clients, hazardous soliciting of passersby and on the public side prostitution is known in causing nuisance since areas of prostitution often characterized by environmental pollution and creation of water ponds due to dumping of dirty materials in to public water canals⁴¹.

The other problems which directly arise together with prostitution are claimed to be expansion, violence and exploitation of child prostitutes. Though there is no comprehensive study conducted country wide on child prostitution, there exists some social science researches conducted across different regions showing high number prevalence of child prostitutes. To list one, in the capital of the country

³⁸Cheryl Overs, *Sex Workers, Empowerment and Poverty Alleviation in Ethiopia*, P. 20.

³⁹*Id*, P. 19. See also Lorraine van Blerk , 'Poverty, Migration and Sex Work: Youth Transitions in Ethiopia', *Area Journal*, June 2008, Vol. 40, No. 2, P. 250. Available at: <http://www.jstor.org/stable/40346119>, [Accessed on 09-02-2018 11:32]. [Here in After Lorraine van Blerk, *Poverty, Migration and Sex Work: Youth Transitions in Ethiopia*]. Besides, In a study undertaken by Family Health International Ethiopia and Addis Ababa City Administration Health Bureau in 2002, it is revealed establishment owners and pimps in Addis Ababa highly exploited the establishment-based sex workers. Most of these sex workers received low salaries or were unpaid for the services they provided as waitresses during working hours; some others were required to share their incomes with the establishment owners.

⁴⁰ Nina Persak & Gert Vermeulen (eds), *Reframing Prostitution :From Discourse to Description, From Moralization to Normalization?*, Maklu Publisher, 2014, P. 253. Available at: <http://www.worldcat.org/title/reframing-prostitution-from-discourse-to-description-from-moralisation-to-normalisation/oclc/87098>, [Accessed 21 January 2018]. [Here in after Nina Persak & Gert Vermeulen, *Reframing Prostitution: From Discourse to Description, From Moralization to Normalization?*]

⁴¹ *Ibid*

researches revealed that countless juveniles engaged in to commercial sex work at their early ages.⁴²

Due to its nature, sex work has been perceived largely as having a negative impact on society. However, there is another side to it. Sex work can generate income, both for the country and for the individuals working in the field. Some women that have risked prostitution have been able to earn a better living and may provide an education for their children. This is largely because earnings from prostitution are often more better than other alternative employment opportunities open to women with low levels of education in many developing countries.⁴³ The overall international sex industry, primarily including prostitution and other subsidiary lists such as magazines, videos services, has been estimated to be worth at least \$20 billion in 2002.⁴⁴ Even in Ethiopia, though there is no any research to show the exact share of sex work in the country's gross domestic product, it is with no doubt that Ethiopia would not be an exception to the world so far as there are numerous sex workers and corresponding demand for the service.⁴⁵ Thus, Ethiopia while taxing daily laborer individuals with low level of income, an income from sex work still remains untouched for the country had not well addressed it legally. This in turn would create wealth inequality and pull massive individuals to engage in to it as a tax free zone. Solving the above problems thus, requires a careful research. As the prevalence of these problems highly demanded an effective legal response in today's Ethiopia than ever before, it is sensible to study how Ethiopia's legal regime should be framed to effectively address these problems. Thus, the researcher is interested to study the opportunities and downsides for Ethiopia in introducing a new regulatory model on prostitution (sex work) mainly on a

⁴² Dr. Kevin J. Lalor, *The Victimization of Juvenile Prostitutes in Ethiopia*, Dublin Institute of Technology School of Social Science and Law Research Paper, 2000, P. 11, See also *Lorraine van Blerk, Poverty, Migration and Sex Work: Youth Transitions in Ethiopia*, P. 245-253. These researchs revealed that most juvenile commercial sex workers engage in due to extreme poverty on average of 12 years and seldom has the age extended to 8.

⁴³ KibichoWanjohi, 'Tourism and the Sex Trade in Kenya's Costal Region' *Journal of Sustainable Tourism*, 2005, Vol. 13, No. 3, P. 276.

⁴⁴ Clancy Michael, *The Globalization of Sex Tourism and Cuba: A Commodity Chains Approach*, Studies in Comparative International Development, 2002, P. 72. Available at: <http://WWW.metapress.com.ludwig.lub.lu.soe/content/dbvytcxgae612mrg/fultext.pdf> . [Accessed on 15 February 2018]

⁴⁵ Reading different writings across Ethiopian based magazines witnessed the same. For instance, the Addis Admas Newspaper on 07 December, 2013 published as sex work in the capital, Addis Ababa had become more productive comparably than trading with clothe and shoe (Butik)

comparative basis and suggest possible precautionary measures either to totally avoid or at least limit the scope of those probable challenges.

1.3. Objectives of the Study

1.3.1. General Objective

The general objective of this research is to assess the opportunities to be obtained and challenges to be faced in introducing a new regulatory shift towards prostitution.

1.3.2. Specific Objective

To attain the above general objective, the researcher specifically intends

- ❖ To clearly demonstrate existing controversies and arguments towards recognition and regulation of prostitution.
- ❖ To briefly investigate the level of recognition (place) of prostitution under international human rights legal regime.
- ❖ To elucidate approaches (legal models) used worldwide towards regulation of prostitution.
- ❖ To briefly investigate the place and existing approach (legal model) used to address prostitution in Ethiopia currently.
- ❖ To identify the available opportunities for Ethiopia in adopting the legalization/regulation model of regulating prostitution.
- ❖ To identify the challenges for Ethiopia in regulating prostitution.
- ❖ To suggest possible alternatives if any to effectively avoid/eliminate challenges arising out of regulation.
- ❖ To demonstrate the preferable/appropriate way to effectively address prostitution in Ethiopia.

1.4. Research Questions

1.4.1. Main Research Question

To achieve the research objectives enumerated above, the researcher is intended to answer the following main research question.

- ❖ What are the opportunities and challenges to regulate prostitution in Ethiopia?

1.4.2. Specific Research Questions

To adequately address the research objectives, the researcher disintegrated the main research question in to the following specific research questions.

- ❖ What are the prevailing contradictions on legal recognition and regulation of prostitution?
- ❖ What is the status of recognition of prostitution under relevant international human rights law?
- ❖ What are internationally well known legal models to address prostitution?
- ❖ What is the place of prostitution in Ethiopia and the legal approach/model currently in use?
- ❖ What are the probable prospects and obstacles of regulating/legalizing prostitution in Ethiopia?
- ❖ What alternatives are available to solve challenges of regulation?
- ❖ What is the preferable way to effectively address/regulate prostitution in Ethiopia?

1.5. Significance of the Study

The researcher is of opinion that the thesis will have both theoretical and practical importance to stake holders and individuals having a study interest on the area. Theoretically, it will be beneficial to add abundance on previously existing knowledge on the area and serve as a spring board for future researchers with an interest to further explore the issue. Practically, the research would be vital, so far as the findings and discussions of the research on the regulation of prostitution will be an encouraging call for the legislative branch of the government to reconsider the issue further and to address the issue in an adequate manner. Besides, different practitioners of law, governmental and nongovernmental organizations, feminist actors, human rights activists, and political campaigners among others can appropriate the findings of the research towards furthering their purposes.

1.6. Research Design and Methodology

So far as the purpose of the research is to assess the needs towards adopting a new legal model on regulation of prostitution and at the same time to identify the possible opportunities and challenges arising from regulation and to suggest appropriate way for Ethiopia, the researcher used both doctrinal and empirical research designs together. Doctrinal research design is used to assess and adequately address the existing controversies on recognition and regulation of prostitution, the status of prostitution under international human right and Ethiopian legal regime, and elucidate approaches (legal models) used worldwide towards regulation of prostitution which purely require extensive examination of laws and documents analysis. On the other hand, empirical research design is used since exhaustively enumerating probable challenges and opportunities which may arise from regulation of prostitution and suggesting an appropriate/preferable way of regulation for Ethiopia requires a field study apart from document analysis.

Once the researcher had adopted doctrinal and empirical research designs, the researcher is of interest to use both the two doctrinal qualitative and empirical qualitative research approaches. Thus, the doctrinal part of the study adopted qualitative research approach. This is primarily because doctrinal research method is dealt with pure qualitative research approach relying on interpretation, examination and exploration of documents like books, scholarly articles, statutes or doctrine of precedents. Other way stated, qualitative research is appropriate for issues requiring deep exploration of written sources/documents.

For the empirical aspect of this research, the researcher would use qualitative research approach too. But unlike the above, the qualitative research approach would be based on both doctrinal and field data. That is, the researcher to address issues of exhaustively identifying possible opportunities and challenges for regulating prostitution, determine the appropriate way and suggesting an appropriate/preferable way for Ethiopia would use both necessary documents and qualitative field data.

1.7. Types of Data Sources

In the study, the researcher is with determination to use both primary and secondary data sources. For the doctrinal qualitative part, the researcher is of interest to use primary data sources such as relevant national, regional, and international legal documents and precedents, if any. This is because assessing the status of prostitution in Ethiopian and international human rights legal regime could only be achieved through consultation of appropriate laws and court decisions. In addition, secondary sources such as books, articles, international reports and other relevant literatures on the area would be consulted. For the qualitative empirical part of the study, the primary data would be collected through interview. Additionally, secondary sources of data like books, articles, reports and other relevant scholarly writings would be collected and analyzed.

1.8. Data Collection Tools

To substantiate the study, the researcher used data collection tools under the umbrella of qualitative data collection techniques mainly including documents analysis and interview. Document analysis of primary sources of data provided above would be used by the researcher so far the research is devoted on briefly assessing the status of prostitution in international human right and Ethiopian legal regimes. On the other hand, document analysis of secondary sources of data listed above would be employed since the study is devoted to briefly assess existing controversies on recognition and regulation of prostitution, briefly illustrate opportunities and challenges which may probably arise together with introducing a new regulatory model, and suggest an appropriate way for Ethiopia.

Apart from the document analysis of primary and secondary data sources, the researcher had used interview to gather necessary data/information from concerned bodies. Mainly, it would be conducted with selected law academicians having a women's right background if any, Ethiopian ministry of health officials, Ministry of Women and Children's Affairs officials, religious leaders, and known feminists if any. The researcher would employ a semi-structured form of interview. The interview would however, be limited to issues concerning illustrating possible opportunities and challenges which would arise in introducing a new regulatory

model, suggest possible solutions to rectify those probable challenges and determine the appropriate way to address the issue in Ethiopia.

The researcher to collect data through semi-structured interview would use non-random purposive and snow-ball sampling techniques. Purposive sampling technique is used since samples/interviewees would be selected based on their educational background, close tie and specialized knowledge on the issue/study area. The researcher apart from purposive sampling employed a snowball type too since the researcher has no abundant knowledge as to whom are with the required educational background and the where about of such samples. Above all, the sample size would be determined based on data saturation or redundancy test.

1.9. Methods of Data Analysis

The data gathered through the above data collection instruments would be analyzed through the use of qualitative data analysis techniques. The doctrinal part of the research employed document/content analysis while the empirical part used both document/content and interview analysis. Analysis of such data would pass through the four steps of qualitative data analysis. These steps involve data preparation, familiarity with the data, interpreting the data and verifying the data. In interpreting the data the researcher would follow four different stages. These include data coding, data categorizing, establishing themes and relationships among codes and categories, and develop a concept to arrive at a generalized conclusion.

1.10. Scope of the Study

The study has scope in terms of area, subject matter, population and norms. In terms of area, the study is going to be conducted in the federal democratic republic of Ethiopia constituting nine regions and two city administrations. The population in which the study to introduce a new regulatory model towards regulation of prostitution covers is of all within the republic of Ethiopia. The Reason for selecting Ethiopia in whole as a study area stems from the primary aim of the study which is to look for an alternative regulatory shift in addressing the widespread practice of prostitution in the country. Hence, doing so could be more effective,

feasible, and enforceable when advocated country wide. Besides, the subject matter scope of the study is limited only on regulation of adult prostitution. In relation to norms which are concerns of this study, relevant national, international and regional laws would be selectively used based on their close attachment with the issue under discussion.

1.11. Limitation of the Study

In the process of the study, the writer of this paper in conducting every act towards answering the research objectives adequately faced some limitations. Such as

- ❖ Lack of resource to conduct the research particularly, material and some other resources.
- ❖ There was also shortage of adequate time to conduct the research since the time allocated to the thesis at the longest is not more than five months.
- ❖ The researcher is challenged for interviewees are not available at all times. So long as they are mostly higher officials and legal practitioners, they were sometimes unwilling and unable to devote me their golden time due to work loads. Above all, what heavily challenged the researcher is that it was a hardly easy task to found research participants for the purpose of interview and obtain a redundant information/data from the set of those participants since the number of participants with the required educational background are either almost non-existent or hard to access throughout the country. Besides, it was also difficult to come across all persons having the required quality to be participants since the researcher had no list of persons with that required background.
- ❖ Above all, respondents, persons and organizations in which the researcher needs to consult and gather information for effective completion of the study stood somehow confidential and antagonistic for prostitution relatively is taken immoral in the mind set of almost all Ethiopians.

1.12. Ethical Considerations

In conducting the study, the following ethical considerations were employed;

- ❖ Consent:-all participants involved in and serve as sources of data/information in the study were first requested their free consent before their participation in the study.
- ❖ Confidentiality; the researcher had informed informants of the study that any confidential information acquired from them would be kept in secret unless they consented to, and would not be used for purposes other than the objective of the study.
- ❖ Anonymity of the participants; participants were told in advance that their identity would not be disclosed unless they consented to that effect.
- ❖ Proper acknowledgement; proper acknowledgement is made to their contribution in the study.

1.13. Organization of the Study

The thesis is designed to explore the needs to introduce a shift in regulation of prostitution for Ethiopia based on analysis of opportunities and challenges out of such a move. To this end the study is organized in five chapters in the manner to respond the objectives and research questions adequately.

Accordingly, the first chapter simply deals the study proposal: high light on the thesis' statement of problem, research question, objective, scope as well as significance of the study and related issues. The second chapter tried to briefly deal with the conceptual and theoretical frameworks on prostitution. Chapter three of the study also mainly deals on the Legal and Policy Frameworks on practicing of prostitution. Finally, the researcher in the fourth and fifth chapters briefly adressed the opportunities and challenges out of regulation of prostitution (on a comparative basis), and conclusion and recommendation(s) respectively.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORKS ON PROSTITUTION

2.1. Introduction

This chapter explores the foundational theoretical frameworks of the study. In doing so, it primarily focuses on discussing the prevailing major controversies surrounding practice, notion and regulation of prostitution. Thus, an introduction to the notion of prostitution; controversies across the naming to be claimed appropriate to the practice are the first issues discussed. Then, it moves on discussing the prevailing feminist controversies (Liberal, radical, socialist, Marxist and Existentialist Feminism) on the recognition of prostitution as an empowering occupation. Lastly, the next part which is the main focus of the chapter wind-up the chapter exploring well-known international approaches employed in legally addressing prostitution.

2.2. General Notion of Prostitution

Currently, there is a great problem across the world in establishing the correct terminology which would describe those individuals engaged in the sex industry. Let alone other mediums, discussions among sex workers, academics, and the international community as a whole on listserves such as the Sex-Work Forum illustrate the existing hot debate on determining the appropriate terminology.⁴⁶

The debates surrounding the terminology, however, are on whether prostitution, commercialized sex work, or sex work is appropriate. According to Bindman and Doezema (1997) as cited in Sasha R. Drummond, the term commercialized sex work was coined by Family Health International to replace the more stigmatized label of prostitution which had been in use for longer periods starting from the beginning of the act.⁴⁷ Since its inception however, the term has been used to

⁴⁶All listserve entries are available catalogued at: <http://www.hivnet.ch:8000/Topics/sex-work>.

⁴⁷ Drummond, Sasha R., Sex Work as Work', online, *Electronic Theses and Dissertations*. 3445, 2001, P. 5, available at: < <https://scholar.uwindsor.ca/etd/3445>>, [Accessed on 10th July, 2018]. [Here in after Drummond, Sasha R., *Sex work as work*]

distinguish between sex work for money and sexwork for other forms of payment or incentive such as rent, food or housing expenses.⁴⁸ This term nonetheless continues to be used only till early 1990's since the beginning of recent decades had started to witness the repeated questions of individuals working in the sex industry for the term commercial sex work be abandoned in exchange for the more generic term "sexwork".⁴⁹

The reasons for such terminology shift was related with the belief in the sex workers movement that the term commercial sex work is redundant, have demeaning character, politically incorrect, stresses the form of payment while sex work stresses participation in the sex industry which has resulted in a demand by workers to have the constructed division in sex work implied in the term commercial sex work, replaced with one all encompassing term sex work.⁵⁰ To the contrary however, there are numerous actors arguing against the appropriateness to have a universally accepted naming on the occupation. Among others, the discussions made on Listserve about the term "sex work" had accommodated contesting ideas such as the use of the term sex work is under false illusion that endeavors to determine a single and all encompassing term for all sex workers' world wide can be successful.

Apart from absence of uniform nomenclature for the act of prostitution across time and space, precisely understanding with theoretical explanations as to what prostitution exactly denotes is hardly possible. Within the discipline of social science for instance, sex work is most often placed within the framework of theories of deviant behaviour or social problems. More recently, however, it has been conceptualized as a form of employment. Sex work as work represents this emerging view and some recent theories in the field now attempts to incorporate this perspective.⁵¹ Therefore, we can easily conclude that the notion of prostitution had evolved from conceiving it as deviant behavior, as a social problem and as a work latter.

⁴⁸ *Ibid*

⁴⁹ *Ibid*

⁵⁰ *Id*, P. 5-6.

⁵¹ *Id*, P. 12.

In support of the first conception: prostitution as a deviant behavior, early sociological theories seen focused on explaining women's entrance in to prostitution, explain why some women deviate from normative gender roles and enter into prostitution.⁵² Among others, the prominent theories are biological positivist, psychopathic, social disorganization, and sociobiological.

According to the first theory; Biological positivist theory, women's entrance into prostitution and continued deviation from normal female roles within the society is the direct result of females' biological inferiority compared to men (Lowman. 1988: 65-66). Therefore, female prostitutes are considered as evolutionary throwbacks and borm criminals. On the other hand, the Psychopathic theory had insisted in that psychological degeneracy and regressive sexuality are the main reasons for why women enter in to prostitution and why they fail to perform normal female roles within their society (Lowman.1988: 66).

Undersocialization theory, also known as the social disorganization theory, stresses the causes for women's entry in to prostitution are inadequate or insufficient socialization to prescribed roles and norms and the maladaptation of the deviant individuals in the society while Sociobiological perspectives suggest that biological predisposition and inherent behavioral traits account for entrance into prostitution (Lowman.1988: 67&68).

In addition to the above conception of prostitution as a deviant behaviour, the occupation had also been seen as a social problem. According to Brock, sex work has consistently been constructed as asocial problem.⁵³ Thus, many writers insist on that looking for either legal or any other appropriate measures towards finding a solution for practicing of prostitution emanates from the perception by stakeholders as it is a social problem.⁵⁴ Therefore, the most proposed and well-known legal responses on prostitution are highly concerned on suppression; uncompromised use of legal sanctions towards elimination, legalization; which

⁵² Lowman. John, *Street Prostitution, Deviance: Conformity and Control in Canadian Society*, Vincent F. Sacco (ed.), 1988, P. 65.

⁵³ Brock, Deborah, *Making Work, Making Trouble: Prostitution as a Social Problem*, University of Toronto Press, Toronto, 1998, P. 3.

⁵⁴ Gusfield.J, 'Constructing the Ownership of Social Problems: Fun and Profit in the Welfare State', *Journal of Social Problems*, 1989, Vol. 36. No.5, P. 432.

includes states control of individuals participating in it, and decriminalization; removal of laws or any form of governmental control.

Surprisingly, contrary to the above views on prostitution, recent academic writings, sex worker's movements, and advocacies of international governmental and non-governmental institutions are highly contributing to the emerging notion of prostitution as a sex work. The notion of sex work as work implies that prostitution should be viewed as an occupation and should receive the same considerations and benefits (those minimum working standards) as other types of work do receive such as rights pertaining to personal safety, pension, unemployment insurance, disability, health insurance and worker's compensation.⁵⁵

2.3. Defining Prostitution

To have a uniform definition for prostitution is not as such an easy task. The reason is highly related with the fact that though the profession had started to be practiced from since a time immemorial, it had different and unique features across time and space. The way it had been practiced a long ago is not totally the same with what it is today. To look in terms of time for instance, there is a huge difference between pre-modern and modern form of prostitution.⁵⁶ Colonisation, industrialisation, urbanisation, agricultural reform or decline, the emergence of class systems, the rise of nation states and state control, military modernisation, revolution and development of modern forms of communication and transport all had an impact on the practice, form, evolvement and societal reactions to it worldwide.⁵⁷ It is for this reason that different states, academicians/scholars and governmental/nongovernmental institutions had tried to define prostitution based on existing country and societal contexts.

To look some; a modern definition contained in a study on prostitution in Namibia reads: "Prostitution consists of any sexual acts, including that which do not

⁵⁵ Jo Bindman & Jo Doezema, *Redefining Prostitution as Sex Work on the International Agenda*, Anti-Slavery International & Network of Sex Work Projects, 1997, P. 4, Available at: <<http://www.walnet.org/csis/papers/redefining.html>>. [Accessed on January 10, 2018]. [Here in after Jo Bindman & Jo Doezema, *Redefining Prostitution as Sex Work on the International Agenda*]

⁵⁶ Nina Persak & Gert Vermeulen, *Reframing Prostitution: From Discourse to Description, From Moralization to Normalization?*, P. 25.

⁵⁷ *Ibid.*

actually involve copulation, habitually performed by individuals with other individuals of their own or the opposite sex, for a consideration which is non sexual”⁵⁸.

A critical look at this definition had something unique than other countries way of looking prostitution. This is because for it, an act of prostitution is a form of sexual contact either among persons of the same or different sexes while using any form of consideration other than sexual one. Accordingly, prostitution seemed somehow very wide in including any consideration which may have contribution to a prostitute towards transforming her/his life in either the political, social or economic spheres.

In the past, prostitution was seen as a social category which consists in it women who do not adhere to sexual and other behavioural norms; pitied or despised.⁵⁹ For this reason it is that prostitutes are otherwise known as “whores,” “hookers,” “hoes,” “harlots,” “women of the street”⁶⁰ which are dominantly of stigmatizing names. They are often excluded by the community in which they are living together with from mainstream society so that they occupy low and marginal position analogous to that of a low caste or minority ethnic group.⁶¹

Contrary to this, modern conception of prostitution had drastically changed. Today, prostitution had started to be viewed as a “sex work”⁶², legitimate form of employment which is believed as any other professions, to empower and transform prostitutes economically.⁶³ In doing so, Jo Bindman & Jo Doezema in preparing a joint report by Anti-Slavery International and the Network of Sex Work Projects (NSWP here in after) defined prostitution as a form of labor as

Negotiation and performance of sexual services for remuneration with or without intervention by a third party, where those services are advertised or generally recognised as available

⁵⁸ LAC, *Whose Body is it?, Commercial Sex Work and the Law in Namibia*, 2002, P. 1, Available at: <<http://www.lac.org.na/projects/grap/Pdf/commsex.pdf>>, [Accessed on 20 February 2018]

⁵⁹ Jo Bindman & Jo Doezema, *Redefining Prostitution as Sex Work on the International Agenda*

⁶⁰ *Ibid*

⁶¹ *Ibid*

⁶² Johanna Schmidt, ‘The regulation of Sex Work in Aotearoa/New Zealand: An overview’, *Women’s Studies Journal*, December 2017, Vol. 31, No. 2, P. 36. [Here in after Johanna Schmidt, *The regulation of Sex Work in Aotearoa/New Zealand: An overview*]

⁶³ *Ibid*

*from a specific location, and where the price of services reflects the pressures of supply and demand.*⁶⁴

According to this definition therefore, prostitution as a constitutive element to sex work in general⁶⁵ is presumed to be conducted up on a negotiation at a specific public market places up on the force of demand and supply. In other words, prostitutes apart from having the freedom to practice it as a means of legitimate source of income in a publicly open market places are endowed with the absolute right of rejection of specific clients or acts on an individual basis. Indiscriminate acceptance by the worker of all proposed transactions is not presumed and such acceptance would indicate the presence of coercion. Besides, the transactions to be made among the prostitutes and their customers should be free from governmental or individual interference. Rater it should be based at least partially, on a competitive price structure.

Apart from the above definitions, we can have a look at what prostitution practically is defined across legal dictionaries. These kinds of definitions more or less are similar in a way they only differ in the way and words they used to define. To list one, the Black's Law free online dictionary (2nd ed) defined prostitution as: "a common lewdness; whoredom; the act or practice of a woman who permits any man who will pay her price to have sexual intercourse with her".⁶⁶ According to a number of dictionary definitions unlike those provided in above, prostitution is presumed/viewed/ to be practiced only by women than men.

More surprisingly, the prevailing variety on the way of connoting and defining what prostitution exactly is seen to be very irreversible fact. To be practical, the Rhode Iceland General Law states "A person is guilty of prostitution when such

⁶⁴Jo Bindman&Jo Doezema, *Redefining Prostitution as Sex Work on the International Agenda*, P. 12.

⁶⁵ The practices understood as 'sex work' and the sex industry as a whole incorporate a wide range of activities and enterprises including prostitution, stripping, pornography, telephone sex lines, sex shops that sell a range of goods, pimping, and various other commercially-motivated endeavours involving sexual or sexualised activities. Prostitution as a constitutive element to the term sex work can therefore share the definition stated above.

⁶⁶*Black's Law free online dictionary, 2nd ed, s.v. "Prostitution", at: <https://thelawdictionary.org/prostitution/>, [Accessed 18th march 2018]*

person engages or agrees or offers to engage in sexual conduct with another person in a return of fee”.⁶⁷ A sexual Conduct in the same legal instrument is defined as:

*Sexual intercourse, cunnilingus, digital intrusion or intrusion by any object in to the genital opening or anal opening of another person’s body or the stimulation by hand of others’ genitals for the purpose of arousing or gratifying the sexual desire of either person (.....) and a fee is anything of monetary value, including but not limited to money, given as consideration for sexual conduct.*⁶⁸

In sum, reading through differing number of literatures, reports, articles or primary sources like statutes of nations could witness us that there is numerous way of defining prostitution so far as it’s mode of performance across states and time is constantly volatile. Hence, the researcher has got it hardly easy to come across a very precise definition to be used for this research purpose accurately within an Ethiopian context. It had been taken to be beyond reality that in countries which had faced socio economic challenges, sexual services are frequently rendered for rewards other than financial (monetary) reward, such as food, clothes and accommodation.⁶⁹ In our country, especially in big towns and cities like Addis, ‘‘sugar daddy’’and ‘‘Sugar Mammy’’ phenomenon are rumored to be common practices of rich elders. Therefore, the researcher is of opinion that defining prostitution narrowly to denote only the exchange of sexual acts for money is not prudent seen in light of the particular socioeconomic problems accompanying Ethiopian society in general and it would be futile to think to define prostitution very broadly in a way to include any sexual acts accompanied by any form of gifts or rewards of economic value. Therefore, for this research is concerned, the researcher is of opinion to provide a working definition for that prostitution is to mean the exchange of any financial reward, favour or compensation for the purpose of engaging in a sexual act with a person of an opposite sex.

⁶⁷ Malinda Bridges, *What’s Best For Women: Examining the Impact of Legal Approaches to Prostitution in Cross-National Perspective and Rhode Island*, A Thesis in Partial Fulfillment of The Requirements for Honors in Justice Studies, Rhode Iceland College, 2012, P. 2. [Here in After Malinda Bridges, *What’s Best for Women: Examining the Impact of Legal Approaches to Prostitution in Cross-National Perspective and Rhode Island*]

⁶⁸ *Ibid*

⁶⁹South African Law Reform Commission, *Sexual Offences and Adult Prostitution*, Discussion Paper, Project. 107, No. 0001, 2009, P. 59. [Here in after The South African Law Reform Commission, *Sexual Offences and Adult Prostitution*]

2.4. Prevailing Controversies on Prostitution

2.4.1. Prostitution and Feminism

Feminism, traditionally had been seen to constitute a diverse social and political movements and this movement is known to be made up of feminists who identify under different labels among others, which include the prominent ones as Liberal Feminists, Radical Feminists, Socialist Feminists, Anti-capitalist(Marxist) Feminists and Existential Feminists⁷⁰. Yet, there is little unity among feminists to come up with a common definition and understanding as to what exactly feminism is. Nonetheless, most feminists agree that the notion means equality among all genders and non-hierarchical practice of solidarity.⁷¹ Within these wide variety of forms and definitions of feminism, debates about sex work have often been an intense point of contention among from other societal and political problems. Views within feminism are extended from what labels to use ('prostitution' or 'sex work'); how to understand socialrelations in the sex industry; and up to how to address the situation of women engaged in sex work.

Above all, the most and the noisiest cry of feminists on the issue of prostitution lies in answering of questions whether prostitutes are coerced victims, entrepreneurs or empowered whores and whether the solution should be decriminalization, legalization, or abolition of prostitution. Other ways stated, the debate revolves on whether emancipation from male sexual oppression (prostitute as a victim) or freedom of choice (prostitute as a worker) is appropriate view.

2.4.1.1. Radical Feminism and Prostitution

Radical feminists have tried to show us that prostitution is a societal evil to result inequality, which deserves a strong condemnation, based on the context of sexuality and gender analysis. The causes for women's inequality for them are

⁷⁰ The International Committee on the Rights of Sex Workers in Europe (ICRSE), *Feminism Needs Sex Workers, Sex Workers Needs Feminism: Towards a Sex Worker Inclusive Women's Right Movement*, Intersection Briefing Paper, March 2016, No 2, P. 4. [Here in after ICRSE, *Feminism Needs Sex Workers, Sex Workers Needs Feminism: Towards a Sex Worker Inclusive Women's Right Movement*]

⁷¹*Ibid*

societal constructions of gender which gave man a prominent power in the interaction between the two sexes than women.⁷²

For radical feminists, sex is a fundamental factor in the interaction between men and women. Nonetheless, heterosexual sex for them always involves the exercise of male power over women: it is absolutely impossible for them to separate sex from exercise of power. For this reason, institutionalizing male sexual dominance by allowing prostitution as a legitimate means of winning ones bread is claimed to perpetuate the male definition of women as anytime and anywhere available sex objects for every man who is able to afford, which in turn ensures their continued subjugation for that purpose.⁷³

Allowing prostitution by government is viewed no less than sponsoring for institutions working against the full enjoyment of equality among men and women in their aspect of societal life. Otherwise stated, prostitution is one means for less enjoyment of gender equality for women. Accordingly, radical feminists highly disagree with the assertions made by pro prostitution advocates whom strongly relied on consent as a relevant determinant factor for either legitimizing or otherwise rejecting prostitution as a threat to gender equality. For them, prostitution willingly entered into is as damaging as forced prostitution since it is the result of existing patriarchal societal order, not from free agency or is a false choice as patriarchy clouds all women's judgments.⁷⁴

It is viewed to be much easier and tenable to justify a crusade only to rescue actual victims of forced prostitution. However, in the radical feminist discourse all Third World sex workers are also victims of forced prostitution. The operating assumption for them is that although choice is comparatively possible in the West, economic oppression prevalent elsewhere in the World is so all-encompassing that

⁷² Kate Sutherland, 'Work, Sex, and Sex-Work: Competing Feminist Discourses on the International Sex Trade', *Osgoode Hall Law Journal*, Spring 2004, Vol. 42, No. 1, P. 142. [Here in after Kate Sutherland, *Work, Sex, and Sex-Work: Competing Feminist Discourses on the International Sex Trade*]

⁷³ Belinda Cooper, 'Prostitution: A Feminist Analysis', *Women's Rights Law Reporter*, 1989, Vol. 11, No. 99, P. 112.

⁷⁴Ratna Kapur, 'The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics' *15 Harv. Hum. Rts. J. I*, 2002, P. 26. [Here in after Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics*]

the very possibility of choice or agency is negated against prostitutes.⁷⁵ Besides, they strongly recognise that consent is not an absolute bench mark for prostitutes' agency to freely determine whether to engage in to the occupation and with whom to perform sexual relation is highly dependent on whether they have equal bargaining power with their customers or not. The reason which they claim is for prostitutes across different classes are not endowed with equal bargaining power so far such capacity is highly dependent on one's previous experience and educational background.⁷⁶ Among others, young, migrant and uneducated classes of prostitutes are taken to have the lowest bargaining power.⁷⁷

In contrast to the pro prostitution advocates therefore, the radical feminist groups view "prostituted women" as compelled by their social circumstances in to prostitution. For this reason it is believed that the involvement of woman in prostitution is always nonconsensual so that they highly link involuntary prostitution, which could occur in all situations in which women or girls cannot change their immediate circumstances and cannot get out, with female sexual slavery (sexual violence and exploitation) whether it is legalized, regulated, or tolerated regardless of how they got in to those conditions.⁷⁸

For women often involve in to prostitution since they are with an empty alternative opportunity sets, Radical feminists disagree that prostitution, no matter how defined, could be accepted as a free choice by any person. Besides, some advocates of this form of feminism further claim the same lack of freedom for any kind of heterosexual intercourse even that which takes place within marital relationships let alone for institutionalized intense problem driven markets of sex. The prostitute are there simply because they demands cash up front. The very assumption by those feminists is the fact that marital relationship is deemed in every cultures, laws and religions to be in a Madonna woman way, which requires a woman

⁷⁵ Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics*, P. 26.

⁷⁶ICRSE, *Feminism Needs Sex Workers, Sex Workers Needs Feminism: Towards a Sex Worker Inclusive Women's Right Movement*, P. 10.

⁷⁷*Ibid*

⁷⁸ Karni Kissil and Maureen Davey, 'The Prostitution Debate in Feminism: Current Trends, Policy and Clinical Issues Facing an Invisible Population', *Journal of Feminist Family Therapy*, 2010, Vol. 22, P. 7. [Here in after Karni Kissil and Maureen Davey, *The Prostitution Debate in Feminism: Current Trends, Policy and Clinical Issues Facing an Invisible Population*]

(wives) to provide sexual services to her husband whether she wanted to or not, and in return for this she received financial support.⁷⁹ To put it in the commonly used words, “women's bodies belong to their husbands, not to themselves: the good wife submits; the bad wife can be forced to submit. Thus all women are supposed to submit”⁸⁰. This argument however, is claimed by many scholars to have greater truth in the past not today since it is only historically that there was often little difference between the sexual obligation of a wife and the selling of services by a prostitute. This is because by law, a woman is not required to do the same with the past as many states have started to incorporate marital rape in their jurisprudences.⁸¹

In sum, radical feminists claim that although legally this is no longer the case everywhere in the world at all times, a system of exchange of benefits for sexual services exists in varying degrees in all marriages. Thus, Prostitution from this point of view, for stronger reason represents an extreme case of sexual stratification in which the commodization of female sexuality contributes to the devaluation and objectification of women which in turn had a strong negative implication on gender equality in a way that an absolute embodiment of patriarchal male privilege would be pronounced.⁸²

As a final remark, for radical feminists view prostitutes as victims than liberated woman, believe that decriminalization will promote more sex trafficking, expand the sex industry, increase child prostitution, encourage men to buy women for sex in a wider and more permissible range of socially acceptable settings and will not be able to protect women working in prostitution, nor will it promote their health or increase their choices.⁸³ These groups of scholars believe that the solutions has to be those which are much more comprehensive in addressing the societal structures which support gender inequalities among others, such as conscious

⁷⁹ *Id*, P. 8.

⁸⁰ *Ibid*

⁸¹ *Ibid*

⁸² Kesler, K., *Is a Feminist Stance in Support of Prostitution Possible?, An exploration of current trends*, P. 219, Available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.876.2531&rep=rep1&type=pdf>, [Accessed on March 20, 2018]

⁸³ Karni Kissil and Maureen Davey, *The Prostitution Debate in Feminism: Current Trends, Policy and Clinical Issues Facing an Invisible Population*, P. 8.

raising or any other means as a mode of discerning and delivering the truth.⁸⁴ Thus, the most comprehensive and effective means of dealing prostitution should be through simultaneously criminalizing the buyers and decriminalizing the sellers (via the Swedish model).⁸⁵ The assumption here is that without men's demand for and use of women/girls for sexual exploitation, the prostitution industry would not flourish. And since prostitution is acknowledged as a form of male sexual violence against women and children or Prostitutes are seen as victims of male violence, they should not risk legal penalties.⁸⁶ Instead, they have the right to assistance in escaping prostitution.

2.4.1.2. Liberal Feminism and Prostitution

In liberal feminism, prostitution is conceived of in the contractarian sense as a private business transaction since it is contended that a woman, in entering in to contracts with her clients in need of her sexual service is deemed to conclude it of her own free will.⁸⁷ Conversely, Radical feminists usually see prostitution as an exploitative relationship in which the customers are only highly interested in the wellbeing of the service the prostitute should render them and not to her personal wellbeing. But the liberals respond to this by pointing out that the above consideration is not unique for prostitution only. For instance when one seeks out a professional such as a doctor, lawyer, plumber, carpenter or mechanic, one is not centrally concerned in the person doing the professional work; it is rather only in his or her services.⁸⁸

For liberal feminists, what is important for a certain form of work to have the power of empowerment to those regularly engaged in performing it is directly reflected in the positive answers to whether such person has engaged in it either by

⁸⁴Kate Sutherland, *Work, Sex, and Sex-Work: Competing Feminist Discourses on the International Sex Trade*, P. 149.

⁸⁵Karni Kissil and Maureen Davey, *The Prostitution Debate in Feminism: Current Trends, Policy and Clinical Issues Facing an Invisible Population*, p. 7.

⁸⁶ICRSE, *Feminism Needs Sex Workers, Sex Workers Needs Feminism: Towards a Sex Worker Inclusive Women's Right Movement*, P. 7.

⁸⁷ Sarah Bromberg, 'Feminist Issues In Prostitution', 2004, P. 17, Available at: http://WWW.feministissues.com/liberal_feminism.html, [Accessed March 2/2018]. [Here in after Sarah Bromberg, *Feminist Issues in Prostitution*]

⁸⁸*Ibid*

his own free will or not and it has the power of transforming one's life.⁸⁹ Thus, practicing of prostitution either by women or men is a profession which can empower regardless of their sex and gender. The reason for which they relied on is their assumption that it is common in all legal systems the capacity to consent has, for the most part, been a privilege enjoyed by those who engage in sexual behavior of either in marriage, any other relations, or commercial sex.⁹⁰ Furthermore, in strengthening their stand, liberal feminists argue the existence of myriad lists of recognized occupations like sweeping the streets, domestic work and cleaning public toilets in which women often seen engaged to perform while those works are least empowering and more damaging to the woman than prostitution.⁹¹ Accordingly, many liberal feminists unravel that prostitution for women is found to be the best option amongst the bad options that are available to them.

This group, which is in favor of prostitute's rights view prostitutes as active decision makers who choose to engage in prostitution. From this perspective, prostitution rests on economic and social inequality more than it does on sexual inequality (patriarchy) such as poverty, job discrimination, and segregation.⁹² Choosing to be a prostitute is therefore linked to a full and equal personhood. Restricting a woman's choice to engage in prostitution denies her equality and with that her status as a human being.

Consequent to viewing prostitutes as either victims or liberated women, the "pro" and "anti" groups differ in their preferred solutions. The "pro" group wants to empower prostitutes through decriminalization. They struggle to organize sex work so that prostitutes are safe, healthy, and prosperous. "Pro" group feminists (liberal) are primarily concerned with inequity caused by laws and law enforcement

⁸⁹Kate Sutherland, *Work, Sex, and Sex-Work: Competing Feminist Discourses on the International Sex Trade*, P. 144.

⁹⁰*Id.*, P. 145.

⁹¹Tariro Tandi, *A Case for the Decriminalization of Prostitution? A Critical Analysis of the Women in Prostitution in Harare, Zimbabwe*, A Dissertation Submitted in Partial Fulfilment of the Requirements for a Masters Degree in Women's Law, Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe, 2012, P. 12. [Here in after Tariro Tandi, *A Case for the Decriminalization of Prostitution? A Critical Analysis of the Women in Prostitution in Harare, Zimbabwe*]

⁹² Karni Kissil and Maureen Davey, *The Prostitution Debate in Feminism: Current Trends, Policy and Clinical Issues Facing an Invisible Population*, P. 6.

practices.⁹³ They stress that imprisonment, court imposed debt, and law enforcement officers are the primary vehicle for the exploitation of prostitutes and if prostitution is decriminalized, police harassment would decrease and prostitutes would be able to rely on the police for protection rather than be oppressed by them.⁹⁴

For both feminist groups, it is clear from the above paragraphs that criminalization will only intensify female inequality because in addition to the other inequalities, prostitutes will now have to bear the physical, psychological, and economic burdens of being identified as criminals. In addition, the most convincing argument against criminalization as a way to decrease or eliminate prostitution is that criminalization could never achieve that goal. Therefore, both feminist groups similarly do not view legalization as a policy worth considering as its strategies could lead to the expansion of states control in women's lives.

2.4.1.3. Marxist/Socialist Feminism and Prostitution

For both Socialist and Marxist feminists' views, prostitution is considered to be oppression. However, the difference lies in that Marxist feminists focus on economic determinism while the socialists believe that psychological and social roots are the primary sources of oppression.⁹⁵ Away from taking prostitution as oppression against those engaged in it, both schools are identical in a sense they believe that the cause of prostitution is linked with a structuring which existed in the society.⁹⁶ If the structuring of a society is characterized by a class society, for them it is inevitable to look in to certain portion of a society engage in to prostitution as a one constituent class of the community.

For Socialist feminists, prostitutes, regardless of their sex considered to be victims of "the corruption of the society which accompanies a class distinction".⁹⁷ Otherwise stated, in a materialistic class society, oppression is a natural outcome

⁹³*Id.*, P. 8.

⁹⁴ For liberal feminists more protection would mean less violence against prostitutes and decriminalization is deemed to allow prostitutes be able to leave prostitution without stigma.

⁹⁵ Rosemarie Tong, *Feminist Thought: A Comprehensive Introduction*, West view Press, Boulder and San Francisco 1989, P. 192. [Here in after Rosemarie Tong, *Feminist Thought: A Comprehensive Introduction*]

⁹⁶*Ibid*

⁹⁷Sarah Bromberg, *Feminist Issues in Prostitution* , P. 21.

for there is among societies categorizing of others to a particular class and objectifying such classes by others so that they are accessible and could be replaced by a same description. Thus, what is oppressive to prostitutes is the belief held by other members of the society that they are available classes of the society and replaceable for one another.

On the other hand, what is central to Marxist feminism is the notion of division of labor which is characteristic feature of a capitalist system. Unlike socialist feminists which based the basis of their arguments on societal corruption as a source of oppression for prostitutes, Marxist feminists rely on corruption of wage labor as a source of oppression.⁹⁸ For them, prostitution is considered to be a form of labor and therefore is taken to fall under the notion of corruption of wage labor. Hence, prostitutes are victims since it is the presumption as wage labor is a form of oppression in which the workers are considered to be slaves of their lords under a system in which they are no more than nothing than a means of production.

In both socialist and Marxist feminism perspectives, prostitution is condemned. Nonetheless, neither school seeks a legal remedy as an appropriate way to address/eliminate/ prostitution. Rather, they believe that since the cause of prostitution is in the structuring of the society, and it is only where the solution lies too; only through avoiding class society.⁹⁹

2.4.1.4. Existentialist Feminism and Prostitution

The very notion of this feminism is claimed to be traced back to Simone De Beauvoir's thought. In her thought she believed that a woman is not a powerless being and dependent only on a relation in which she would create with a male relative.¹⁰⁰ Therefore, prostitution among other alternatives is suggested by her as a forum in which a woman could get escape from men's dependency, towards an empowered woman.

⁹⁸ Simone Weil, *Oppression and Liberty*, University of Massachusetts Press, Amherst, 1955, P. 61-62.

⁹⁹ Sarah Bromberg, *Feminist Issues in Prostitution*, P. 21.

¹⁰⁰ Rosemarie Tong, *Feminist Thought: A Comprehensive Introduction*, P. 211.

Unlike the radical feminism, in the existentialists view, power in which a woman could have over a man is not an illusion. A man may think he is the one with the power to degrade, subdue, and subjugate a woman; however, this power is not inconvertible provided that a woman has competence and the same spirit.¹⁰¹ Similarly, in prostitution a man may think he has her, nonetheless, his sexual possession of the woman is an illusion since it is not he; rather she who owes him as far as it is hardly possible to take her as she is being paid.¹⁰² For these feminists therefore, the spirit of entrepreneurship prevailed unlike the Marxist view of employment as a source of oppression and exploitation.

In sum, according to this perspective, prostitute women are liberated and oppressed at the same time. They are oppressed on the one hand because it is believed they are historically and today too treated by inequality between the sexes and on the other hand they are liberated woman since they have prostitution as a successful economic strategy for their survival.¹⁰³ Though it is not an easy task to exactly appreciate the legal tool in which they are in favor to address prostitution, it is plain as criminalization is inappropriate way and decriminalization like liberal feminists is thought by existentialists too.¹⁰⁴

2.5. Legal Approaches in Regulation of Prostitution

Across the world, there is no identical parameter in developing an appropriate legal model towards regulation/addressing prostitution. Legal frameworks in which states opt to address prostitution are in no way indifferent; different groups approach to solve problems arising out of prostitution through differing legal responses. This is because some look prostitution as a problem, while some others as an essential evil. Therefore, those approaches in which states across the world using now a days are highly dependent on the policy frameworks and objectives of a particular country. Given the diversity of views about the nature and causes of prostitution, socio-economic issues, moral and religious viewpoints, human rights, the nature of the harm to women, culture and tradition, governments across the

¹⁰¹Sarah Bromberg, *Feminist Issues in Prostitution* , P. 23.

¹⁰²*Ibid*

¹⁰³ Rosemarie Tong, *Feminist Thought: A Comprehensive Introduction*, P. 211.

¹⁰⁴Sarah Bromberg, *Feminist Issues in Prostitution* , P. 133.

world demonstrate a similar diversity of policy and legislative responses in dealing with prostitution.¹⁰⁵

Above all, it is not only existence of diverse factors to be considered across the world which witness differing approaches, it is rather because the particular meaning and weight attached to each factor varies across jurisdictions, and are contingent upon the particular historical, philosophical and social context of each country. Whatever it is, the factors in which states accord differing concerns in addressing prostitution can be generalized to range from protecting prostitutes so that they should not be exploited by third parties, protecting society from the adverse effects of and exposure to prostitution.

As evidenced across numerous literatures, despite the absence of uniformity, it is however possible to generally classify laws applicable in addressing prostitution in to some categories. In general, these can be categorized into three basic legal frameworks. These systems are classified as: Criminalization, Decriminalization and Legalization.¹⁰⁶ What we have to take in to account in discussing the purposes and peculiarities of these models is that they are designed to respond in different ways to the complexities¹⁰⁷ of prostitution.

2.5.1. Criminalisation Model

According to this legal approach the premised belief is that prostitution is a social evil¹⁰⁸ which should be eliminated through the use of coercive criminal law

¹⁰⁵ Frances M. Shaver, *Prostitution: A Critical Analysis of Three Policy Approaches*, P. 493. See also Jean D' Cunha, *Prostitution Laws: Ideological Dimensions and Enforcement Practices*, P. 34.

¹⁰⁶ Kakule Kalwahali, *The Criminalisation of Prostitution in South African Criminal Law*, P. 7, Dr Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution*, P. 11. See also Frances M. Shaver, *Prostitution: A Critical Analysis of Three Policy Approaches*, P. 493, Jean D' Cunha, *Prostitution Laws: Ideological Dimensions and Enforcement Practices*, P. 104; LAC, *Whose Body is it?, Commercial Sex Work and the Law in Namibia*, 2002, P. 151.; Tariro Tandi, *A Case for the Decriminalization of Prostitution? A Critical Analysis of the Women in Prostitution in Harare, Zimbabwe*, P. 60. Though it is the common classification we can come across in major legal literatures on the area, there are some literatures like the South African Law Reform Commission Discussion paper classified in to four subdividing the criminalization model in to two independent (Abolitionist and prohibitionist) than a constituent of one model. Regardless of the categorization, there is no any ideal deference anyhow.

¹⁰⁷ Among the complexities for instance prostitution takes many forms such as adult and under-aged prostitution, outdoor and indoor prostitution, voluntary and coerced prostitution; different role-players are involved in prostitution such as prostitutes, clients, brothel owners and pimps.

¹⁰⁸ Social evils justifying criminalization approach of regulation, however, vary from community to community. In south Africa for instance, in a grand case on the area found across numerous

provisions¹⁰⁹ so that a person found guilty of such a criminal offence face punishment in the form of a fine, imprisonment, or both. The sources for such claim are often thought to be emanated from religious, moral, feminist grounds and aims at its eradication for which it bans prostitution *per se*, by criminalising the activities of all or some categories of people involved in prostitution such as brothel-keepers, pimps, procurers, clients and prostitutes.¹¹⁰

In spite of the existence of convincing rationales in favor of criminalization, there are also consistent rallying cries for against. The main reasons that those disfavoring parties raise are one way or another related with the fear that criminalisation will cause further social evils by forcing prostitution in to the criminal underground and endangers prostitutes' health and safety as well.¹¹¹ In their view, if prostitution is tolerated by law to be practiced at least in certain areas of the community, the public visibility would be fertile ground to enable concerned stakeholders like the police to deal more effectively with the buse, violence or frauds surrounding prostitution since the public, customers and sex workers would be more likely to report criminal incidents to the police.

Jurisdictions which have followed the criminalization model of regulation of prostitution are claimed to employ either of the two distinct variations of the criminalisation method. Thus, the criminalization approach can be subdivided into two groups: total criminalisation (prohibitionist approach) and partial criminalisation (abolitionist approach).¹¹²

literatures (South African case of *S v Jordan and Ors* 2002(1)SACR17(T)), those social evils in which prostitution laws should prevent are stated to constitute public nuisance, child prostitution, trafficking in women and children, public health and some associated crimes with prostitution; In some states like Sweden, the ill is related to violence and exploitation of women; in USA it is based on the idea that prostitution is inherently harmful, dehumanising, and fuels trafficking in persons.

¹⁰⁹Jo Doezema, *Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy*, Global Sex Workers, Kamala Kempadoo and Jo Doezema (eds), London: Routledge, 1998, P. 37 [Here in after Jo Doezema, *Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy*]; Frances M. Shaver, *Prostitution: 'A Critical Analysis of Three Policy Approaches*, p. 494.

¹¹⁰Jean D' Cunha, *Prostitution Laws: Ideological Dimensions and Enforcement Practices*, P. 107. See also Gary Rhoda, *The Decriminalization of Prostitution in South Africa: Towards a Legal Frame Work*, P. 34.

¹¹¹Alan Shatter TD, *Discussion Document on Future Direction of Prostitution Legislation*, Department of Justice and Equality of Ireland, 22 June 2012, P. 32. [Here in after Alan Shatter TD, *Discussion Document on Future Direction of Prostitution Legislation*]

¹¹²The South African Law Reform Commission, *Sexual Offences and Adult Prostitution*, P. 13.

The total criminalisation or prohibitionist approach is employed in countries that find all forms of prostitution unacceptable and therefore all aspects of prostitution including the sale and purchase of sexual services are totally criminalised. Hence, all parties involved in prostitution such as the prostitute, the client brothel-keepers and the pimp are criminalised.¹¹³ This is the approach known to be practiced in most states of the USA and countries in the Middle East.

In contrast, the partial criminalisation (or abolitionist approach) of prostitution is some how a modified form of prohibition which allows the sale of sex, but bans all related activities such as soliciting, living off the earnings of prostitution, brothel keeping, and procurement.¹¹⁴ There is no uniformity in states employed this version. Accordingly, we do have two different versions of partial criminalisation. In the first version – the form which is in force in UK, Canada and Ireland, activities related to prostitution such as soliciting, brothel-keeping and living off the earnings of prostitution are prohibited, while giving sex for money itself is not a crime.¹¹⁵ The very purpose of this version is thought to be reduction of exploitation of prostitutes by third parties and protection of the rights of adults to their private life at the same time.¹¹⁶ The other version, most prominently the form which is in force in Sweden, Finland and Norway favours targeting those who buy or facilitate the buying of sexual services. The assumption here is that criminalising the buyer will reduce the demand for prostitution, and thus end the oppression against prostitutes.¹¹⁷

2.5.2. Decriminalisation Model

The very notion with the toleration or decriminalization legal approach to prostitution is a claim for a radical repeal or abolition of all laws which criminalize any aspects of prostitution.¹¹⁸ So far as the assumption under this model of

¹¹³Alan Shatter TD, *Discussion Document on Future Direction of Prostitution Legislation*, P. 32.

¹¹⁴Gary Rhoda, *The Decriminalization of Prostitution in South Africa: Towards a Legal Frame Work*, P. 34.

¹¹⁵The South African Law Reform Commission, *Sexual Offences and Adult Prostitution*, P. 174.

¹¹⁶*Ibid*

¹¹⁷*Ibid*. See also Alan Shatter TD, *Discussion Document on Future Direction of Prostitution Legislation*, p. 38.

¹¹⁸Dr Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution*, p. 12.

regulation is that prostitutes often engage in it voluntarily with full knowledge and consent, clear distinction is required to be made between forced and voluntary practice of prostitution so that it is possible to pose criminal sanction on forced/coerced form of prostitution.¹¹⁹ Accordingly, the very notion here is that all acts of prostitution except forced prostitution should be freed from criminal responsibility.

In this model of regulation, prostitution is neither regarded as a crime nor a licensable activity too.¹²⁰ It is based on voluntariness and considered an act between two consenting adults where the role of the State is limited only to eradication of coercive prostitution than controlling every transaction through regulatory laws via licensing.¹²¹ Thus, prostitutes would not be criminalized for their work. Rather have more or less the same rights as other citizens in the society. Apart, this model is best characterized by absence of prostitution specific laws/legislations.¹²² However, it doesn't totally mean that adoption of the decriminalization model necessarily implies absence of regulation of activities of prostitution. Rather it is subject to the legislation and regulations that regulate other businesses.¹²³ Prostitution is recognised as a legitimate form of business and as such, it comes under the ambit of employment, health, occupational, safety regulations and human rights. Those involved in prostitution therefore have the same rights and responsibilities as other workers among others, payment of tax. In most of the time the feature of decriminalization model is known to be a form of self-regulation.¹²⁴ This is because various stakeholders in the community such as brothel-keepers, clients and prostitutes often involve in the system of regulation in a more prominent way than the government. This may involve through the use of a monitoring institution, a code of practice, and regulation under the planning-and development code.

¹¹⁹Jo Doezeema, *Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy*, P. 37. It is not willful sexual commoditization, rather only disruptive and abusive activities and behaviours would be regulated using criminal law explicitly designed to deal with them.

¹²⁰ Dharmendra Chatur, *Legalization of Prostitution in India*, Legal Methods Research Paper, 08D6015, 2009, P. 12, Available at: <https://works.bepress.com/dchatur/1/>, [Accessed 12/03/2018]

¹²¹ *Ibid*

¹²² *Ibid*.

¹²³Dr Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution*, P. 12.

¹²⁴Alan Shatter TD, *Discussion Document on Future Direction of Prostitution Legislation*, P. 41.

Now a day, only a few states like the New South Wales (Australia) and New Zealand have adopted a legal framework based on the decriminalisation approach. In adopting this model the very objective states need to meet beyond protection of social order is on the sex worker – respecting their human rights, and improving their health, safety and working conditions.¹²⁵

2.5.3. Legalisation/Regulation Model

The same way as the decriminalisation model of prostitution involves repealing the criminal laws relating to prostitution activities, legalisation/regulation involves the repeal of criminal laws too while refusing other laws to apply as they would to any trade activities.¹²⁶ The difference, however, lies in the fact that the regulation model instead of relying on existing labor and trading laws insists on enactment of a new law on the detail regulation of the sex trade under certain state-specified conditions.¹²⁷ The removal of prostitution specific criminal provisions from application doesn't nonetheless imply an absolute shield of prostitution related activities from suffering in to criminal sanction. This is because the sanctions for non-compliance with the detailed regulatory scheme are usually of acriminal nature, with enforcement by the police or similar state law enforcement agencies.¹²⁸ Hence, we can perceive that criminalization, though not the principle, still remains as an element of the regulation model.

The assumption under this model of regulation is that there are two extreme opposing classes of a society concerning legitimacy of prostitution as a form of work.¹²⁹ Therefore, this model is taken as a middle ground in a sense it viewed prostitution as a necessary evil for stable social order which therefore needs to be controlled so as not to offend those that do not agree with this principle and/ to

¹²⁵*Ibid*

¹²⁶The South African Law Reform Commission, Discussion Paper, P. 198.

¹²⁷Dr Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution*, P. 13, Lena Reinschmidt, *Prostitution in Europe Between Regulation and Prohibition Comparing Legal Situations and Effects, Observatory for Sociopolitical Developments in Europe*, Working Paper Nr. 13, May 2016, P. 3. [Here in After Lena Reinschmidt, *Prostitution in Europe Between Regulation and Prohibition Comparing Legal Situations and Effects, Observatory for Sociopolitical Developments in Europe*]

¹²⁸The South African Law Reform Commission, *Sexual Offences and Adult Prostitution*, P. 198.

¹²⁹Tariro Tandí, *A Case for the Decriminalization of Prostitution? A Critical Analysis of the Women in Prostitution in Harare, Zimbabwe*, P. 63.

protect public order and health, reduce the crimes associated with it and to protect the prostitutes themselves.¹³⁰

As tried to be highlighted above, the salient features¹³¹ of the legalisation legal approach/system are the existence of prostitution-specific controls and conditions specified by the state. These can include licensing of brothels, zoning, registration, and mandatory health checks.¹³² Licenses may be managed by police and the judiciary, elected municipal authorities, or independent specialist boards depending on the peculiarity of the law of the states. Prostitutes are often required to register and mandatory health testing with the authorities so that they can practice their business within the prescribed legal framework without affecting the interest and health of the public. Besides, prostitution business is seen to be allowed in specifically identified areas through limiting of outdoor prostitution or the creation of specific redlight districts as other businesses but always far away from schools, worshipping/religious and residential areas.

Though the assumption taken by this approach of regulation is that prostitution is unavoidable and a necessary social evil in which its worst side effect could only be managed through effective regulation, there are numerous counter arguments by different scholars. Among others the criticisms forwarded against include legalization of prostitution is a gift to pimps, traffickers and the sex industry than prostitutes, promotes sex trafficking especially from foreign or neighboring countries, expands the sex industry than controlling, increases clandestine, illegal and street prostitution for illegible sex workers would go underground, increases child prostitution, could not protect women in prostitution from abuse during sexual contact, and increases the demand for prostitution.¹³³

¹³⁰*Ibid*

¹³¹The salient features are identified from a study through the trends and modes of regulations used by states which have introduced the legalization model among others, such as Netherlands, Germany, Iceland, New Zealand, Austria, Denmark, Greece, Turkey, Senegal, the USA's state of Nevada, and many Australian states (Victoria, Queensland, ACT and Northern Territory).

¹³²Dr Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution*, P. 12.

¹³³ Janice G. Raymond, 'Ten Reasons for Not Legalizing Prostitution', Available at: [http://action.web.ca/home/catw/attach/10_Reasons_9-15-03_FINAL_\[1\].doc](http://action.web.ca/home/catw/attach/10_Reasons_9-15-03_FINAL_[1].doc), [Accessed on 02/02/2018]

To sum up our discussion on approaches of prostitution regulation, it is equally vital to indicate readers that there are numerous states/jurisdictions in which their legal regimes on prostitution never fall in any of the above discussed three approaches. In these jurisdictions, prostitution is entirely unregulated – i.e. there are no laws either prohibiting or allowing prostitution.¹³⁴ For this reason it is started to be found in some recent literatures as the “*unregulated*” or the “*Defacto legalization*”¹³⁵ regime is to be taken as the fourth approach. The main characteristic feature of this regime is that it is a twilight zone in which either the act of prostitution or aspects of it (such as night bar and brothel keeping) are specifically stated illegal but either or both are informally tolerated by authorities.¹³⁶ I.e. when prostitution or aspects of it are prohibited but tolerated. Similarly, looking in to court practices and prevailing legal regimes, the Ethiopian approach on addressing prostitution can be grouped in none of the three prominent approaches since practicing it is neither prohibited and nor allowed. Thus, it can be claimed to fall under the last, fourth regime.¹³⁷

¹³⁴Dr Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution*, P. 12.

¹³⁵ Lena Reinschmidt, *Prostitution in Europe Between Regulation and Prohibition Comparing legal Situations and Effects*, *Observatory for Sociopolitical Developments in Europe*, P. 3. Under this model, prostitution is often referred as being “not technically illegal” or taking place in a legal vacuum, since prostitution itself is not covered by national laws (neither prohibited nor explicitly permitted) than criminalizing third party activities. In a report published by the Ministry of Justice of New Zealand in October 2007, it had identified around eleven states found in central and Eastern Europe and Central Asia which can be categorized under this residual legal approach. To list them, they included Azerbaijan, Bulgaria, the Czech Republic, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Poland, Slovakia, Slovenia and Tajikistan.

¹³⁶Ronald Weitzer, *Legalizing Prostitution From Illicit Vice to Lawful Business*, New York University Press, New York and London, 2011, P. 79-80. [Here in after Ronald Weitzer, *Legalizing Prostitution From Illicit Vice to Lawful Business*]

¹³⁷This is because in Ethiopia, third party involvement not prostitution is a criminal offence. Nevertheless, looking in to what is going on hotels, bars and restaurants in which almost all have either a part time or full time prostitutes under their business in the name that they are their daily/monthly laborers without or with little interference from the government, we can say that the fourth model is in practice. Besides, in Ethiopia there are some governmental and non-governmental institutions primarily operating to support both indoor and outdoor prostitutes so that it could be possible to protect them from STD. Currently for instance Ethiopia had opened confidential sex workers’ clinics in almost all regional centers of the country under the supervision of Family Guidance Association of Ethiopia at the federal level. These clinics are confidential in which no one knows than sex workers. Sex workers in those clinics are provided with services like HIV test; ART provision, Pre and Post HIV test counseling, and psychological counseling to enable them either recover from a post sexual trauma resulting from violence/abuse by their clients’/bar owners or not to get back to the occupation anymore. Prostitution is tolerated in Ethiopia so that we can say the fourth model is prevailing.

CHAPTER THREE

LEGAL AND POLICY FRAMEWORKS ON PROSTITUTION

3.1. Introduction

This chapter is devoted to provide a general overview of the International and Ethiopian Legal systems on the area of the study. It starts by discussing the international legal and policy frameworks having a relevance in talking about the issue of prostitution either specifically or with non-specific terms among others, which include the Convention for the Suppression of Trafficking in Persons and of the Exploitation of Others, Convention on the Elimination of all Forms of Discrimination Against Women, Declaration on the Elimination of Violence Against Women, UDHR, ICCPR, ICESCR, Beijing Declaration and Platform for Action, International Charter for Prostitutes' Rights, the ILO policy and UNSG's bulletin and the next part concludes the chapter discussing appropriate domestic legal regimes on the topic such as the constitution and some criminal law regimes.

3.2. International Legal Frameworks and Policies

Despite the existence of numerous international policies and legal instruments concerning the worth and wellbeing of human beings, it is still hardly possible to exactly know the stand of the international community on prostitution. From this it seems why there is no at least a relative uniformity among states in addressing the act of prostitution. The basic reason for this inconsistent appreciation of the act emanates from the fact that the recognition of prostitution had passed through numerous inconsistencies in the international forum.¹³⁸

¹³⁸This inconsistency can be viewed starting from the times which marked the beginning of international concern on the subject; conferences in 1895 in Paris, followed by others in London and Budapest in 1899. Starting from these times onwards, the issue was started to be addressed through the concept of 'white slavery', later as trafficking, thereafter as a human rights issue and, most recently, within labour law. For instance, the automatic results of the above conferences were instruments such as the International Agreement for the Suppression of the White Slave Trade in 1904 and the International Convention for the Suppression of the White Slave Trade in 1910, and the two conventions on trafficking in women and children adopted by the League of Nations, namely, the International Convention to Combat the Traffic in Women and Children of 1921 and

Regardless of existing historical inconsistencies, the researcher is of with interest to look in to only those policies and international human rights instruments on the subject matter under the umbrella of the United Nations system. Despite the absence of absolute uniformity in their ways of appreciating the concept and adequate respect for the human rights of prostitutes, there are two kinds of instruments; prostitution specific and non-prostitution specific instruments¹³⁹ whereby the researcher would try to analyze them exhaustively in the following pages.

3.2.1. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1950 (The Trafficking Convention)

A year after the adoption of the grand human rights document by the UN; UDHR, the General Assembly in 1949 as part of the UN universal human rights instruments focusing specifically on prostitution and its exploitation, adopted the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. The convention as a UN binding instrument focusing specifically on prostitution and its exploitation, tries to stress that prostitution and trafficking in persons are incompatible with the dignity and worth of the human person stating in its preamble

*(.....) Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community(.....)*¹⁴⁰

the International Convention for the Suppression of Women in Full Age of 1933. Latter in the UN too, there are numerous instruments.

¹³⁹ Chi Mgbako and Laura A. Smith, 'Sex Work and Human Rights in Africa', *Fordham International Law Journal*, 2011, Vol. 33, Issue 4, Article 2, P. 1199-1202. [Here in after Chi Mgbako and Laura A. Smith, *Sex Work and Human Rights in Africa*] Prostitution specific instruments include the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1950, Convention on the Elimination of All Forms of Discrimination against Women of 1967, Declaration on the Elimination of Violence against Women of 1993, Beijing Declaration and Platform for Action of 1995....and non-prostitution specific documents include International Covenant on Civil and Political Rights of 1966, and International Covenant on Civil and Political Rights of 1966....

¹⁴⁰ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 21 March 1950, The preamble, Available at: < <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>>, [Accessed 22 May 2018]

For this reason, the convention in addressing these two specific concerns, namely, trafficking in persons for the purposes of prostitution and the exploitation of persons in prostitution in its articles 1 and 2 obliged state parties to prosecute and punish persons within their jurisdictions whom would procure, entice another with or without consent for the purpose of prostitution, exploit the prostitution of another, manage/finance brothel business, or lent/rent a building for the purpose of the prostitution of others.

In furthering its primary objective, the trafficking convention apart from the above, impose further obligations on state parties which it deems appropriate. In doing so in its articles 6, 17 and 20 require state parties to repeal or totally abolish previously existing domestic legal regimes which allowed the practice of prostitution up on special registration or possession of special document by prostitutes or any exceptional requirements for supervision or notification, to encourage, through their public and private educational, health, social, economic and other related services measures for the prevention of prostitution and for the rehabilitation and social adjustment of victims of prostitution, and to take necessary measures towards the supervision of employment agencies to prevent persons seeking employment in particular, women and children from being exposed to the danger of prostitution respectively.

In sum it is implicit from the provisions of the convention that prostitution may be of two types; voluntary and forced.¹⁴¹ However the instrument recognized the right of an adult prostitute to engage in to prostitution in a complex way since it propounds that sex work should be brought to an end so far as the act is dangerous and persons engaged in to it are victims in need of support and rehabilitation.¹⁴² From this therefore it is agreed as the approach recognized in the convention is the (abolitionist) partial criminalisation model since it rejects the idea that an individual can ever consent to prostitution.¹⁴³

¹⁴¹ Chi Mgbako and Laura A. Smith, *Sex Work and Human Rights in Africa*, P. 1200.

¹⁴² The South African Law Reform Commission, *Sexual Offences and Adult Prostitution*, P. 91.

¹⁴³ *Id.*, P. 92.

3.2.2. Convention on the Elimination of All Forms of Discrimination Against Women of 1979 (CEDAW)

In 1979, the United Nations and the international community had taken a major step towards advancing women's rights by adopting the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁴⁴ CEDAW being described as an "International bill of rights for women",¹⁴⁵ is known in setting minimum standards that governments need to meet in order to ensure that there is an end to discrimination and to promote gender equality.

Coming to our main point, there are some selected provisions worth mentioning to look in to the place of prostitution. Accordingly, the instrument had some provisions which tried to address prostitution specifically and some may be through interpretation. To begin showing the place of prostitution, let's start with discussing provisions which doesn't specifically pronounce in to prostitution. The one to mention above all is the provision which reveals the grounds of discrimination in the eyes of CEDAW and this is article 1. This provision runs:

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁴⁶

Though article 1 failed to specifically address prostitution as one ground of discrimination against women, it is not however, impossible to argue that prostitution is one ground in a sense that it may fall under the umbrella of distinction, exclusion or restrictions that are placed against women on the basis of their sex so that it would impair them enjoy the fundamental freedoms and rights enshrined in different instruments. Hence, it is held through some literatures that

¹⁴⁴ Convention on the Elimination of All Forms of Discrimination Against Women, December 1979, Available at: <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>>, [Accessed 11 may 2018]. [Here in after *Convention on the Elimination of All Forms of Discrimination Against Women*]

¹⁴⁵ "The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): A Fact Sheet, Physicians for Human Rights", at : <<http://physiciansforhumanrights.org/library/documents/general-pdfs/cedaw-factsheet.pdf>>, [Last accessed March.13, 2018]

¹⁴⁶ *Convention on the Elimination of All Forms of Discrimination against Women*, Article.1

the practice of prostitution is closely related to exploitation and discrimination of women as it serves to perpetuate issues of childhood violence, poverty and pervasive patriarchy that continue to impede on the ability of women to fully enjoy economic, social and political freedom.¹⁴⁷

The other provision worth mentioning is article 6. Unlike the above, this provision tries to specifically address practice of prostitution stating “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.¹⁴⁸ Though this provision addressed specifically the practice of prostitution, it is not clear whether it requires states parties totally abolish the practice of prostitution itself or implement measures which could protect women involved in prostitution from exploitation. Due to this unclear wording of the provision there are two conflicting interpretations. On the one hand, it is argued that Article 6 deals only with the exploitation of prostitutes and not prostitution itself as exploitation refers to the related mischief and not the activity of prostitution and accordingly it is claimed that CEDAW does not call for the total criminalisation of prostitution, but rather for the criminalisation of prostitution resulting from sexual exploitation.¹⁴⁹ Conversely, it is strongly held as states are obliged to criminalize prostitution since there is a belief that it is too closely and inseparably tied with sexual exploitation of women based on their unequal status in sexual and other relations: because of unequal status between men and women, and their inability to participate on an equal footing with men, prostitution is the only choice in which women have an absolute power so that practicing of prostitution is no more than a form of exploitation.¹⁵⁰

Given the ambiguity regarding the message intended by CEDAW in its Article 6, it is important to look around another authoritative ways of interpretation. To do

¹⁴⁷Gary Rhoda, *The Decriminalization of Prostitution in South Africa: Towards a Legal Frame Work*, P. 49.

¹⁴⁸*Convention on the Elimination of All Forms of Discrimination Against Women*, Article. 6.

¹⁴⁹ Kakule Kalwahali, *The Criminalisation of Prostitution in South African Criminal Law*, P. 98.

¹⁵⁰ Gregoire They, *Prostitution under International Human Rights Law: An Analysis of States' Obligations and the Best Ways to Implement Them*, CAP international, February 2016, P. 12. [Here in after Gregoire They, *Prostitution under International Human Rights Law: An Analysis of States' Obligations and the Best Ways to Implement Them*]; Shelagh Day, *Prostitution: Violating the Human Rights of Poor Women*, 2008, P. 28.; Kakule Kalwahali, *The Criminalisation of Prostitution in South African Criminal Law*, P. 34.

so, resorting to the drafting history of the convention would have a purpose. In the evolution of CEDAW as an international instrument, there was one proposal made by Morocco to amend article 6 so that it would include the phrase “suppression of prostitution” in addition to the phrase “suppression of the exploitation of prostitution”¹⁵¹. Nonetheless, this proposal was rejected by the Netherlands and Italy claiming for not all forms of prostitution is inherently coercive.¹⁵²

The other important event we should look in to in identifying the clear stand of the convention is the power exercised by the UN Committee on CEDAW. Under Article 21, CEDAW empowers the UN Committee on CEDAW to make suggestions and general recommendations based on the examination of reports and information received from States parties. Among others, General Recommendations 19 and 24 are worth mentioning. General Recommendation No. 19 which is about Violence against women sustains that prostitution is not an exploitation running

*Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalise them. They need the equal protection of laws against rape and other forms of violence(....)*¹⁵³

In this assertion the recommendation highlighting the major causes for how women engage in to prostitution emphasizes that women in prostitution are special vulnerable groups to discrimination and social/economic marginalisation due their status as a prostitute. For this reason, it seems that the recommendation in its paragraph 24 begs for states parties to introduce penal, preventative and rehabilitative measures to protect women engaged in prostitution or are subjected to trafficking and other forms of sexual exploitation.

Apart from general recommendation number 19, the same stand is seen to be reflected too in another instrument. In the General Recommendation No. 24 which is all about Women and health, the Committee notes in paragraph 6 that the same way as biological factors, societal factors have a great implication on the health

¹⁵¹ Chi Mgbako and Laura A. Smith, *Sex Work and Human Rights in Africa*, P.1201.

¹⁵² *Ibid*

¹⁵³ General Recommendation No. 19: Violence against Women, 1992, Para 15, Available at: www.globalhealthrights.org/wp-content/uploads/2013/09/CEDAW-General-Recomendation-No.-19-Violence-against-Women.pdf, [Accessed 20 January 2018]

status of women and men so that it recommends women belonging to vulnerable and disadvantaged groups, such as in prostitution needs special attention to their health needs and rights.¹⁵⁴

To conclude, in the absence of a call for measures to eliminate the institution of prostitution, it is more tenable to argue that CEDAW does not expressly embrace a prohibitionist/abolitionist standpoint, rather it represents a shift from an emphasis on measures to eradicate prostitution to a view of sex workers as individuals who hold fundamental rights.¹⁵⁵

2.2.3. Declaration on the Elimination of Violence Against Women (DEVAW) (1993)

DEVAW is a declaration which arises from a resolution made by the United Nations General Assembly on the 20th December 1993 for the primary purpose of supplementing the CEDAW and to show that it is a reiteration of the commitment to the eradication of all forms of violence and discrimination against women.¹⁵⁶ As an international commitment, the declaration had tried to emphasize on defining what constitutes violence against women (gender based violence), identifying specific instances of gender based violence as “violence in the family”, “public violence” and “violence condoned by the state” regardless of where it occurs as forms of violence that violate women’s human rights and illustrate specific tasks/measures/ to be taken by states parties to avoid violence on women.

The declaration defining violence against women as “any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”¹⁵⁷ illustrated the constitutive encompassing grounds of gender based violence stating.

¹⁵⁴ CEDAW General Recommendation No.24:Article 24 of The Convention (Women and Health), 1999, Para 6, Available at: www.refworld.org/docid/453882a73.html, [Accessed 20 January 2018]

¹⁵⁵Chi Mgbako and Laura A. Smith, *Sex Work and Human Rights in Africa*, p.1201

¹⁵⁶ Declaration on Elimination of Violence against Women, The Preamble, Available at: www.un.org/documents/ga/res/48/a48r104.htm, [Accessed 20 January 2018]

¹⁵⁷ Declaration on the Elimination of Violence against Women, 20 December 1993, Article. 1. Available at: www.un.org/documents/ga/res/48/a48r104.htm or at

Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.¹⁵⁸

From the above statement it is plain that trafficking in women and forced prostitution, not voluntary adult prostitution forms a category of gender-based violence though it is a contentious issue as it is not certain the extent to which women and men enter into prostitution voluntarily or under a form of duress. Apart from the distinction; forced and voluntary prostitution, although the measures required of States Parties under the Declaration do not expressly refer to prostitution, some of the provisions may arguably have relevance for women prostitutes. To list some, it is asserted that all women without any distinction are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, and civil or any other field.¹⁵⁹.

Furthermore, provided that violence against women may occur in private, family and public spheres, it is clear that there may even be a room for its occurrence in voluntary prostitutions apart from forced ones (emphasis mine). Therefore, for this appreciation it seems that the declaration obliges states to prevent, investigate and punish acts of violence against women, made the justice system accessible for all women, made available civil, administrative and labor measures for women to be able to claim for redresses arising out of violence they suffer.¹⁶⁰ Nonetheless, there is a counter argument on the position held by the DEVAW with regards to voluntary adult prostitution. This argument is based on the premise that states have a duty to prevent any act that is likely to result in physical, sexual or psychological harm or suffering to women and women who sell sex voluntarily too are subjected

<<http://www.refworld.org/docid/3b00f25d2c.html>>, [Accessed 21May 2018]. [Here *Declaration on the Elimination of Violence against Women*]

¹⁵⁸ *Declaration on the Elimination of Violence against Women*, Article. 2.

¹⁵⁹ *Declaration on the Elimination of Violence against Women*, Article. 3.

¹⁶⁰ *Declaration on the Elimination of Violence against Women*, Article. 4.

to acts of violence such as post-traumatic stress disorder and poor health condition of sex workers.¹⁶¹

In sum, despite these conflicting interpretations, it is reached in to consensus by a number of writers that the United Nations in the Declaration on the Elimination of Violence against Women had made its clear departure from the abolitionist view of prostitution and for this reason since the adoption of the DEVAW, most international agreements distinguish between forced and voluntary prostitution than blindly condemning both.¹⁶²

In spite of the global traction in which sex work has enjoyed, the basic international human rights instruments have yet to provide for comprehensive protections specific to the enforcement of the rights of sex workers. However, away from those treaties which claimed to address prostitution specifically, there are some international instruments in which literatures often list in discussing the topic possessing certain provisions to be applied to a number of rights violations that affect sex workers. Among others the vital instruments are the ICCPR, ICESCR and the UDHR.

A bird's eye view to these instruments would enable us to know the specific rights included in them. The rights, among others enshrined in includes the right to free choice of work; the right to be free from arbitrary arrest, detention, discrimination and violence; and the right to free association upon which states should aim to advance sex workers' rights too. To discuss them in detail; the right to free choice of work and to just and favorable work conditions are fundamental economic rights that are embodied in international human rights law. Article 23(1) of the Universal Declaration of Human Rights (UDHR) clearly enumerates these rights. Article 6(1) of the International Covenant on Economic, Social and Cultural Rights(ICESCR) also includes the right to free choice of work. The International Covenant on Civil and Political Rights in its Art. 9(1) preserves the right to be free from arbitrary arrest and detention and the UDHR in Art. 3 include the right to liberty. Gender equality is enshrined in UDHR Article 2, ICCPR Article 3, and ICESCR article 3

¹⁶¹ Gary Rhoda, *The Decriminalization of Prostitution in South Africa: Towards a Legal Frame Work*, P. 54.

¹⁶²Chi Mgbako and Laura A. Smith, *Sex Work and Human Rights in Africa*, p. 1201.

and the right to organize and join free trade unions, is protected by UDHR Article 23(4) and ICESCR Article 8(1)(a). In sum, it is echoed across numerous scholarly writings as creation of legal obstacles by states would prevent individuals from engaging in to sex work which violets the grand rights included in the above instruments.¹⁶³ Therefore, the alternative seen usually thought for respect and protection of those basic human rights is through abolishing of criminalizing an act of prostitution.¹⁶⁴

Regardless of the existence of the above substantive rights across international and regional human rights documents, there are consistent and strong arguments advocated claiming for an act of prostitution is a form of degrading act which is against dignity and worth of human beings clearly stated under the UN Charter and UDHR.¹⁶⁵

Next to international instruments which tried to address the issue of prostitution in specific or in non-specific terms, it is vital for us to look in to what international policies look like so that we would be able to know the future of the international community on the topic. In doing so however, the researcher is with the view to discuss only major policies thought playing higher influence on the international community. Some of them to be discussed include the Beijing Declaration and Platform for Action, International Charter for Prostitutes' Rights, ILO's policy/report, UN Secretary General's Bulletin (2003), and reports by some UN organs (UNESCO & UN special reporter and the Amnesty international's policy.

3.2.4. Beijing Declaration and Platform for Action (1995)

In 1995 from September 4–15, official representatives from over 180 countries gathered in Beijing, China, for the Fourth World Conference on Women. The Beijing Declaration and the Platform for Action, claimed to reflect on the issues and concerns of women's at the end of the 20th century, due to the commitments taken by representatives of states and strong lobbies made by Sex workers' rights

¹⁶³*Id.*, P.1203ff

¹⁶⁴*Id.*, P. 1203-05, The South African Law Reform Commission, *Sexual Offences and Adult Prostitution*, P. 92-94.

¹⁶⁵ Gregoire Thery, *Prostitution under Internationa Human Rights Law: An Analysis of States' Obligations and the Best Ways to Implement Them*, P. 10.

groups, including Network of SexWorkers Project and the Global Alliance Against Trafficking in Women come to be published after the conference. Despite the claims and efforts made by those previously mentioned lobbyists to ensure that every use of the word “prostitution” is a form of violence against women and “sex work”, is the appropriate one instead, occasionally prostitution was again addressed in the context of forced prostitution and trafficking.¹⁶⁶ Nonetheless, the absence of antiprostitution language was a significant achievement of the conference since the theme of distinguishing forced and voluntary prostitution have become the accepted approach and non criminalisation of voluntary prostitution was reaffirmed again.¹⁶⁷

3.2.5. International Charter for Prostitutes Rights (ICPR, 1985)

The World Charter of Prostitutes’ Rights; which was born out of the two World Whores Congresses that were held in Amsterdam and Brussels and adopted as the ICPR in 1985 for the sake of ensuring prostitutes, ex-prostitutes and all women regardless of their work, color, class, sexuality, history of abuse or marital status be granted the same human rights as every other citizen, had epitomized a worldwide prostitutes’ rights movement and politics.¹⁶⁸

In nutshell, the Charter calls for the decriminalisation of all aspects of adult prostitution resulting from individual decisions and that prostitutes should be guaranteed all human rights and civil liberties, such as freedom of speech, travel, immigration, work, marriage, motherhood, the right to unemployment insurance, health insurance, and housing.¹⁶⁹ Furthermore, it calls for protection of work standards including the abolition of laws which impose any systematic zoning of prostitution, prostitutes to have the freedom to choose their place of work and residence, to provide their services under the conditions that are absolutely determined by themselves and no one else and requires prostitutes apart from

¹⁶⁶ The South African Law Reform Commission, *Sexual Offences and Adult Prostitution*, P. 100.

¹⁶⁷ *Ibid*, Chi Mgbako and Laura A. Smith, *Sex Work and Human Rights in Africa*, P. 1202, Gary Rhoda, *The Decriminalization of Prostitution in South Africa: Towards a Legal Frame Work*, P. 55.

¹⁶⁸ Tariro Tandi, *A Case for the Decriminalization of Prostitution? A Critical Analysis of the Women in Prostitution in Harare, Zimbabwe*, p.22.

¹⁶⁹ Jo Doezema, *Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy*, P. 37.

granted rights to owe duties to pay regular taxes on the same basis as other independent contractors and employees.¹⁷⁰

Though this instrument just like the Beijing Declaration is not the commitment of states representatives, it is as influential as other international policies. This is why the researcher is interested to discuss as one international policy on the subject matter. Its influence can be seen from what it has attracted many writers to publish scholarly articles regarding the issues addressed in the document and have become a template which was now being utilized by Human Rights Groups across the world.¹⁷¹ Besides, it has made an influence even continentally. This influence is seen from the adoption of a resolution on violence against women by the European Parliament in the aftermath of the charter calling for member states to decriminalize the exercise of this profession, to guarantee prostitutes the rights enjoyed by other citizens, to protect the independence, health and safety of those exercising this profession, to reinforce measures which may be taken against those responsible for duress or violence to prostitutes and to support prostitutes' self-help groups and to require police and judicial authorities to provide better protection for prostitutes who wish to lodge complaints which seemed the other version of the charter.¹⁷²

The fact that it has an international influence doesn't mean however, there is no any controversy surrounding it. The Charter remains controversial as some writers consider prostitution to be one of the most serious problems facing women, particularly in developing countries.¹⁷³ In spite of these ridiculing ideas, the charter on the other hand is considered as "a Magna Carta for whores".¹⁷⁴

¹⁷⁰ *Ibid*

¹⁷¹ Tariro Tandi, *A Case for the Decriminalization of Prostitution? A Critical Analysis of the Women in Prostitution in Harare, Zimbabwe*, P. 22, see also Kimberly Klinger, "Prostitution humanism and a woman's choice — Perspectives on Prostitution", Available at: <http://findarticles.com/p/articles/mi-m11374/is-1-63/ai-96417149/pg-2>, [Last accessed 10 January 2017]

¹⁷² "Fifteen Years After the World Charter for Prostitutes Rights", Available at: https://www.carnegiecouncil.org/publications/archive/dialogue/2_03/articles/629, [Accessed 20 February 2018]

¹⁷³ Jessica Spector (ed), *Prostitution and Pornography: Philosophical Debate about the Sex Industry*, Stanford University Press, 2006, P. 35.

¹⁷⁴ "House of ill repute", Available at: <https://www.bing.com/search?q=%22house+of+ill+repute%22.+the+daily+pennsylvanian.+1996->

3.2.6. International Labour Organisation (ILO) and Its Policy

The International Labour Organisation (the ILO) was established in 1919 by the Treaty of Versailles for the purpose of assuring international peace and order through true equality and freedom; through ensuring labour conditions that are fair, equal and entrenched in human dignity.¹⁷⁵ In terms of prostitution, the ILO has not included the practice in any binding instruments that would Require the official recognition of prostitution as a form of work. However, in a 1999 report entitled “The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia”¹⁷⁶ recommended the recognition of the sex industry based on its potential contributions to the gross domestic product (GDP) of four Southeast Asian countries.

The report without exactly determining the appropriate way of dealing prostitution emphasizes that macro-economic policy should be prioritized over measures to regulate or prohibit the practice based on moral, social and human rights grounds since prostitution is mainly economic in nature.¹⁷⁷ In this regard, the report presupposes that if policy makers and legislators do not take into account the economic and social aspects of prostitution, that legislation, policies and programmes instituted to deal with prostitution will not be effective as these measures are drafted with a moral bias. Its view of prostitution from a distinct economic perspective is therefore subjected to critics for it failed to take in to account issues of exploitation, patriarchy and violence.

This report as a policy by ILO has its own contribution in the debate surrounding practice of prostitution. Its contribution is seen for though the report does not clearly suggest that prostitution should be either decriminalised or otherwise, it recognized prostitution in terms of its economic viability so that policy makers and

[0306.&form=EDGTCT&qs=PF&cvid=f8729ec1ff8442ae899ad6b818c5b912&refig=f3a622c22431486aa67be37523fb084b&cc=US&setlang=en-US](http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm), [Accessed June 20 2018]

¹⁷⁵ Gary Rhoda, *The Decriminalization of Prostitution in South Africa: Towards a Legal Frame Work*, p. 56. See also “Origins and History- International Labor Organization”, Available at: <http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>, [Accessed 10 March 2018]

¹⁷⁶ “Sex Industry assuming massive proportions in South East Asia ”, Available at: http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007994/lang--en/index.htm, [Accessed 10 March 2018]

¹⁷⁷*Ibid.*

legislators would be able to formulate a more effective legislative and policy response to prostitution depending on their national peculiar circumstances. Otherwise stated, it had made a critical contribution since it emphasizes in that any discussion around prostitution should take into account the economic bases for prostitution as a means of establishing any legislative or policy recognition to the practice.

3.2.7. UN Secretary General's Bulletin (2003)

In 2003, the Secretary General of the United Nations, Kofi Annan, released guidelines aimed at ending sexual exploitation and sexual abuse within the context of UN operations. The very purpose of the bulletin was to guide its stakeholders in their peacekeeping mission towards protecting and not endangering universally recognised international legal norms and standards.¹⁷⁸ For this reason, among others, it includes special measures for protection from sexual exploitation and sexual abuse. Accordingly, the UNSG directly targets sexual abuse, and prohibits, the purchase of sex acts stating:

*(.....) similarly, the term 'sexual abuse' means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited.*¹⁷⁹

Although the regulatory scope of this prohibition is limited to operators of UN missions and their partners, the consequences of the bulletin are much broader since the high degree of ethical obligation expected by the UN of its personnel is a direct and logical implementation of all human rights frameworks.¹⁸⁰ Therefore, it is argued for a stronger reason to hold water that it would be very difficult to consider that what is defined as sexual abuse, and thus a "violation of universally recognised international legal norms and standards" by the UN for its own

¹⁷⁸ Gregoire Thery, *Prostitution Under International Human Rights Law: An Analysis of States' Obligations and the Best Ways to Implement Them*, p. 19.

¹⁷⁹ "UNHCR- Secretary General's Bulletin – Special measures for Protection from Sexual Exploitation and Sexual Abuse 2003", Available at: <http://www.unhcr.org/protection/operations/405ac6614/secretary-generals-bulletin-special-measures-protection-sexual-exploitation.html>, [Accessed from 13 March 2018]

¹⁸⁰ Gregoire Thery, *Prostitution Under International Human Rights Law: An Analysis of States' Obligations and the Best Ways to Implement Them*, p. 19.

personnel, should not also be a violation of human rights when imposed by other actors.

Nonetheless, though it is logical and persuasive to rely on the provisions and the argument advocated above, driving in to a consensus that there is a uniform policy attributing prostitution as a human rights violation at the UN level is as hardly possible as dreaming to plough the space.¹⁸¹

3.3. Domestic Legal Frameworks and Prostitution

The Ethiopian legal framework on Prostitution is characterized by in the absence of either criminalization, or clear blessing of the act. In this regard, it is neither criminalized nor clearly allowed so that prostitutes could take in to it as an option for their livelihood. Tenably however, many are engaged in to it almost in all major cities of the country without a strong barrier either from the community and/or the state. For this reason, this position is attracting the researcher and various portions of Ethiopian societies to continue the discourse around prostitution and the way in which the Government should deal with it. The researcher is of with opinion that an important factor to be considered among other things in determining the way in which Ethiopia should effectively address prostitution is through assessing the current legal regimes and/or the implications that these domestic legal frameworks has on prostitution.

The following section will provide a discussion on the Ethiopian legal framework and the way in which prostitution is dealt with. This is comprised of discussions on specific pieces of legislation or bills.

¹⁸¹ This is clear from the fact for instance that UNESCO, as a UN Organ in Beijing in 1995 identified prostitution as a human rights violation which is in contrast with the report made by the UN Special Rapporteur on Violence Against Women in 1997 which notes that some women become prostitutes as a 'rational choice'. Let alone at the UN level, there is contention even among governments, non-governmental organizations and prostitutes' rights advocates too. Looking in to a policy by Amnesty international on prostitution witnessed the same

3.3.1. The FDRE Constitution (1995)

The constitution¹⁸² commenced on the 21st August 1995 with the aim to create one economic community, consolidated and amended previously existing laws to accelerate such purpose through recognition of full respect of individual/people's fundamental freedoms and rights on the basis of equality without any sexual, religious or cultural discrimination and rectifying historically unjust relationships. In doing so, it has incorporated in more than 100 provisions. Though there is no any provision specifically tried to address prostitution and all are not equally vital for discussion, there are some provisions in which we have to look in to. To begin with article 25 runs

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.*¹⁸³

From this provision which advocates for principle of non-discrimination, had tried to list the grounds in which individuals should not be discriminated for which they have a great implication on the equality of individuals. Once these grounds are not exhaustive enough to conclude that any grounds of discrimination on the basis of the day to day activities of individuals relating to their livelihood or statuses are excluded from the ambit prohibited grounds, it may be tenable for one to argue that prostitutes should not be subjected to discrimination or should be treated equally with other portions of the community since the term "all persons" includes them too. In addition, this argument could positively be strengthened by what is stipulated under article 35 of the same instrument. Under this provision it is stated that "Women shall; in the enjoyment of rights and protections provided for by this Constitution, have equal right with men".¹⁸⁴

Therefore, provided that the prohibited grounds of discrimination are very likely to include the status of prostitution of individuals and the fact that women often engage in to the profession and at the same times are endowed with the enjoyment

¹⁸² Constitution of the Federal Democratic Republic of Ethiopia , 1995, *Federal Negarit Gazzeta*, Proc. No. 1. [Here in after *The Constitution, Proc. No. 1/1995*]

¹⁸³ *The Constitution, Proc. No. 1/1995*, Art. 25.

¹⁸⁴ *The Constitution, Proc. No. 1/1995*, Art. 53 (1)

of rights incorporated in the constitution equally with men, it might be logical to argue that prostitution is given a place in the constitution than arguing to the opposite. Besides, looking in to some of the rights incorporated in the constitution where by everyone has to enjoy without discrimination strengthens the same. Among others article 40 runs:

Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.¹⁸⁵

In the absence of any law in the country for which it prohibits prostitution on the grounds of public interests such as public morality and/or public health, it might be a constitutional infringement for one to prohibit individuals engage in to prostitution for prostitutes as constituents of the term “every Ethiopian” and has the right to acquire property in a way which doesn’t go against a law prescribed in protecting public interest.

To add one on the same regard, the other right in which every individual can enjoy without discrimination is the one stated under article 41. This provision runs:

Every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory (.....) Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession.¹⁸⁶

Thus, once every Ethiopian national is with the right to freely engage in to economic activities and determine where and what to work for his livelihood, it seemed possible to engage in to prostitution as an economic activity/means of lively hood without interference.¹⁸⁷

The other provisions in which we may raise to clearly determine the place of prostitution in our constitution are of Articles 9 (supremacy clause) and 13. Under these provisions all international agreements ratified by Ethiopia are integral parts of the law of the land and interpretation of rights and freedoms specified in

¹⁸⁵*The Constitution, Proc. No. 1/1995, Art. 40 (1).* Besides to this provision, under Article 35 (7) the same is stated recognizing the equal right of men and women stating: “Women have the right to acquire, administer, control, use and transferproperty”

¹⁸⁶*The Constitution, Proc. No. 1/1995, Art. 40 (1) & (2)*

¹⁸⁷ For this purpose, it seems that our government has managed to open a sex workers’ clinics across major cities of the country to enable prostitutes obtain different services than prohibiting those engaged in to it by their own will.

Chapter III of the constitution are required to be in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia. Reference of these constitutional provisions in to the above international instruments may however, pose a certain inconsistency on the place of prostitution in the constitution since there are countering arguments in the interpretation of provisions incorporated in them.¹⁸⁸

3.3.2. The Criminal Law Regime

3.3.2.1. The Criminal Code of 1995

The very basis for the 1995 Ethiopian criminal code was the premise that it is in appropriate to allow the continuance of the enforcement of the 1957 Penal Code which had lasted at least for half a century. During this period, radical political, economic and social changes have taken place which majorly includes recognition by the Constitution and international agreements ratified by Ethiopia of the equality between religions, nations, nationalities and peoples, the democratic rights and freedoms of citizens and residents, human rights, and most of all, the rights of social groups like women and children.¹⁸⁹ From this purpose therefore, it is very ordinary to expect that the prevailing criminal code had included a new provisions and excluded previously existing provisions in the penal code based on the dynamism in which the Ethiopian population and the international community has gone through.

Though prostitution in the 1957 penal code is not included to be a criminal offence, it would not be as such an easy task to determine whether this position is reaffirmed in the new criminal code without going through the whole provisions of the latter. In doing so, the researcher had tried to adequately and briefly discuss the provisions which are appropriate for our discussion.

¹⁸⁸ *Supra note*, Chapter 3, 3.2, P. 40-49.

¹⁸⁹ The Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, *Negarit Gazzeta*, Proc. No. 414, [Here in after *The Criminal Code Proc. No. 414/2004*]. Look at the preface of the criminal code in its paragraph one.

In doing so, our look would take us to Title IV, Chapter I, Section III of the Criminal Code which is all about crimes against morals and the family. Section three which goes to address exploitation of the immorality of others is more important than other parts of the code for our discussion is concerned. Under this section as the naming of the section implies, it didn't address prostitution. Rather it addresses exploitation made by certain legal or natural persons for their act of letting others engage in to immoral acts such as prostitution for the pursuit of gain. To discuss them in detail, they are demonstrated as follows:

Article 634.- Habitual Exploitation for Pecuniary Gain.

Whoever, for gain, makes a profession of or lives by procuring or on the prostitution or immorality of another, or maintains, as a land lord or keeper, a brothel, is punishable with simple imprisonment and fine.¹⁹⁰

Article 635.- Traffic in Women and Minors.

Whoever, for gain, or to gratify the passions of another:

*a) traffics in women or minors, whether by seducing them, by enticing them, or by procuring them or otherwise inducing them to engage in prostitution, even with their consent; or
b) keeps such a person in a brothel to let him out to prostitution, is punishable with rigorous imprisonment not exceeding five years, and fine not exceeding ten thousand Birr, subject to the application of more severe provisions, especially where there is concurrent illegal restraint.¹⁹¹*

From this provisions therefore, what is prohibited is not the act of prostitution; neither the prostitute nor the client are subjected to criminal responsibility, rather only those whom made it a profession to live on the prostitution of others. From the very criminal law principle "Principle of legality" i.e. no law no crime, living on the prostitution of one's own self is not a criminal act. Besides, this way of viewing prostitution is at least partially/implicitly included in the preface of the same code emphasizing that, apart from the dynamism of the domestic and the international community necessitating the revision of the penal code is the discernible gap in the latter to properly address crimes born of advances in technology and the complexities of modern life such as crimes of hijacking of aircraft, computer crimes and money laundering, crimes related to corruption and drugs, which had never been included in the past while they are nowadays, attracting attention on at the regional and international levels, due to the grave crisis they have. Thus, in the absence of any clear provision which is designed to address

¹⁹⁰ *The Criminal Code Proc. No. 414/2004, Article. 634.*

¹⁹¹ *The Criminal Code Proc. No. 414/2004, Article. 635.*

prostitution unlike the above lists, prostitution in our criminal code is not an offence.

3.3.2.2. Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation

In the preamble of this proclamation,¹⁹² this instrument is enacted for the reasons, among other things, trafficking in human being is prohibited under Article 18 (2) of the Constitution; Ethiopia is a signatory to the United Nations Convention Against Transnational Organized Crimes; it has also ratified the United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children; and it is found important to promulgate a law consistent with the Constitution and these international instruments.

Once the very purpose of the proclamation is stated in clear terms, without going through the essence of what is provided in the above listed international instruments, the researcher would try to highlight what is provided in the proclamation alone for it would enable escape from redundancy.

As the name of the instrument clearly implies, it is advocated only to suppress and prevent trafficking in human beings and smuggling of migrants. For our discussion, it is sufficient to discuss only what is provided in defining crime of trafficking in person. Under this instrument, the offence is deemed to be committed by an individual whom for the purpose of exploitation, within the territory or outside of Ethiopia either on the pretext of employment, apprenticeship, adoption, or for any other purpose using threat or force or other means of coercion, abduction, fraud, deception, promise, abuse of power or by using the vulnerability of a person or recruits, transports, transfer harbors or receives any person by giving or receiving of payments or benefits to achieve the consent of a person having control over another person.¹⁹³

¹⁹² Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation, 2015, *Federal Negarit Gazzeta*, Proc. No.909, [Here in after *The Trafficking Proclamation, No.909*]

¹⁹³*The Trafficking Proclamation, No.909, Art.3.*

From this, what is vital is that exactly ascertaining the meaning of “exploitation” used under the proclamation. Accordingly, “Exploitation” includes among other things, benefiting from prostitution of others or other forms of sexual exploitation, labor exploitation, forced labor or servitude, slavery or practices similar to slavery, sexual servitude and enslavement, debt bondage or surrender as pledge for another ,.....¹⁹⁴ Hence, a person is a criminal under this legal regime not because he is engaged in to practice of prostitution, rather only when he transports, transits or transfers a person for the purpose of benefiting from or living out of the prostitution of another or otherwise knows that such individual after transit or transportation is to be subjected to exploitative acts by any other persons. The prostitute in this case is not a criminal, a victim of trafficking in persons rather, so that h/she would not be legally prosecuted on the facts of being a victim of the crime.¹⁹⁵

Furthermore, a victim under this proclamation is any person against whom the offence stipulated under the Proclamation (emphasis mine) has been committed or any person who has sustained harm, including mental and physical injury, emotional suffering, economic loss or substantial violation of basic human rights due to the commission of the crime.¹⁹⁶ So far as the offences specified under this instrument are trafficking in person and smuggling of migrants, the essence of victims is limited only to those who are trafficked or smuggled. From this assertion therefore prostitutes are not victims, they are victims not because they are benefiting from prostitution rather b/c others are benefiting from their prostitution. In sum, the joint reading of both the criminal code’s provisions and the above proclamation, what is prohibited is not prostitution. It is exploitation and trafficking for exploitation and smuggling of migrants. Thus, those who engage in to prostitution out of the free will of themselves are neither victims nor criminals. In the absence of any law criminalizing or negatively prohibiting the practice of prostitution, it is only out of prudence for one state to think for an alternative way of addressing this pervasive and a daily increasing field of engagement. For this reason, the researcher is intended to study the challenges and prospects of adopting

¹⁹⁴*The Trafficking Proclamation, No.909. Art.2 (4).*

¹⁹⁵*The Trafficking Proclamation, No.909. Art. 30.*

¹⁹⁶ “*The Trafficking Proclamation, No.909. Art.2 (11).*”

a legalization/regulation model of addressing prostitution in Ethiopia than letting it be fluidly addressed. In the next chapter the research would be invested in to exhaustively addressing those prospects and challenges out of regulation of prostitution.

CHAPTER FOUR

OPPORTUNITIES AND CHALLENGES OF LEGALIZING PROSTITUTION

4.1. Introduction

This chapter is devoted to provide a general overview of the opportunities and challenges out of regulating prostitution. The chapter is organized as follows: It starts by discussing in brief the prostitution laws of states chosen to the study; Germany, Netherland and Senegal. Brief list of the opportunities and challenges of regulating prostitution based on evidences collected on states chosen in the study are discussed in detail in the second and third part of this chapter respectively. It then in the fourth part determined the appropriate legal model for which Ethiopia should introduce given the lived realities of the country. Within this part, apart from determining the model appropriate, the researcher had illustrated the lessons Ethiopia should take in to account from the experiences of the states listed above.

4.2. Brief Statement of Laws of States Chosen for the Study

4.2.1. German Law of Prostitution

Before January 2002 in which the act regulating prostitution (prostitution act) came in to effect, there was no any prostitution specific regulatory framework in Germany. In spite of absence of specific regulation, the act of prostitution was a legal activity subjected to some restrictions.¹⁹⁷ Legality of the act at these times doesn't however guarantee contracts related to prostitution were not null and void.¹⁹⁸ Neither prostitution itself nor running brothels or similar businesses was prohibited but these activities were considered immoral and anti-social and as a consequence of which prostitutes had virtually no rights.

¹⁹⁷ Prof. Dr. Barbara Kavemann, *et al*, *Findings of a Study on the Impact of the German Prostitution Act*, Berlin, September 2007, P. 4. [Here in After Prof. Dr. Barbara Kavemann, *et al*, *Findings of a Study on the Impact of the German Prostitution Act*] See also Cleo Odzer, *Patpong Sisters: An American Woman's View of the Bangkok Sex World*, New York: Arcade, 1994, P. 133. [Here in After Cleo Odzer, *Patpong Sisters: An American Woman's View of the Bangkok Sex World*]

¹⁹⁸ Prof. Dr. Barbara Kavemann, *et al*, *Findings of a Study on the Impact of the German Prostitution Act*, P. 4.

For the immorality discourse was strong in Germany, the trend on the act of prostitution before the coming in to force of the current prostitution act in 2002 could be generalized as that all contracts related to prostitution were null and void. It was a criminal offence for third parties including brothels to arrange or organise prostitution services in which prostitutes are kept in a state of personal or economic dependence.¹⁹⁹ Although their business was not illegal, brothels and brothel-like businesses could not be registered as businesses, prostitution businesses are subject to police checks at any time, prostitutes' health checkup is mandatory and prostitution was only allowed at certain designated places.²⁰⁰

Due to growing political and civil societies discourses on the need of introducing a new shift on regulation of prostitution in Germany, the act regulating the legal situation of prostitutes was passed in the German Bundestag on 20 December 2001 and came into force on the 1st January 2002 with the aim of improving the social and legal status of prostitutes, to cut crimes that accompany prostitution, improving working condition of prostitutes, removing the aura of immorality from prostitution and make it easier for prostitutes to exit prostitution.²⁰¹

This regulatory regime is known to have included three new sections relating to civil and social insurance and two amendments to the Criminal Code. Accordingly, the legal relationship between the brothel operators and prostitutes, clients and prostitutes is no longer considered in law to be immoral, which means it now has legal validity and Prostitutes and brothel owners/managers can agree an employer/employee relationship. In this way, prostitutes can gain access to the statutory social insurance system (health insurance, pension funds).²⁰² Therefore, Procuring, managing, and promoting prostitution are no longer crimes, provided

¹⁹⁹ It was a crime for third parties to be involved in “the furtherance of prostitution”_For example, pimping, promoting, and profiting from prostitution. This did not apply to brothel owners as long as they did not keep workers in a state of dependency; meaning any action that went beyond providing accommodation.

²⁰⁰Prof. Dr. Barbara Kavemann, *et al*, *Findings of a Study on the Impact of the German Prostitution Act*, P. 4-7.

²⁰¹*Ibid*, see also Ronald Weitzer, *Legalizing Prostitution from Illicit Vice to Lawful Business*, P. 116.

²⁰²Prof. Dr. Barbara Kavemann, *et al*, *Findings of a Study on the Impact of the German Prostitution Act*, P. 11-12.

however, that these actors do not curtail a worker's personal or financial independence.²⁰³

Apart from existing regulations in Germany before the 2002 prostitution act, there are some new insights in which the new law had introduced. As a general characteristic, the minimum age for entering in to prostitution is 18 and brothels are required to be registered business centers.²⁰⁴ Besides, prostitutes working in brothels are given certain contractual rights although not allowed to advertise sexual services and brothel owners are subjected to prohibitions such as from forcing a worker to accept a particular client or to engage in disliked sexual practices.²⁰⁵ Additionally, health checks are taken not to be compulsory. Nevertheless, unlike some other legal systems, the law failed to regulate other working conditions.²⁰⁶

4.2.2. Dutch Law of Prostitution

In 1911 while prostitution in itself was not criminalized, a general ban on brothels running in order to profit from women working as a prostitute came in to force in the Netherlands Penal code. What is important for this legal regime together with the ban on running a brothel business was avoiding third party involvements including escort agencies, sex clubs, and pimps.²⁰⁷ Nevertheless, the Dutch legal system of this time was described as a “*Pragmatic Tolerance or Gedogen*”²⁰⁸; despite it is theoretically banned to run a brothel, in practice they continued to flourish. Rather than turning a blind eye to prostitution, the Dutch system of the time had limited

²⁰³Ronald Weitzer, *Legalizing Prostitution from Illicit Vice to Lawful Business*, P. 116.

²⁰⁴ But, what makes the German law peculiar is that it is only citizens aged 18–21 who are free from any inducement from third party (They are tolerated only if they engage in to prostitution out of their own free will), and as well as those who are 21 or older regardless of the existence of inducement are free to engage in to prostitution.

²⁰⁵Ronald Weitzer, *Legalizing Prostitution From Illicit Vice to Lawful Business*, P. 117.

²⁰⁶*Ibid*, to list some, brothels' owners are not required to provide specified amenities to ensure that their workplace is safe and hygienic.

²⁰⁷ Bethany Murray, ‘Legislating Lust: A Comparative Analysis of Prostitution Legal Frameworks in Western and Central Europe’, in *Proceedings of the National Conference on Undergraduate Research* (NCUR), University of Kentucky, Lexington, 2014, P. 586. [Here in After Bethany Murray, *Legislating Lust: A Comparative Analysis of Prostitution Legal Frameworks in Western and Central Europe*] See also The South African Law Reform Commission, Discussion Paper, P. 125.

²⁰⁸ Christje Brants, ‘The Fine Art of Regulated Tolerance: Prostitution in Amsterdam’, *Journal of Law and Society*, 1998, Vol. 25, No. 4, p. 624. [Here in After Christje Brants, *The Fine Art of Regulated Tolerance: Prostitution in Amsterdam*]

prosecutions only on specific circumstances in which it tolerated organized prostitution in private premises so far as it didn't become a public nuisance.²⁰⁹

For this reason, in line with this extremely restrictive law, in the Netherlands *de facto* legalization was the common trend by the second half of the twentieth century for brothel running was systematically and informally tolerated: municipal authorities imposed some conditions on brothel owners, even though there was no formal legal basis for this arrangement, the mandated police only interfered when public order was at stake or in cases of human trafficking.²¹⁰ Therefore, due to this growing trend; gradual relaxation in the implementation of the Dutch Penal Code on prostitution and popular perception that prostitution is decriminalised in the Netherlands, repeated attempts since 1981 were made to bring the law in line with prevailing practices.²¹¹ As a result, the Dutch parliament removed the ban on brothels from the Criminal Code in 2000 G.C.

In October 2000 the Dutch government amended the Criminal Code to reflect the new Dutch policy that prostitution is a reality and will never disappear, causing government to take a realistic stance on the problem. The amendment removed the 1911 ban on brothels and Article 250b of the Dutch Penal Code was replaced with a new Article 250a in which it is no longer a crime to operate brothels in which adult prostitutes work of their own accord.²¹²

The Dutch government had lifted the ban in an attempt to destigmatize prostitutes, protect prostitutes from commercial exploitation, increase resources targeting the prevention of involuntary prostitution, trafficking and prostitution involving minors and eliminate criminal involvement in the prostitution industry.²¹³ The new

²⁰⁹ Dan Gardner, 'Coffee? Prayers? Sex?: Part One: Church and Brothel Make for Odd Bedmates in Amsterdam, But Tolerance is the Key in the Liberated Dutch Society that Threw Out the Rule Books the Rest of Us Follow', *Ottawa Citizen*, 2003, p. 3.

²¹⁰ Lena Reinschmidt, *Prostitution in Europe Between Regulation and Prohibition Comparing Legal Situations and Effects*, *Observatory for Sociopolitical Developments in Europe*, P. 10, Ronald Weitzer, *Legalizing Prostitution from Illicit Vice to Lawful Business* P. 153, See also Russell Campbell, *Marked Women: Prostitutes and Prostitution in the Cinema*, University of Wisconsin Press, Madison, 2006.

²¹¹The South African Law Reform Commission, Discussion Paper, P. 125.

²¹² *Ibid*, Bethany Murray, *Legislating Lust: A Comparative Analysis of Prostitution Legal Frameworks in Western and Central Europe*, P. 586.

²¹³ Malinda Bridges, *What's Best For Women: Examining the Impact of Legal Approaches to Prostitution in Cross-National Perspective and Rhode Island*, Honors Projects Overview.Vol.54 ,

Article 250a of the Penal Code prohibits forced prostitution. Therefore, while lifting the ban on brothels, the fight against forced prostitution and prostitution of minors was intensified by increasing the punishment for these forms of prostitution to six years imprisonment.

Following the amendment to the Criminal Code, the operation of prostitution related businesses is regulated as any other commercial businesses and the mandate to regulate adult voluntary prostitution is delegated by the state to the various regional and local authorities.²¹⁴ Decentralisation was chosen as it is the municipalities and local authorities that are actually faced with the problems of prostitution and no national law in the regulation of prostitution had been enacted, which resulted in fragmentation or lack of uniformity in the legal situation throughout the country.²¹⁵

The varieties in regulation of prostitution in the Netherlands are more pronounced since local authorities are endowed with prescribing conditions for licensing of brothels, size of brothels, their geographical location, health and safety regulations as well as the number and type of commercial sex based businesses to be accepted in municipalities.²¹⁶

In spite of varieties on the specificities addressed above, it is possible to reflect some similarities concerning regulation of prostitution looking through the laws of different municipalities. Accordingly, Minors (under age of 18) are ineligible to be prostitutes, to engage in any type of coercion including threats and deception in recruitment or in work requirements or profit from a coerced adult's prostitution, and inducing minors to engage in to prostitution are criminal offences.²¹⁷ Besides, there is a relative similarity on specific requirements in which brothels are required to possess for them to be granted with the license to run a brothel business. Such

2012, P.11. [Here in After MalindaBridges, *What's Best for Women: Examining the Impact of Legal Approaches to Prostitution in Cross-National Perspective and Rhode Island*]

²¹⁴ The South African Law Reform Commission, Discussion Paper, P. 125, Lena Reinschmidt, *Prostitution in Europe Between Regulation and Prohibition Comparing Legal Situations and Effects, Observatory for Sociopolitical Developments in Europe*, P.10.

²¹⁵ The South African Law Reform Commission, Discussion Paper, P. 126, Lena Reinschmidt, *Prostitution in Europe Between Regulation and Prohibition Comparing Legal Situations and Effects, Observatory for Sociopolitical Developments in Europe*, P.10.

²¹⁶ The South African Law Reform Commission, Discussion Paper, P. 127.

²¹⁷ *Ibid*

requirements include that brothels must: be registered with local authorities, assure that they do not hire illegal prostitutes *i.e.* persons without a valid residence permit and underage persons, meet health and safety standards, have condoms available and protect prostitutes from clients who are unwilling to use condoms.²¹⁸

4.2.3. Segal Law of prostitution

Though prostitution is judged immoral resulting in punishment by the family and the community through rejection, physical and verbal violence in the highly Muslim community of Senegal, it exists predominantly in urban centres and was increasing due to economic hardship.²¹⁹ Regardless of this fact however, Senegal, the only African state had legalized prostitution in February 1969 with somehow a tightly regulatory framework.²²⁰ The regulation is strict in Senegal because it is known to require individual sex workers must be at least 21 years of age, registered with police as a sex worker, visit regional treatment centre monthly, carry a valid health card and test negative for sexually transmitted diseases, police can check a sex worker has been for regular check-ups or not, location of work is strictly regulated (street prostitution is prohibited by any means), brothel ownership, soliciting and living off the earning of a sex work (pimping) is prohibited.²²¹

In Senegal, an official registration card called “*Carte Sanitaire*”²²² is issued with the sex worker’s photography in order to keep a record of the visits made to the appointed health centre and this information is shared with the police. The card provides evidence regarding both their registration status and their negative sexually transmitted infection status. If female sex workers are tested positive for

²¹⁸*Ibid*

²¹⁹ Maria Eugenia G. Do Espirito Santo, Gina D. Etheredge, ‘And then I Became a Prostitute . . . Some Aspects of Prostitution and Brothel Prostitutes in Dakar, Senegal’, *The Social Science Journal*, 2004, Vol. 41, P. 138. [Here in After Maria Eugenia G. Do Espirito Santo, Gina D. Etheredge, And then I Became a Prostitute . . . *Some Aspects of Prostitution and Brothel Prostitutes in Dakar, Senegal*], The South African Law Reform Commission, Discussion Paper, P.165.

²²⁰ Seiro Ito, Aurelia Lepine and Carole Treibich, *The Effect of Becoming a Legal Sex Worker in Senegal on Health and Wellbeing*, London School of Hygiene and Tropical Medicine, Global Health and Development department, 2017, P. 2. [Here in After Seiro Ito, Aurelia Lepine and Carole Treibich, *The Effect of Becoming a Legal Sex Worker in Senegal on Health and Wellbeing*], Dr Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution*, P. 30.

²²¹Dr Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution*, P. 30.

²²² *Ibid*, Seiro Ito, Aurelia Lepine and Carole Treibich, *The Effect of Becoming a Legal Sex Worker in Senegal on Health and Wellbeing*, P. 2.

any sexually transmitted diseases, with the exception of HIV, the card is kept at the health centre during the whole course of treatment. HIV-positive sex workers are allowed to work if they adhere to antiretroviral treatment (ART), which could limit the spread of the disease. Hence, an up-to-date health card gives sex workers the right to render clients a sexual service and an insurance against police arrests. Thus, failure of prostitutes to present an up-to-date registration card may incur a prison sentence.²²³

4.3. Opportunities of Regulating Prostitution

Critically looking in to the experiences of the states described above enabled the researcher to demonstrate actual opportunities and challenges in which they have enjoyed and faced respectively. In the researcher's effort to demonstrate the above, it should not be taken however, as those lists are identical and uniform for all of the three states. This is highly because all of the three states have no uniform legal regulation, capacity/commitment for enforcement and do have their own peculiar interests and features in which they primarily focus to address. Being this as it may, the researcher has focused not to demonstrate the state specific achievements. The research focuses rather on addressing those highly claimed to be the common or shared successes and challenges faced by the above states for adopting the legalization model of regulating prostitution.

To begin with, the most success in which this model of addressing prostitution is claimed to have achieved is highly related with the achievement of an improved working condition of prostitutes. In Netherlands, almost all researches and reports on the area are in favor of witnessing the positive effect of the legal change on improving the overall working wellbeing in which prostitutes had enjoyed. To list some, according to the Dutch Ministry of Security and Justice's report on the prevailing Dutch prostitution policy, it is noticed that prostitutes interviewed in the study had assured improved hygiene and improved working conditions over all in brothels.²²⁴ Besides, prostitutes are better protected since they are able to refuse

²²³ *Ibid*

²²⁴ Dutch Ministry of Security and Justice, Ministry of Foreign Affairs. *Dutch Policy on Prostitution*, 2004, P. 7, Available at: <http://WWW.mfa.nl/contents/pages/743/prost.pdf>, [Accessed 21 January 2018]

clients, properly use condoms, choose not to drink alcohol/took any stimulant, resist performing sexual acts they are not in favor, obtain legal, health and social services, the employer's right to give instructions to employees is limited and prostitutes become more likely to trust and approach the police officers when they are harassed, assaulted and robbed. These improvements according to the study are the direct results of the regulation through creating awareness on prostitutes that violence and exploitation are illegal under the Dutch law.²²⁵

Apart from what is stated above, the German law on prostitution is appreciated for improving the working conditions of prostitutes in an admirable manner too. Apart from protecting prostitutes from abuse,²²⁶ what makes it peculiar is that prostitutes are endowed with and started to enjoy their work on a hygienic rooms, within a specified working hours together with respective breaks. Besides, prostitutes as any other employees have the right to pension contribution/claims, maternity protection, and health insurance either because their main occupation is prostitution or through social security benefits for they are part time prostitutes/ have other principal work.²²⁷ Though the degree varies compared to the above states, the same could be concluded for prostitutes in Senegal too.²²⁸

²²⁵*Ibid*, Malinda Bridges, *What's Best for Women: Examining the Impact of Legal Approaches to Prostitution in Cross-National Perspective and Rhode Island*, P. 19, Laura Barnett and Lyne Casavant, 'Prostitution: A Review of Legislation in Selected Countries', *Library of Parliament*, Publication. No. 2011-115-E, November 2011, P. 11, [Here in After Laura Barnett and Lyne Casavant, *Prostitution: A Review of Legislation in Selected Countries*], Bethany Murray, *Legislating Lust: A Comparative Analysis of Prostitution Legal Frameworks in Western and Central Europe*, P. 587, Prof. Dr. Barbara Kaveman, *et al*, *Findings of a Study on the Impact of the German Prostitution Act*, P.38.

²²⁶ Let alone in the indoor type of prostitution even the outdoor prostitution has witnessed an abuse free working environment for prostitutes. For example, the city of Cologne has implemented a model that provides prostitutes with a safe working environment, away from the city centre. An area about the size of a football field has been identified in a specific suburb of Cologne and has been fenced off for the purposes of prostitution. A gate allows clients in, and there are security cameras on site for the protection of the women working in the area. Clients can drive onto the site where the prostitutes are housed in small huts known as 'performance boxes.' This so-called 'supervised line' concept allows prostitutes in Cologne to operate in a protected environment.

²²⁷ Prof. Dr. Barbara Kavemann, *et al*, *Findings of a Study on the Impact of the German Prostitution Act*, P. 17 ff

²²⁸ Seiro Ito, Aurelia Lepine and Carole Treibich, *The Effect of Becoming a Legal Sex Worker in Senegal on Health and Wellbeing*, P. 12-14. According to this study in Senegal especially Dakar, the demand of prostitutes for HIV and sexually transmitted infections prevention is high since sex workers have developed a great affiliation to sexually transmitted disease prevention centers, a high condom use capacity, capacity to refuse high risky sexual behaviors of their clients, and experience low level of violence/abuse from clients and police officers.

The other opportunity out of regulation is viewed to be reduction of incidence of trafficking in persons. In Germany, though there are different views on whether the Prostitution Act has had an impact on curbing criminality, official sources claim that human trafficking and group criminality had decreased in an alarming manner for brothel operators dissociate themselves from in order to show how respectable their establishments are and thus to increase their business.²²⁹ Among others, the Federal Criminal Police of Germany officially assured that 636 trafficking cases prosecuted in 2011 represent a third less than 10 years earlier.²³⁰ i.e. from 1,016 in 2000 to 811 in 2009.....²³¹ On similar fashion, US Department of State's 2017 trafficking in persons report revealed prevalence of higher labor trafficking than sex trafficking in the country.²³² Apart from this, official figures bear that other crimes surrounding prostitution had decreased steadily since the act had enhanced prosecutions of organized crimes.²³³ To look some, given the fact that only a certain kind of procuring or pimping (those only curtailing personal/economic independence of prostitutes) is now outlawed, such cases from 2000 to 2009 had decreased from 1104 to 298.²³⁴ Trafficking has decreased because from the very outset the purpose of specifying designated place of works for prostitution and licensing of brothel business is to screen out whether prostitutes are engaging in to it on their own free will or otherwise through traffickers and to avoid

²²⁹ Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth, *Report By the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)*, Berlin, 2007, P. 44, [Here in after Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth, *Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes*, Jose Mendes Bota, *Prostitution, Trafficking and Modern Slavery in Europe*, Council of Europe's Committee on Equality and Non-Discrimination Report, No 13446, March 2014, P. 11. [Here in after Mr Jose Mendes Bota, *Prostitution, Trafficking and Modern Slavery in Europe*]

²³⁰ Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth, *Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes*, P. 44. See also Ronald Weitzer, *Legalizing Prostitution From Illicit Vice to Lawful Business*, P. 118.

²³¹ Ronald Weitzer, *Legalizing Prostitution From Illicit Vice to Lawful Business*, P. 118.

²³² "US Department of State's 2017 Trafficking in Persons Report", <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271193.htm>, [Accessed 20 July 2018]. For this reason, the German government is recommended by this report to Sentence convicted traffickers to punishments proportionate to the severity of the crime and increase efforts to address labor trafficking through proactive identification of victims and public awareness campaigns on criminal code reforms.

²³³ Malinda Bridges, *What's Best For Women: Examining the Impact of Legal Approaches to Prostitution in Cross-National Perspective and Rhode Island*, P. 18. As cited in this paper Berlin's social study research institute on the effect of the German prostitution law in 2007 revealed that most public prosecution services and police stations surveyed or interviewed agreed the new prostitution act is better than the old version.

²³⁴ Ronald Weitzer, *Legalizing Prostitution From Illicit Vice to Lawful Business*, P. 118.

unprecedented movement of prostitutes from place to place in which traffickers often require to hide themselves so that prostitution is only free choice. Despite the absence of a clear cut data to compare the effectiveness of the Netherlands' prostitution act in fighting trafficking in persons for the purpose of prostitution, a critical analysis could enable us to conclude the same. In fact, in the reports of the National Reporter on Human trafficking in the country, there is a noticeable increase of the cases of trafficking. Incidence of Trafficking had increased ranging from 284 in 2001 to 909 in 2009.²³⁵ Nonetheless, these higher figures are due to the introduction of the broader definition for trafficking in persons under the new article 273a of the Dutch Penal Code in 2005 to include incidences of forced labor, forced prostitution, slavery and servitude, and trafficking of Human organs.²³⁶ In support of this explanation, it is officially reported in 2004 that legalization had boosted prosecution of trafficking and introduction of checks on brothels by the police had improved the chances of a successful prosecution for polices had inspiration to work focused.²³⁷ For the Senegalese are concerned, US Department of State's 2017 trafficking in persons report revealed that labor trafficking including forcing children for begging in major cities of the country is more prevalent than sex trafficking in the country.²³⁸ Despite it is hardly possible to exactly show the level of prevalence, it is often claimed to be high.²³⁹ Hence,

²³⁵ Mensenhandel, *Tien jaar NRM. Den Haag: Bureau NRM*, 2010, P. 100, as cited in Joyce Outshoorn, *Policy Change in Prostitution in the Netherlands: From Legalization to Strict Control*, Sex Res. Soc. Policy, No. 9, 2012, P. 237. [Here in After Joyce Outshoorn, *Policy Change in Prostitution in the Netherlands: From Legalization to Strict Control*]

²³⁶ *Ibid*. See also Dien Korvinus, Koster Dagmar. *et al*, *Trafficking in Human Beings: The Concept of Exploitation in the Dutch Trafficking Provision*, Trema, 2006, Vol. 29, No.7, P. 289, [Here in After Dien Korvinus, Koster Dagmar. *et al*, *Trafficking in Human Beings: The Concept of Exploitation in the Dutch Trafficking Provision*], Gibly, Jess N, 'Safe Sex for Sale: Is Legalizing Sex Work the Answer to Sex Trafficking in the Netherlands?,' *International Journal of Undergraduate Research and Creative Activities*, 2012, Vol. 4, Article 4, P. 4. [Here in After Gibly, Jess N, *Safe Sex for Sale: Is Legalizing Sex Work the Answer to Sex Trafficking in the Netherlands?*]

²³⁷ Prof. Dr. Barbara Kavemann, *et al*, *Findings of a Study on the Impact of the German Prostitution Act*, P. 38. See also Dr Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution*, P. 35.

²³⁸ "US Department of State's 2017 Trafficking in Persons Report", Available at: <<https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271272.htm>> , [Accessed 20 June 2018]. For this reason, Senegal is recommended by the report to significantly increase efforts to investigate and prosecute trafficking offenses and convict and punish traffickers, including those who exploit children in forced begging, with sufficiently stringent sentences; hold government officials accountable for trafficking-related complicity.

²³⁹ Lorraine van Blerk, *Poverty, Migration and Sex Work: Youth Transitions in Ethiopia*, Lorraine van Blerk, K. Horschelmann et al. (eds), *AIDS, Mobility and Commercial Sex in Ethiopia: Implications for Policy*, P. 232-246, Interview with Woretu Worku, Ethiopian Ministry of Women

regulation would be benefiting to fight the highly prevailing trafficking in persons for Ethiopia.

The other opportunity of a legalized approach worth pursuing discussion is that it avoids street prostitution and nuisance. In Germany and Netherlands unlike Senegal, there is outdoor and indoor prostitution. In Senegal only indoor prostitution is allowed prohibiting soliciting on streets and even indoor brothel prostitution too²⁴⁰. In the Netherlands prostitution is allowed to be practiced in “*Tippelzones*”²⁴¹, window rooms (red-light districts), brothels, clubs, hotels, and private residences²⁴² and in Germany the same could be done in special zones for street workers, brothels, sauna clubs and in bars.²⁴³ What makes these states similar is the fact that street prostitution is highly discouraged. For this reason, few municipalities have created special zones for street workers either on the outskirts of the cities or away from residential neighborhoods, schools and religious centers in an effort to remove them from the city centers.²⁴⁴ Accordingly, official reports in Netherlands indicate that window prostitution accounts for approximately 20 percent of the Dutch sex trade; the remainder work in brothels (25 percent) and as escorts and at home (50 percent), with only 1 percent in street prostitution.²⁴⁵ In Germany it accounts for about 10 percent of prostitution.²⁴⁶ For nuisance is highly prevalent in outdoor or street prostitution than indoor ones and outdoor prostitution is allowed only in a separated zones or in outskirts of cities, it is persuasive to claim that regulation of prostitution has a tenable positive effect in avoiding

and Children, Women’s Affairs Minister, Senior Legal Officer, on *Causes and Prevalence of Prostitution in Ethiopia*, 15 July 2018. See also “US Department of State 2014’ trafficking in Persons Report”, Available at: <<https://www.state.gov/j/tip/rls/tiprpt/countries/2014/226721.htm>>, [accessed 17 May 2018]

²⁴⁰“Code Penal Senegal”, Available at: <<http://www.equalrightstrust.org/ertdocumentbank//CODE%20PENAL.pdf>> , [Accessed 20 July 2018]. Look at Articles 318, 323-325

²⁴¹“*Tippelzone*” is to mean designate strolling zones arranged for street prostitutes away from city centers.

²⁴²Ronald Weitzer, *Legalizing Prostitution From Illicit Vice to Lawful Business* , P. 151.

²⁴³ *Id.*, P. 121.

²⁴⁴ *Id.*, P. 121, 150-151.

²⁴⁵ Dina Siegel, *Human Trafficking and Legalized Prostitution in the Netherlands*, 2009, P. 5–16. These Figures are for 2005.

²⁴⁶This evidence is based on the 2006 survey in Frankfurt reported by Menschen Handel, *Wie der Sexmarkt Strafrechtlich Reguliert Wird*, Berlin, 2008, P. 168, as cited by Ronald Weitzer, *Legalizing Prostitution from Illicit Vice to Lawful Business*, P. 121. See also Dorothea Czarnecki, Henny Engels, et al, *Prostitution in Germany – A Comprehensive Analysis of Complex Challenges*, 2014, P. 6. [Here in After Dorothea Czarnecki, Henny Engels, et al, *Prostitution in Germany – A Comprehensive Analysis of Complex Challenges*]

nuisance for residents of a certain city as is experienced in Germany and Netherlands. Therefore, regulation would be vital for Ethiopia to avoid street prostitution which is prevailing here and there.²⁴⁷

Besides, what is worth mentioning in this section of the research is that regulation of prostitution has an impact on increasing the income in which prostitutes accrue and tax revenues of the government. As a result of legalization of prostitution in Germany and Netherlands most European Union sex workers have benefited from the rights accorded under these legal regimes. Among others, there are indications that prostitutes' incomes increased for they no longer need to compete for a share of the illegal economy nor need they pay pimps for support and protection.²⁴⁸ For this reason, in 2010, sexual transactions were estimated to account 10 million dollars²⁴⁹ and prostitution now accounts for 5% of the Netherlands economy.²⁵⁰ In Senegal, prostitution is often practiced in bars and residential areas. Comparatively seen, those working in residential areas; domestic prostitutes are less known because they are less visible. They receive customers in their own residences. These kinds of prostitutes are often unregistered; occasional or clandestine and many of them are heads of households and engage in prostitution to ensure the food, education and medical care for several members of their family.²⁵¹ For this reason they often receive a low income in which this irregular income could not enable them to face the entire obligations of their families.²⁵² To the contrary however, transactions made for sex in sex clubs and bars are of immense. Prices in

²⁴⁷ Lorraine van Blerk, *Poverty, Migration and Sex Work: Youth Transitions in Ethiopia*, Lorraine van Blerk, K. Horschelmann et al. (eds), *'AIDS, Mobility and Commercial Sex in Ethiopia: Implications for Policy'*, P. 232-246, Interview with Woretu Worku, Ethiopian Ministry of Women and Children, Women's Affairs Minister, Senior Legal Officer, on *Causes and Prevalence of prostitution in Ethiopia*, 15 July 2018. In Ethiopia, street prostitution is prevalent almost in all major cities of the country. In my country visit to Gondar, Dessie, Bahirdar, Addis Ababa and Hawasa, I have assured that street prostitution is prevalent in known roads of those cities.

²⁴⁸ Celeste Perri, *Legalizing Dutch Brothels Brings Credit Cards, Taxes*, *Gazette Montreal*, 18 June 2002, P. D3, as cited in Laura Barnett and Lyne Casavant, *Prostitution: A Review of Legislation in Selected Countries*, P. 11.

²⁴⁹ Marianne Chagnon, 'Prostitution in the Netherlands: what is Really Happening Here', Available at: < <https://dutchreview.com/featured/prostitution-in-the-netherlands-what-is-really-happening-here/>>, [Accessed 22 July 2018]

²⁵⁰ Janice G. Raymond, 'Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution', Available at: <<http://catwinternational.org/Content/Images/Article/41/attachment.pdf>>, [Accessed 22 July 2018]

²⁵¹ Maria Eugenia G. Do Espirito Santo, Gina D. Etheredge, *And then I Became a Prostitute . . . Some Aspects of Prostitution and Brothel Prostitutes in Dakar, Senega*, P. 140.

²⁵² *Ibid*

this houses depending on what the woman looks like and the standing of the bar extends from 5,000 and 10,000 Senegalese money (approximately 7–14 U.S. Dollars).²⁵³ This much huge amount of money is invested in these houses because the guys in need of the services are often foreigners, civil servants, married and aged guys with enough money to spend on drinks and the woman.²⁵⁴ In Germany, though there is no official study on the level of income in which prostitutes enjoy after legalization of prostitution, numerous media outlets of the country often reveal that numerous individuals possibly use sex work to finance their lives. For example according to German Newspapers, DerTagesspiegel and DeutscheWelle as cited in Malinda Bridges one out of three university students in Berlin often engage in to sex work to finance their studies and could make up 4300 Us Dollar monthly.²⁵⁵ Thus, for prostitution is seen as a business and prostitutes, brothel owners and any third parties involved in it are registered tax payers, governments are in a better position to generate income out of legalizing this occupation than letting it be practiced in the clandestine environment.²⁵⁶

What equally important to discuss together with previously listed advantages of a legalized/regulated prostitution is the ability to control sexually transmitted diseases at national level. Before looking in to the effect of regulating prostitution on transmission of sexually transmitted diseases, let's have a look how the problem is dangerous in Ethiopia. According to the 2016 World Health Organization Country profile of Ethiopia Concerning HIV Aids, there are 710000 [570 000 - 880 000] estimated numbers of peoples living with HIV in which 1.1% [0.8% - 1.3%] are adults from 15 to 49 years of age, 20000 [13000 - 31 000] estimated numbers of deaths due to HIV, 30000 [19000 - 41000] estimated numbers of peoples newly infect, 0.33 [0.21 - 0.45] estimated incidence rates per 1000 uninfected population,

²⁵³ *Id*, P. 139.

²⁵⁴ *Ibid*

²⁵⁵ Malinda Bridges, *What's Best for Women: Examining the Impact of Legal Approaches to Prostitution in Cross-National Perspective and Rhode Island*, P. 17.

²⁵⁶ The South African Law Reform Commission, Discussion Paper, P. 132, where brothels are allowed to run, they must officially register the prostitutes in their employ and pay a fee of about 15-25 Euros per prostitute per day to local authorities. Prostitutes inturn, are taxed on their earnings. For this reason, some cities like Cologne receive about 700,000 Euros a month.

and 24% HIV prevalence among sex workers.²⁵⁷ Looking in to the experience of the only African country which have regulated prostitution has an answer to this problem without even looking in to the country profile of Germany and Netherlands which are known to have the lowest comparatively. Accordingly in Senegal, there are only 41000 [34 000 - 48 000] estimated numbers of peoples living with HIV in which 0.4% [0.4% - 0.5%] are estimated adults, 1900 [1500 - 2400] estimated numbers of deaths due to HIV, 0.08 [0.05 - 0.11] estimated incidence rates per 1000 uninfected Population, 94% Percentage condom use among sex workers while there is no reliable data in Ethiopia on this regard, and 6.6 % HIV and 9.7 % Syphilis infections prevalence amongst sex workers.²⁵⁸ From this, the lowest Sexually transmitted diseases prevalence among sex workers and high level of condom use among sex workers unlike Ethiopia is claimed across numerous litreatures to be the direct implications of the law legalizing prostitution which requires/oblige sex workers to be registered workers, use condoms and have health checkups regularly. The same is witnessed across international reports/researches made on the public health and wellbeing implication of being a sex worker in Senegal.²⁵⁹

²⁵⁷ Look in to “Ethiopia 2016 Country Factsheet”, Available at: <[Www.UNAIDS., Global AIDS Monitoring \(UNAIDS/WHO/UNICEF\), Spectrum estimates \(UNAIDS/WHO\) and WHO HIV Country Intelligence Tool, 2017](http://www.unaids.org/global-aids-monitoring)>, [Accessed 11 July 2018]

²⁵⁸ Look in to “Senegal 2016 Country Factsheet”, <[Www.Global AIDS Monitoring \(UNAIDS/WHO/UNICEF\), Spectrum Estimates \(UNAIDS/WHO\) and WHO Country Intelligence Tool 2017](http://www.global-aids-monitoring.org/)>, [Accessed 11 July 2018].

²⁵⁹ Seiro Ito, Aurelia Lepine and Carole Treibich, *The Effect of Becoming a Legal Sex Worker in Senegal on Health and Wellbeing*, P. 2, see also Dr Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution*, P. 30, Tariro Tandi, *A Case for the Decriminalization of Prostitution? A Critical Analysis of the Women in Prostitution in Harare, Zimbabwe*, P. 63. In our country, though there are no great achievements in reducing the epidemic, the efforts mostly taken since recent years in addressing the problem are preventative measures which include among others providing comprehensive sexuality education to adults, and introducing school health programs as a course to be delivered to students starting from high schools to university level. Interview with Eyob Getachew, Federal Ministry of Health, Women and Children’s Health Directorate, Adolescent and Youth Health Technical Advisor, on *Measures Taken and proposed to Address HIV and Sexually transmitted diseases in the country*, July 19, 2018. In the past there were numerous very costly measures taken to prevent the spread of the epidemic though none were successful. To list some, in 1985 the National Task Force on HIV was established by the Ministry of Health and in 1987 the first national AIDS prevention and control program was launched. These early intervention efforts were inadequate in scale and largely ineffective due to lack of adequate stakeholders participation in planning, multisectoral coordination, integration, lack of financial and human resources. Due to the ineffectiveness of these programs the government in 1998 issued National Policy on HIV/AIDS which provides framework for the National Multisectoral HIV/AIDS Strategic Plan for 2000-2004 by the Ministry of Health. This plan though was effective in major African states remain failed and unsuccessful in Ethiopia again. From this therefore, adopting

As a last remark, though it would be hardly possible to exactly identify the number of child prostitutes across Germany, Netherlands and Senegal, it could be concluded that their laws concerning practice of prostitution had a great implication on avoiding child prostitution for they relay stating prostitutes could only be registered as a sex worker provided only if they attained 18, 18 and 21 years of age respectively. So far as there is a huge number of child prostitution in Ethiopia²⁶⁰, regulation of the sector thus would have a positive implication in driving out them from the sector.

4.4. Challenges of Regulating Prostitution

As it is tried to be indicated above, apart from the successes in which those selected countries had enjoyed out of regulating prostitution, there are common and country particular/specific challenges in which they have faced. For the purpose of the research is not to focus on all of the challenges, I would try to illustrate those of common challenges for the reasons in which country specific challenges often arise from commitments and capacity to enforce laws.

Accordingly, the first common challenge I can discuss would be migration. As the experiences of Germany and Netherlands thought, legalizing prostitution would be alarming neighboring countries' citizens to migrate for sex work. Though it is hardly possible to get uniform and reliable sources indicating the exact number of prostitutes across these countries²⁶¹, it is possible however, to conclude a largest share of the number of prostitutes is taken by foreign nationals. According to experts' summaries and numerous reports, more than half of the sex workers in

regulatory framework to deal prostitution would be effective in achieving the purpose of prevention remarkably.

²⁶⁰ Lorraine van Blerk, *Poverty, Migration and Sex Work: Youth Transitions in Ethiopia*, Lorraine van Blerk, K. Hörschelmann et al. (eds), *AIDS, Mobility and Commercial Sex in Ethiopia: Implications for Policy*, P. 232-246, Interview with Woretu Worku, Ethiopian Ministry of Women and Children, Women's Affairs Minister, Senior Legal Officer, on *Causes and Prevalence of prostitution in Ethiopia*, 15 July 2018.

²⁶¹As clearly cited by Joyce Outshoorn, *Policy Change in Prostitution in the Netherlands: From Legalization to Strict Control* at 236, Vanwesenbeeck in 1994 estimated that there were about 20,000 to 25,000 in the Netherlands. In parliamentary debates of the 1990s, the figures of 30,000 were circulated. Asante, A., & Schaapman, K. In 2005 estimated there were around 15, 000–20,000. Besides vanWijk, A., Nieuwenhuis, A., Van Tuyn, D., Van Ham, T., Kuppens, J., & Ferwerda, H in 2010 had estimated 5,150 to 7,660 sex workers in Amsterdam.

Germany and Netherlands are from other countries.²⁶² The reasons for such high number share of foreigners is directly related with the freedom of movement arrangements in connection with the EU's expansion to the east in 2004 and 2007 which prompted greater numbers of women from the new EU countries to come to Western Europe and especially to Germany and Netherlands to work in prostitution for Eastern Europe is economically weak and unemployment is massive comparatively.²⁶³

To pragmatically look in to an alternative way outs for Ethiopia concerning migration if any, the researcher has got it vital to stress in to the reasons for why Eastern Europeans influx in to Germany/Netherlands and the experience of Senegal on this regard. As is tried to be briefed in the above paragraph, pursuit of better economic and employment advantages as inherent and the European Union membership of most Eastern European countries as an immediate cause are the reasons. Looking from this perspective therefore, it would not be as such a worrying problem for Ethiopia. This is highly because there is no a platform for African nations to freely move through Africa yet and Ethiopia had no any better/high economic and employment advantage to Africans for we owe a low economic capacity. Turning our look in to the Senegalese experience is of important for one thing we do have almost the same poor economy and on the other hand we are under the same geo political sphere. Hence, as evidence speaks out, there is little influx of foreigners from neighboring countries in to Senegal.²⁶⁴

²⁶² Dorothee Turnau, *Prostitution in Germany – A Comprehensive Analysis of Complex Challenges*, P. 17, Joyce Outshoorn, 'Policy Change in Prostitution in the Netherlands: From Legalization to Strict Control', P. 236, Teela Sanders, et al, *Prostitution, Sex Work, Policy and Politics*, Sage Publications Ltd, Sage Publications Inc, Sage Publications India Pvt Ltd, Sage Publications Asia-Pacific Pvt Ltd, London, California, New Delhi, Singapore, *Library of Congress*, Control Number: 2008934311, 2009, P. 154. [Here in After Teela Sanders, et al, *Prostitution, Sex Work, Policy and Politics*]

²⁶³ Dorothee Turnau, *Prostitution in Germany – A Comprehensive Analysis of Complex Challenges*, P. 17, Joyce Outshoorn, *Policy Change in Prostitution in the Netherlands: From Legalization to Strict Control*, P. 236. Among others those countries having the largest share of prostitutes in Germany and Netherlands include Poland, Hungary, the Czech Republic, Slovakia, Bulgaria and Romania.

²⁶⁴ "US Department of State's 2017 Trafficking in Persons Report", <<https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271193.htm>>, [Accessed 20 July 2018]. Under this report Internal influx is more prevalent than transnational one. In Ethiopia now a day, the same holds true too. Look at "US Department of State's 2014 trafficking in Persons Report", at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2014/226721.htm>. [Accessed 17 May 2018]

The second challenge the researcher has got to discuss in advance is of prevalence of underground sex work and exploitation within a legalized regime. The underground illegal sex sector within a legalized country is claimed across numerous writings to be manifested with highly exploitative practices. This is because that the safety of the industry is not dependant upon creating safe working conditions for the sex workers as a whole but on building a safe and conflict free transaction in the operation of brothels and specified zones as a means to sustain the economic and social viability of the legalised prostitution industry.²⁶⁵ Thus, there is a danger in such approach that the women who, for some reasons, fail to qualify for the rights and protections afforded by legalisation are then pushed in to the underground sector where risk of vulnerability and exploitation remains higher than ever.

When a legalization regimes' degree of control becomes higher, the level of control and qualifications for legitimate entry into the industry will inevitably result in the exclusion of a large number of sex workers, where involuntary prostitutes, underage prostitutes or illegal prostitutes are relocated from the regulated sector to the unregulated sector; in forms of prostitution that are difficult to monitor.²⁶⁶ Despite absence of exactly representative hard data on the exact number of underground prostitutes in neither of the states having regulated prostitution²⁶⁷, it is however claimed across such states as it is an ever growing

²⁶⁵ Barbara Brents and Kathryn Hausbeck, 'State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels', *Journal of Sociological Perspectives*, 2001, Vol. 44, No. 3, P. 327. [Here in After Barbara Brents and Kathryn Hausbeck, *State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels*]

²⁶⁶ Gillian Abel, *Decriminalisation: A Harm Minimization and Human Rights Approach to Regulating Sex Work*, University of Otago, Dunedin, June 2010, P. 26.

²⁶⁷ The underground sector in the Netherlands, for instance is thought to be ever growing. Nonetheless, there is no a uniformity among reports/researches on the number of individuals in the sector. For instance, a study by van der Helm and van Mens in 1999 estimated there were approximately 25,000 sex workers in the Netherlands in any one year, fifty per cent of which are not nationals of the European Union. For more information on this regard read Judith Kilvington, Sophie Day and Helen Ward, 'Prostitution Policy in Europe: A Time of change?', *Feminist Review*, 2001, P. 67&86. In another study by Bindel and Kelly in 2003 noted that over 50% of prostitutes in Netherlands come from outside of Europe and 75% are thought in the Netherlands illegally. For more information, read Malinda Bridges, *What's Best for Women: Examining the Impact of Legal Approaches to Prostitution in Cross-National Perspective and Rhode Island*, P. 19. To understand the prevalence of underground sex, look at Chi Mgbako and Laura A. Smith, *Sex work and Human Rights in Africa*, p. 1215.

sector.²⁶⁸ Looking in to the reasons for underground sex in those states enable us to know that it extends from prevalence of illegal migration, social stigma and substantive or procedural inability of prostitutes to be registered as a sex worker.²⁶⁹ Though prevalence of underground sex in a legalized approach seemed a natural consequence, it is not however to mean legalizing prostitution and prevalence of illegal sex are absolutely intertwined. It is rather possible at least to eliminate the number of those involved in it. The way out to it could be through allowing police check up and imposing responsibility on customers not to buy services from illegal sex workers. These measures are seen to be very successful in the Netherlands.²⁷⁰ Besides, looking in to the causes for prevalence of underground sex in the Netherlands and Germany is attributable for Europe is home of foreign migrants.²⁷¹ Thus, it would not be as such worrying problem for Ethiopia as it is a point of immigration than a home of emigrants.

The last though not the list challenge in introducing legalized/regulated prostitution in which the researcher had turned a look is prevalence of stigma against prostitutes since prostitution is considered an immoral whore across religions and

²⁶⁸ Maria Eugenia G. Do Espirito Santo, Gina D. Etheredge, *And then I Became a Prostitute . . . Some Aspects of Prostitution and Brothel Prostitutes in Dakar, Senegal*, P. 138, The South African Law Reform Commission, Discussion Paper, P. 140, Joyce Outshoorn, *Policy Change in Prostitution in the Netherlands: From Legalization to Strict Control*, P. 237, Seiro Ito, Aurelia Lepine and Carole Treibich, *The Effect of Becoming a Legal Sex Worker in Senegal on Health and Wellbeing*, P. 2.

²⁶⁹ In Senegal for instance many women in the clandestine sex industry fail to register because either they do not meet the legal requirement of twenty-one, they lack identity papers and ignorance of the substance and procedure of the legal requirements, or social stigma attached to being a sex worker in a predominantly Muslim country is another reason for the existence of underground sex workers. While in Germany and Netherlands it is highly attributed to high flow of illegal migrants. Look at Chi Mgbako and Laura A. Smith, *Sex work and Human Rights in Africa*, P. 1215, Lang, Victoria, Caroline & Vilven, *Towards a Harm-Minimising Approach to Sex Work: A Call for Decriminalisation in England and Wales*, P. 76 & 80.

²⁷⁰ In the Netherlands, from 2003 to 2004, in some districts like the Rotterdam and Amsterdam strictest controls were introduced aiming to avoid underground sex and the illegalities encountering it. Such introduced stringent regulation requires licensing and registration requirements for all prostitutes apart from brothels, and allowed police inspections to all sectors of prostitution to control and avoid an underground sex and the evils facing it. In such districts for the introduction of such stringent regulations, numerous houses involving underground sex were closed and underground sex in these cities had decreased in an alarming manner. Look at Joyce Outshoorn, *Policy Change in Prostitution in the Netherlands: From Legalization to Strict Control*, P. 237, Laura Barnett and Lyne Casavant, *Prostitution: A Review of Legislation in Selected Countries*, P. 12.

²⁷¹ Annelies L. Daalder, *Prostitution in the Netherlands since the Lifting on the Brothel Ban*, The WODC of the Ministry of Justice, Hague, 2007, P. 38.

cultural set ups of our society.²⁷² In Germany and Netherlands it was not an easy task to reach in to a consensus for the coming in to effect of the regulation for there are a number of seats sized by religious/cultural oriented persons in their respective law making organs of the two states.²⁷³ Standing even from the very purposes of the Netherlands and the German prostitution acts, the morality politics is seen very bold for it aimed among others to avoid the immorality of prostitution.²⁷⁴ Apart from the above morality discourses, there is a great belief as prostitution is immoral in Germany and Netherlands during the first five years of the acts though alarmingly decreased later.²⁷⁵ Unlike Germany and Netherlands, the public at large in Senegal still considers prostitution immoral or religiously condemned since Senegal is predominantly a Muslim country. Thus, prostitutes are viewed social outcasts than recognized sex workers.²⁷⁶ The same would work for Ethiopia too.²⁷⁷ Accordingly, the alternative way to avoid/reduce this challenge for Ethiopia is through education of the society at large as the advantage of regulation outweighs keeping the morality discourse alone.

²⁷² Interview with Teshome Mihret, A Priest at Gebriel Church in Kebele 14 of Bahirdar City, on *The Place of Prostitution in Christianity Thought*, Jull 12, 2018, D.r Mohammed Kemal, Sheik and ‘Imam’ at Kebele 7 Mosque of Bahirdar City, on *The Place of Prostitution in Islamic Thought*, Jull 13, 2018. In my interview with Teshome Mihret and D.r Mohammed Kemal Priest and “Sheik” respectively in Bahirdar city, I assured that prostitution is condemned in both Religions; Christianity and Islam. The priest told me as God has ordered us if possible, to serve him being virgin without having married let alone to prostitute. In my interview with the second interviewee, I assured that having a sex with anyone else in whom he/she has no “Nikah” is a big sin called “Zinah” in which Allah would not tolerate. Thus, prostitution is a big sin in which all Muslims should protect themselves from. Even looking in to some Islamic states, the one who have a sex with someone out of marriage would be ordered by courts to be killed in front of a big gathering of peoples so that his sin would be compromised.

²⁷³ For instance, in Germany though four of the five political parties having a seat in the law making organ at the time of the enactment of the act, 2000, voted for the bill, the Christian Democratic Union had remained opposing it.

²⁷⁴ Ronald Weitzer, *Legalizing Prostitution From Illicit Vice to Lawful Business*, p. 116.

²⁷⁵ *Id.*, P. 115 & 148. The number of German nationals who felt that prostitution should never be tolerated declined from 42 percent in 1981 to 33 percent in 1999, dropping further to 24 percent in 2005. This trend towards a greater tolerance may have been catalyzed by legal reform made at 2002. In the Netherlands according to a public opinion pollin 1997 reported that 73 percent of Dutch citizens favored the legalization of prostitution, and 74 percent regarded prostitution as an acceptable job. Two years later, 78 percent of the population agreed and latter in the 1990 and 2005 surveys, only 20 percent of Dutch citizens felt that prostitution is unjustified.

²⁷⁶ Chi Mgbako and Laura A. Smith, *Sex Work and Human Rights in Africa*, p1214. See also Foley, E.E. and Nguer, R, ‘Courting Success in HIV/AIDS Prevention: The Challenges of Addressing a Concentrated Epidemic in Senegal’, *African Journal of AIDS Research*, 2010.

²⁷⁷ Interview with Teshome Mihret, A Priest at Gebriel Church in Kebele 14 of Bahirdar City, on *The Place of Prostitution in Christianity Thought*, Jull 12, 2018, D.r Mohammed Kemal, Sheik and ‘Imam’ at Kebele 7 Mosque of Bahirdar City, on *The Place of Prostitution in Islamic Thought*, Jull 13, 2018. See also ኤርሚያስ ስዩም፣ ስላት ጸላፊ፣ ወንዶች ቁጥር አንድ, 1st ed., Addis Ababa, July 2006. [Here in After ኤርሚያስ ስዩም፣ ስላት ጸላፊ፣ ወንዶች ቁጥር አንድ]

4.5. Criminalization?, Legalization?, or Decriminalization?: What is the Way Forward for Ethiopia?

Deciding which model of regulation has to be really considered in a certain jurisdiction highly depends on the mischief to be addressed in that jurisdiction. Among others therefore it needs to have a regard on socio-economic issues, moral and religious viewpoints, human rights, nature of the harm to women, culture and tradition. Apart from this, approaches to deal with prostitution are also influenced by whether it is viewed as a phenomenon that can or should be eliminated, or as one that will persist or should be left alone.

4.5.1. Criminalization?

As is previously addressed in brief in chapter two this model of regulation relies on either totally prohibiting all or some aspects of prostitution.²⁷⁸ This regime is premised on the belief that prostitution is a social evil which should be done away with through the use of criminal law. Criminal law is thus used to punish whoever is found prostituting. Commentators of this model, those who oppose prostitution on moral and religious grounds often tends to total criminalisation and those oppose prostitution on human rights and on certain feminist grounds tend to partial criminalisation.

To pragmatically determine the appropriate model for Ethiopia, the researcher had tried to show the successes and drawbacks in which this model is claimed to possess. Totally criminalising prostitution is often claimed to result in prostitutes becoming increasingly vulnerable to violence, since the activity is pushed underground and prostitutes need to avoid arrest and subsequent criminal records.²⁷⁹ In Ethiopia the main causes for which prostitutes engage in to sex work

²⁷⁸ For more detail look in to *Supra*, Chapter 2, 2.5.1, P. 33-35.

²⁷⁹ Jared R. Rayborn, 'Regulated Prostitution as a Component in the Fight Against Trafficking in Oregon', *William Ete Law Review*, 2013, Vol. 50, No. 115, P. 128, [Here in After Jared R. Rayborn, *Regulated Prostitution as a Component in the Fight Against Trafficking in Oregon*], Don Kulick, 'Sex in the New Europe: The Criminalization of Clients and Swedish Fear of Penetration', *3 Anthropological Theory* 199, 2003, P. 200, Alan Shatter TD, *Discussion Document on Future Direction of Prostitution Legislation*, P. 32. In Western European and US Cities which have used criminalization model, prostitution is claimed to have adapted with an increasing reliance on mobile phones and the internet.

is highly linked with their pursuit of an earning to lead their lives.²⁸⁰ Many engage in for they either owe to be bread winners of their families or themselves without any one supporting them behind. Thus, the researcher had found that most prostitutes engage in to it as a last resort, as a last resort means of survival and therefore it is hardly possible to avoid/abolish prostitution using the criminalization model.²⁸¹ Employing so would rather create a ground for violence and exploitation of prostitutes which are in need of support.

Beyond to what prostitutes would be turned to function in an underground environment; they would also face abuses and violence, threat of assault, battery, and rape from police, patrons, and pimps or any differing actors.²⁸² What makes it very harsh is that legal recourse for prostitutes may technically be available in these situations, but it would rarely be claimed since prostitutes would remain fearful of arrest and generally feel unprotected.

The other issue I need to address here is whether it would be effective in addressing trafficking by criminalizing prostitution. The researcher had found that criminalization of prostitution is a waste of resources, ineffective, and highly focuses on prostitutes who may be victims, not criminals. Otherwise stated using state resources to prosecute all forms of prostitution may miss many cases of trafficking but criminalize instances of voluntary, consensual commercial sex. In support, America's statistics made in 2010 reflected that the government focuses on punishing the victims than actual perpetrators.²⁸³ Let alone total criminalization,

²⁸⁰ ኤርሚያስ ስዩም፣ ስላት እላፊ፣ ወንዶች ቁጥር አንድ, Meaza Genemo and Mesfin Balgo Tito, The causes and Consequences of Child Commercial Sex Work in Arba Minch City, South Ethiopia, *American Journal of Applied Psychology*, 2015, Vol. 4, No. 5, p. 115-119, Achille Piotrowicz, *Looking for Cheap Sex: Child Prostitution in Ethiopia*, March 2014, Available at; <https://pnhmuseum.com/achillepiotrowicz/story/looking-for-cheap-sex-child-prostitution-in-ethiopia-68b57f1626>. [Accessed 10 June 2018]

²⁸¹ Let alone in Ethiopia in which more than 23 million peoples are below the poverty line, poorly educated peoples with limited work opportunities in America often engage in to prostitution despite involving in to it is highly criminalized since prostitution is a way to pay for essential needs and family expenses and ensure survival. Read: Meredith Dank et al., *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, The Urban Institute, 2014, P. 220

²⁸² Jared R. Rayborn, *Regulated Prostitution as a Component in the Fight Against Trafficking in Oregon, 2005*, P. 128.

²⁸³ Howard N. Snyder, *U.S. Dept. of Justice, Bureau of Justice Statistics, Arrest in the United States, 1990–2010*, 2012, P. 4, available at, <http://www.bjs.gov/content/pub/pdf/aus9010.pdf> [Accessed 2 May 2018]. According to this statistic in 2010, there were 62,700 arrests for

even partial criminalization (Swedish model) is criticized for it has not reduced the numbers of people involved in prostitution, but has pushed the activity underground since male clients are legally bared to access sexual service in the legalized sector.²⁸⁴

On the other hand, criminalization of prostitution has been criticized for being ineffective in improving the working conditions of sex workers. The working conditions of sex workers under this regime are characterized to be worse than all other approaches for it would make them easily accessible to pimps and violent criminals/clients.²⁸⁵ In this regime, sex workers are more marginalised and since criminalising laws increase the marginalisation of the sex workers, there are fewer safe places to work and it become harder for social and health services to reach them.²⁸⁶ This is highly because the laws ability to impose stigma against sex workers is viewed as positive from the perspective that the purpose of the law is indeed to combat prostitution and this stigma/marginalization is often proved to lead sex workers in to a bad health conditions for it would make them vulnerable to sexually transmitted diseases and post sexual trauma.²⁸⁷

The researcher therefore has found that this model is not appropriate for Ethiopia since it could only protect one interest of the country among other things, morality. Thus, it is advisable to look in to an approach which could compromise other interests in giving effect towards solving problems surrounding prostitution and protect our moral/cultural setups at the same time.

“prostitution and commercialized vice” in the U.S.: sixty-nine percent of these arrests were of females, with a median age of 30 for females and 36 for males; two percent involved a juvenile

²⁸⁴ The Standing Committee on Justice and Human Rights, *The Challenge of Change: A Study of Canada's Criminal Prostitution Law*, 2006, P. 73-74.

²⁸⁵Jane Scoular, ‘What's Law Got to Do with It? How and Why Law Matters in the Regulation of Sex Work’, *Journal of Law and Society*, 2010, Vol. 37, P. 12; Janet Halley et al, ‘From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, Sex Trafficking’, *Harvard Journal of Law and Gender*, 2006, Vol. 29, P. 33.

²⁸⁶Ann Jordan, *The Swedish law to Criminalise Clients: A Failed Experimental in Social Engineering Program on Human Trafficking and Forced Labour*, *Centre for Human Rights and Humanitarian Law*, Issue 4, 2012, P. 4.

²⁸⁷*Ibid*, See also Cameron, J. Muz, and M. Shah. *Crimes against Morality: Unintended Consequences of Criminalizing Sex Work*, Mimeo, 2016, Paul J. Gertler and Manisha Shah. ‘Sex Work and Infection: What's Law Enforcement Got to Dowith it?’ *Journal of Law and Economics*, 2011, Vol. 54, No. 4, p. 811-840.

4.5.2. Decriminalization?

Decriminalization is the complete removal of prostitution and prostitution related offences from criminal law.²⁸⁸ Unlike criminalization which reinforces the marginalization of prostitutes, decriminalization increases their quality of life the same as legalization for prostitutes become masters of their own destinies.²⁸⁹ Decriminalization is thought mainly due to the realization that laws which criminalize prostitutes drive them further into the realm of violence as they become more vulnerable to people within the underworld who manipulate them.²⁹⁰ In trying to answer the question whether decriminalization is the answer to prostitution given Ethiopia's lived realities, there is a need to critically examine what it really means to decriminalize with particular focus on a country that has decriminalized previously. New Zealand is the most known of the countries adopted a liberal approach to prostitution which allows for its unprohibited existence. New Zealand had adopted its Prostitution Act in 2003 with the aim of reducing harms against sex workers, while not this much focusing on issues of public health, nuisance and endorsing or morally sanctioning it.²⁹¹ It highly focuses on protecting prostitutes' interests.²⁹²

The researcher has got this form of regulation worth no value for Ethiopia. This is b/c it highly focuses on the safety of prostitutes at large than the public. Though it is effective in improving the working conditions of sex workers and reducing stigma and marginalization, it has failed to protect public health, avoid trafficking of persons for sex and nuisance against the public compared to legalization.²⁹³ In

²⁸⁸ Under this approach New Zealand is known for it in June 2003 undertook radical reforms to its prostitution laws, decriminalizing adult prostitution by repealing a serious of old laws prohibiting solicitation, operation of brothel, and living of the avails of prostitution.

²⁸⁹ The South African Law Reform Commission, Discussion Paper, P. 175.

²⁹⁰ *Ibid*

²⁹¹ *Ibid*

²⁹² For instance, the 2003's prostitution act of New Zealand highly focuses on protecting prostitutes' interests than the public at large... to assure so, look in to the ACT from: Prostitution Review Committee, *Review on the Operation of the Prostitution Act 2003*, Ministry of Justice, 2008, P. 23-24. [] Here in after Prostitution Review Committee, *Review on the Operation of the Prostitution Act 2003*].

²⁹³ In New Zealand there is great frustration with prostitution since street prostitution is prevalent anywhere without restriction and brothels often operate in residential neighborhood. Besides, though numerous articles and writings thought that the New Zealand's prostitution policy had improved the working conditions of prostitutes, New Zealand's Prostitution Law Review Committee in 2008 claimed otherwise that majority of prostituted persons felt the decriminalization

this approach, there is no any form of regulation to be issued to run sex work than simply assuring prostitutes to proceed with their free choice of work. Thus, prostitutes are at an unlimited freedom to work in any places they need. Let alone others, even with regard to transmission of HIV aids, Ethiopia would not be benefiting something different than what it has today for the difference would be in the naming that prostitution is legally recognized as work. Though prostitutes are given the right to get medical counseling and health checkup services in a decriminalized system, it is up to their choice either to exit or remain a prostitute even knowing they are HIV positive. Thus, letting them to freely engage in to the work without any restriction could not guarantee the public to be rescued from sexually transmitted diseases. Letting prostitutes to engage/stay in the business without at least enabling the public know their health status while they are victims of sexually transmitted disease seem to guarantee prostitutes to be public health threats since they would not be careful in effectively using preventative measures for they are once victims of the disease.

Next to its failure to guarantee public health interests, decriminalization is criticized for it has not made successive achievement in combating trafficking in person.²⁹⁴ Besides, this approach had given no concern to moral and religious values of our country. While Ethiopia is among those known to be the home for strict religions of Islam and Christianity, letting the decriminalization approach would no more serve the public at large than giving prostitutes absolute freedom.²⁹⁵

act could do little about violence. Abusive brothels did not improve conditions for prostituted individuals; the brothels that had unfair management practices continued with them even after the decriminalization since there is no a regulatory scheme in New Zealand which empowers public authorities to exercise inspection and mentorship. Look at: Prostitution Review Committee, *Review on the Operation of the Prostitution Act 2003*, P. 17& 159.

²⁹⁴ This is because looking in to the experiences of New Zealand could assure that decriminalization could not contribute towards fighting trafficking. For this reason, New Zealand is often found in to be one of European states in which numerous trafficked persons transported in to and lived. For instance, in 2014 the US department of State in its Trafficking in Persons report found New Zealand to Size the second tier. Look at “US Department of State’s 2014 Trafficking in Persons Report”, at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271193.htm>, not only in this report, almost in all reports, New Zealand is found to be home trafficked women. Look the Data catalogued at: <https://www.state.gov/j/tip/rls/tiprpt/>. [Accessed 20 July 2018].

²⁹⁵ In Ethiopia to get blessing for prostitution legally recognized without any further regulation would not hold water. Let alone in the eyes of the public, it would not get a blessing even in the lawmaking organ. In new Zealand for instance the law has been proclaimed in 2003 after a long

4.5.3. Legalization/Regulation?

Since the above models of regulation are failed to be appropriate in addressing prostitution given the lived realities of Ethiopia, the researcher had found to look in to another legal model which could compromise those interests/problems. It is therefore the regulation model which can achieve so since it is the combination of the criminalization and decriminalization models²⁹⁶. This model is appropriate for one thing the legalization model apart from the advantages dealt above,²⁹⁷ would give recognition to our morality, cultural and religious standards through regulation than the decriminalization model²⁹⁸, protect prostitutes' than the criminalization model and for another thing the current model in which we are using this time is a *defacto* legalization model²⁹⁹ which is claimed to protect our moral set up less than what a strict regulation could do.

Determining in to what should be the appropriate model of addressing prostitution in Ethiopia is not sufficient. We have to take lessons from the experiences of states known to have adopted regulation and look in to possible alternatives for us to effectively deal on the challenges of regulation. First and for most the lesson we should take from the experiences of Germany, Senegal and Netherlands is adopting a country wide uniform and strict/tight than a loose form of regulation of prostitution.

Germany and Netherlands had adopted a law blessing prostitution while the power to issue specific regulations was left to respective municipalities. This wide power accorded to municipalities in the two states resulted in a legal pluralism. Most municipalities allow prostitution to be practiced without requiring prostitutes be registered, without imposing licensing requirements for brothel, escort and bars to

time debate with only one vote (60 to 59 and one abstention). This is because that decriminalization is a means highly deviate from moral, religious and cultural beings.

²⁹⁶ look in to *Supra*, Chapter 2, 2.5.1, P. 33-35.

²⁹⁷ Look at *Supra*, Chapter 4, 4.3, P. 68-76.

²⁹⁸ Look *Supra*, chapter 2, 2.53, P. 37-38.

²⁹⁹ Interview with Eyob Getachew, Federal Ministry of Health, Women and Children's Health Directorate, Adolescent and Youth Health Technical Advisor, on *Measures Taken and proposed to Address HIV and Sexually transmitted diseases in the country*, July 19, 2018, Huddisa Emiru, Family Guidance Association of Ethiopia, HIV Team Senior Health Officer, on *Causes, Prevalence of prostitution measures taken and challenges in the field*, 18 July 2018, Mohammed Yimmer, Family Guidance Association of Ethiopia, Addis Ababa Area Office, Area Manager, on *Causes, Prevalence of prostitution measures taken and challenges in the field*, 18 July 2018.

run the business while only a few states adopted a strictest regulation posing a licensing requirements and arranging special designated places for street prostitution in the outskirts of their cities.³⁰⁰ There is also an instance in which street prostitution in some municipalities is not allowed in any instance.³⁰¹

This lack of detail and uniform regulation had challenged Germany and Netherlands. Prostitutes and traffickers often become mobile going across differing municipalities in need of a loose legal regime so that they would run their business as they wish without being registered.³⁰² Besides, though regulation had a good impact on reducing prevalence of crimes around prostitution, prevalence of a less tight regulation across numerous municipalities of these two states had witnessed that trafficking, nuisance and organized crimes persist to exist very systematically around licensed red-light districts and brothels too³⁰³. For these reasons it is Germany and Netherlands had proposed new regulatory frameworks for prostitution which are detailed and uniform across all municipalities and stricter than most previous laws of municipalities' comparatively requiring registration of prostitutes, licensing of brothel business owners, allowing unprecedented police

³⁰⁰ In Germany, with the exception of city of Cologne, almost all municipalities had somehow loose regulations. In Netherlands the regulation till 2003 was too loose. During this time however municipalities like Amsterdam and Rotterdam had adopted a strictest regulation which let a number of brothel businesses out of the market for they fail to meet licensing requirements and homes for abuses.

³⁰¹ In Berlin for instance prostitution is allowed only to be practiced indoor.

³⁰² Laura Barnett and Lyne Casavant, *Prostitution: a Review of Legislation in Selected Countries*, p.11-12, Joyce Outshoorn, *Policy Change in Prostitution in the Netherlands: From Legalization to Strict Control*, P. 7 & 239, Ronald Weitzer, *Legalizing Prostitution From Illicit Vice to Lawful Business*, P. 155, Lena Reinschmidt, *Prostitution in Europe between Regulation and Prohibition Comparing Legal Situations and Effects, Observatory for Sociopolitical Developments in Europe*, p. 6, 11 & 21, Jess N. Gibly, *Safe Sex for Sale: Is Legalizing Sex Work the Answer to Sex Trafficking in the Netherlands?*, P. 5.

³⁰³ Laura Barnett and Lyne Casavant, *Prostitution: A Review of Legislation in Selected Countries*, P.11-12, Maite Verhoeven et al., 'Relationships Between Suspects and Victims of Sex Trafficking, Exploitation of Prostitutes and Domestic Violence Parallels in Dutch Trafficking Cases,' *European Journal on Criminal Policy and Research*, 2015, Vol. 21, No. 1, P. 49-64, Wim Huisman & Edward R. Kleemans, 'The Challenges of Fighting Sex Trafficking in the Legalized Prostitution Market of the Netherlands', *Journal of Crime, Law and Social Change*, 2014, Vol. 612, P. 218. In Netherlands for instance, when regulation had impaired organized criminals; pimps and traffickers commit crimes, they turn to engage in to crime systematically collaborating with business owners. The best instance we can raise is the "Sneep Case". In this case, German pimps were accused in Netherlands for they have traveled across the borders to Netherlands and took over large parts of red-light districts in Amsterdam using their intimate relationships they have with owners of red light districts and brutal violence against women to coerce them sell sex and hand over them their profits.

inspections, and obliging clients not to get/claim sexual services from illegal sex workers; strictest regulation.³⁰⁴

The other lesson Ethiopia should take in to account apart from identifying the more appropriate approach is strict regulation and adopting comprehensive national (federal) law to avoid variation is adopting transformative measures for prostitutes to exit the business. This is because the cause for most prostitutes to enter in to the business is highly attributable to poverty.³⁰⁵ For it is beyond reality that in our country many engage in to prostitution since it is the accessible choice for every one having no employment opportunity to meet his/her basic need, it is equally important to introduce schemes transforming prostitutes like through providing them with skill and vocational trainings.

³⁰⁴Lena Reinschmidt, *Prostitution in Europe Between Regulation and Prohibition Comparing Legal Situations and Effects, Observatory for Sociopolitical Developments in Europe*, P. 31. Evaluations made in the two countries showed that the objectives of the prostitution laws were not achieved to the level expected and that therefore additional steps were deemed necessary. It is because in comparison to other trade sectors, employment in prostitution is still not subject to regulation through legal requirements addressing the particular risks of this sector. These lacks of specific regulations also mean absence of a basis for regulatory over-sight. The lack in supervision in turn favours lack of transparency and encourages very systematic criminal structures in the sector. The new laws for the protection of prostitutes are intended to change this. These new laws are advocated for Netherland had got a success in eliminating the above problems since some Dutch authorities starting from 2003 tighten controls on prostitution. For this reason, many street level and red-light prostitution are shutdown so that outdoor prostitution had been eliminated and in 2009 92% of prostitution started to be practiced indoor compared to 75% in 2006.

³⁰⁵ In Ethiopia the grand cause for prostitutes to engage in to prostitution is of poverty. It is not however to mean that there are no prostitutes engaged in to it willingly. I have assured the same from; Lorraine van Blerk, *Poverty, Migration and Sex Work: Youth Transitions in Ethiopia*, P. 245-253, ኤርሚያን ስዩም፣ ሰአት ጸላፊ፣ውንዶች ቁጥር አንድ. and Interviews with Woretu Fekadu, Ethiopian Ministry of Women and Children, Women's Affairs Minister, Senior Legal officer, on *Causes, Prevalence of prostitution and challenges in the field*, July 17, 2018, Huddisa Emiru, Family Guidance Association of Ethiopia, HIV Team Senior Health Officer, on *Causes, Prevalence of prostitution measures taken and challenges in the field*, 18 July 2018, Mohammed Yimmer, Family Guidance Association of Ethiopia, Addis Ababa Area Office, Area Manager, on *Causes, Prevalence of prostitution measures taken and challenges in the field*, 18 July 2018, Eyerusalem Solomon, Ethiopian Women Lawyers Association Program Coordinator, *Causes, Prevalence of prostitution and challenges in the field, and on The Feminist movements Taken by the institution in Addressing Women in Prostitution*, 18 July 2018. There are a number of sex workers in Ethiopia willingly engaged in to the field for they believe prostitution is more productive for them than any other works that they can be employed. Thus, while Exit programs would help those engaged in to prostitution for they are poor exit from, regulation would help those engaged in to prostitution enjoy a good working environment. For this reason, it seems the German and Netherlands prostitution policy highly stresses the importance of helping people to get out of prostitution. Read Prof. Prof. Dr. Barbara Kavemann, *Findings of a Study on the Impact of the German Prostitution Act*, P. 34, 42 & 38, "The federal government of German report on the Prostitution Act 2007", at: <http://www.bmfsfj.de/Kategorien/Forschungsnetz/forschungsberichte,did=93304.html>, [Accessed June 20 2018]

CHAPTER FIVE

CONCLUSSION AND RECOMMENDATIONS

5.1. Conclusion

The very objective of this research is to analyze and show the opportunities and challenges of regulating prostitution in Ethiopia and thereby indicate the appropriate model to address prostitution and the problems arising out of it. This was done to answer the main research question of what would be the opportunities and respective challenges for Ethiopia in introducing regulation of prostitution. It is also with this in mind that the rest eight main research questions are framed to assist the researcher in effectively addressing this research question. All of the three chapters succeeding the first therefore are devoted to answer these questions through documents, policy and legal analysis of international and domestic legal regimes, interviews and examination of the experiences of three well known states having regulated prostitution since decades ago.

The second chapter thus begins by precisely discussing the notion, definition, prevailing feminist controversies on recognition and regulation, and internationally known legal models of addressing prostitution. Accordingly, it is noted that the discussion on the notion of prostitution revolves around identifying the differing names which were in use across time and space and theoretical explanations as to what prostitution exactly denotes. Starting with the first, names denoting the occupation are never similar across time and spaces though prostitution, commercialized sex work and sex work are the common ones emerging through time consecutively. Theoretically, it is noted that the notion of prostitution had evolved from conceiving it as deviant behavior, as a social problem and as a work latter. It is also shown that defining prostitution with a relative similarity across the world is an impossible task for it had different and unique features across, time and space. The chapter then moved in to addressing the first and third specific objectives of the research aimed to demonstrate existing controversies and arguments towards recognition and regulation of prostitution and elucidate approaches (legal models) used worldwide towards regulation of prostitution. Accordingly, the researcher demonstrated in brief that the existing feminist

controversies concerning recognition and regulation of prostitution are of five which include radical, liberal, socialist, Marxist and existentialist feminism while the models of regulation of prostitution are three including criminalization, decriminalization and legalization models.

The third chapter particularly devoted to review international and domestic legal frameworks and policies concerning prostitution with an attempt to answer the second and the fourth research objectives; to investigate the level of recognition/place of prostitution under international human rights law and the place of prostitution and existing legal model used to address prostitution in Ethiopia currently. Accordingly, the researcher had discussed non prostitution specific international instruments and prostitution specific instruments such as the ICCPR, ICESCR, UDHR, the 1950 Trafficking Convention, CEDAW, Beijing Declaration and Platform for action, International charter for prostitutes' rights, international labor organization's policy and the 2003 United Nations secretary general's bulletin at the international level and the FDRE Constitution, the 1995 Criminal Code and the Trafficking and Smuggling Convention at domestic level. Therefore, it is shown that though there is no absolute consensus at the international level as to whether prostitution is a human right violation or not, distinction on forced and voluntary prostitution is often emphasized so that the international community could highly condemn the first. At domestic level similarly, it is only forced prostitution penalized in Ethiopia and the *defacto* legalization in effect is recognized currently.

Under the fourth chapter, the researcher had provided a deeper analysis of the opportunities and challenges of regulating prostitution based on comparison of the experiences of three states known to have regulated prostitution since decades ago, way outs to challenges of regulation, and determined the appropriate legal model Ethiopia should follow in addressing prostitution and problems surrounding it based on its lived realities. This part of the study had attempted to provide analytical answer to the remaining four specific objectives of the research.

On the first spot, it is noted that introducing regulation of prostitution is with both prospects and challenges. On the one hand thus, it would enable to achieve prospects like improved working condition for prostitutes, reduced incidence of

trafficking in persons, increased income for prostitutes and tax revenue of the government, control sexually transmitted diseases, and avoid child prostitution, street prostitution and public nuisance. On the other hand, regulation at the same time would entail challenges like increased cross boarder migration, evolution of a two tier legal and illegal sex, prevalence of exploitation in the illegal sector, and prevalence of stigma against prostitutes since prostitution is considered an immoral whore across religions and cultural set ups of our society.

Secondly, with respect to indicating the probable way outs from challenges of regulation, the research looking in to the experiences of states chosen for the study had found that migration would not be as such a worrying problem for Ethiopia since it is intense in states having a comparative better economic advantage and in regions where free movement of goods and labor is tolerated unlike our region. Besides, underground sex work and exploitation in this sector could be eliminated through allowing police check up and imposing responsibility on customers not to buy services from illegal sex workers, and stigma against prostitutes could be done the same through education of the society at large as the advantage of regulation outweighs keeping the morality discourse alone.

As a last remark, the study had systematically analyzed and indicated the appropriate model for Ethiopia via comparing the three models of regulation. In doing so, the researcher had found on the first hand that the criminalization model is not appropriate for prostitution could never be abolished in poor countries like Ethiopia, underground sex would persist with a bad working condition, it highly focuses on punishing consensual and nonconsensual sex workers (victims) than traffickers (criminals) and it only protects the moral interest of the country. Secondly, it has also assured that decriminalization is not appropriate for Ethiopia since it highly focuses on protecting prostitutes' interests alone than worrying to protect any other public interests. Finally, the research had noted that legalization is the appropriate one comparatively for it is the mixture of the two models and is able to protect public interests and our moral set ups unlike the decriminalization model and prostitutes' interests at the same time unlike the criminalization model. Besides, it concludes emphasizing that legalization model apart from the above reasons is appropriate since it is better to protect our moral, religious, and cultural

well beings than the *defacto* legalization model what Ethiopia currently is following.

5.2. Recommendations

The study has revealed that there is a need to made a regulatory shift towards introduction of legalized/regulated prostitution in Ethiopia since the existing law is insufficient to address problems arising out of prostitution. Besides, it is also shown that adopting a legalization approach is more appropriate for Ethiopia compared to other models of addressing prostitution. On the bases of these findings, the researcher would like to recommend the following.

- ❖ Ethiopia should revisit the existing legal framework addressing prostitution. In doing so, it should conduct further comparative studies to be able to adopt a comprehensive legal/regulatory framework of which is uniform and strict.
- ❖ Ethiopia should together with regulating prostitution strengthen/introduce exit schemes for prostitutes. As indicated above, the main cause for prostitutes to engage in to the occupation is attributable to poverty. To let the occupation be practiced only by those engaged in to it for free will prioritizing from any other work, arrangements encouraging prostitutes to leave their occupation is vital. Such exit schemes could be arranged through establishing vocational training centers, short term training centers, funding/credit systems, strengthening and supporting/encouraging non-governmental organizations to highly involve in training and encouraging entrepreneurship.
- ❖ Ethiopia shall strengthen and support feminist activism and public awareness creation to avoid or fight against challenges of regulating prostitution such as morality, religious and cultural discourses. Strengthening so would enable the public be aware that the fruits of regulation would out way other models' and regulation better protects those discourses than the model what currently in Ethiopia is. It could be in doing so that Ethiopia would be successful in enjoying the fruits of regulation.

- ❖ Ethiopian feminists should start prostitution as one area of concern and work in organizing prostitutes so that it would be easy to transform prostitutes, get data on the area for policy makers and for them to influence policy makers too.

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