LAW COMMISSION OF INDIA
SIXTY- FOURTH REPORT

ON

THE SUPPRESSION OF IMMORAL TRAFFIC IN WOMAN AND GIRLS ACT, 1956

MARCH, 1975

D.O. No. F.2(2)/74-L.C.

P. B. Gajendragadkar,

Shastri Bhawan,
'A' Wing, 7th Floor,
New Delhi-110001

March 7, 1975

My dear Minister,

I have great pleasure in forwarding herewith the Sixty-fourth Report of the Law Commission on the Suppression of Immoral Traffic in Women and Girls Act, 1956. The opening paragraph of the Report will explain the circumstances under which the Commission took up this Act for study.

This is the third Report of the Commission after it was reconstituted on the 1st of October, 1974.

Having regard to the nature of the subject and its importance, the Commission first made a preliminary study of the subject, and framed a Questionnaire in order to elicit views. This Questionnaire was sent to the Ministries concerned, the State Governments, the High Courts, Bar Associations, and other interested persons and bodies, including the Central Bureau of Correctional Services. The replies received in response to this Questionnaire were carefully considered by the Commission. A draft Report was then prepared by the Member-Secretary, P. M. Bakshi, for discussion; it was duly circulated to the Members and, after full discussion the Commission decided to make its recommendations for the amendment of several provisions of the Act. Accordingly, the draft was finalised incorporating the agreed recommendations. That is how the Report has taken its present form.

I may point out that the provisions of the Act operate within a limited sphere. They do not purport to penalise prostitution in general, but deal with commercial or open prostitution. In fact, this limited scope of the Act is consistent with the international Convention on the subject in pursuance of which the Act was passed. The preamble to the Act, makes this position clear.

When we took up this subject for our study, we considered two main issues at the outset. The first was whether, in revising the Act, an attempt should be made to cover a wider field dealing with prostitution in general, and the second was whether the proposed revision should bring within its purview male participants in the act of prostitution. After examining in depth the pros and cons in respect of both these questions, we decided to limit our recommendations in regard to the

revision of the existing provisions, keeping in tact the limited scope of the Act. Our reasons for coming to this conclusion are explained in our Report.

I would, however, like to add that, even within the limited scope of the Act, we have made recommendations which we trust may rationalise the scheme of the Act and help its effective implementation. With that object, we have recommended a revised definition of "prostitution" as well as of "protective homes" and "corrective institutions". Consequent upon the redefinition of the two latter expressions, radical changes have been recommended by us in the operative provisions of the Act.

As you are aware, the present year (1975) has been declared by the United Nations as the International Women's Year. It seems to us that the present Report can well be regarded as appropriate, because it seeks to rescue and rehabilitate girls and women who, owing to circumstances over which they have no control, have fallen in the trap of prostitution. That, in our view, is an important aspect of the work which our nation is expected to undertake during this year for the betterment of the women's position in general.

Before I conclude, I would like to invite your attention to the fact that, in our Report, we have incidentally referred to another collateral but important matter which needs immediate attention. In discussing the question about revising the Act, one of the problems which we incidentally considered was in relation to the children born to the prostitutes. It is hardly necessary to emphasise that taking care of such children is an urgent and important problem which should occupy place of high priority in our national effort for social reform. Since this aspect of the matter falls outside the scope of our present inquiry, we could not make any positive recommendations in regard to it. However, we thought it necessary to draw the attention of the Government to this problem and have very broadly indicated the line of approach which may be adopted in dealing with it.

Yours sincerely,

(Sd.) P. B. GAJENDRAGADKAR

The Hon'ble Mr. H. R. Gokhale,
Minister of Law, Justice and Company Affairs,
Government of India,
Shastri Bhavan,
New Delhi.

REPORT ON THE SUPPRESSION OF IMMORAL TRAFFIC ACT, 1956

CONTENTS

APPENDICES

REPORT

ON

THE SUPPRESSION OF IMMORAL TRAFFIC IN WOMEN AND GIRLS ACT, 1956

CHAPTER 1

INTRODUCTION

1.1. *Scope and genesis of the Report*—This Report deals with the Suppression of Immoral Traffic in Women and Girls Act, 1956. This Act will hereafter be referred to as "the Act". The Commission has taken up the subject, in view of the importance of the Act as a measure of preventing the exploitation of women and girls for immoral purposes.[1] The Commission thought that the social importance of the Act justified its consideration. It may also be mentioned that a Committee[2] was appointed to suggest amendments in the Act some time ago by the Government of India. We shall give our comments on the proposals of the Committee[3] at the appropriate place.

1.2. *Scope of the revision*—As we shall indicate later[4], the present Act is limited in its scope, but we have also considered the question[5] whether its scope should be expanded.

1.3. *Evil of prostitution*—Prostitution is, beyond doubt, a social evil. It has been an obnoxious feature of every society. It has been observed in recent study[6] of prostitution that[7] "in a theoretically good society, where sexual fulfilment ought to be possible as are other kinds of personal satisfaction, no one would be a prostitute or a client. . .". Despite the attempts made from time to time to check it, the evil of prostitution persists. The Act is one such attempt to check the evil.

Prostitution is also thought of as a threat to the marriage-family institution[8]. "Law-makers are afraid that the delicate threads which bind society together will be broken if people are free to engage in sexual activity for pleasure. Laws, it is stated, are often not enforced adequately because the police have too many other things to do. Judges also know that jail will not rehabilitate a prostitute. Nevertheless, laws exist to emphasise that prostitution is not a socially acceptable form of behaviour."

---

[1] See Para 1·4, *infra*.

[2] Para 3·9, *infra*.

[3] It will be referred to as "the Committee".

[4] Para 3·1 and 3·2 *infra*.

[5] Para 3·4 to 3·8, *infra*.

[6] Charles Winick, author of the book "The Lively Commerce" (Quardrangle, 1971).

[7] Publishers weekly (24 May, 1971), Vol. 199, No. 21, page 53.

[8] Charles Winick, as quoted in the Publishers weekly (24 May, 1971), Vol. 199, No. 21 page 53.

Thus, being a threat to the family as an institution, and a means of exploitation of females, prostitution is a social evil which leads to social injustice.

1.4. *Constitutional provision*—It may be mentioned that article 23(1) of the Constitution prohibits traffic in human beings. It also provides that any contravention of this provision shall be an offence punishable in accordance with law. Then, article 35(a)(ii) of the Constitution confers on Parliament exclusive power to prescribe punishment for those acts which are declared to be offences under this Part of the Constitution (which includes article 23). Article 35(a) also provides that Parliament shall, as soon as may be, after the commencemet of the Constitution, make laws for prescribing punishment for the acts which are declared to be offences under this Part of the Constitution.

Finally, article 39(f) of the Constitution provides that the State shall, in particular, direct its policy towards securing that childhood and youth are protected against exploitation and against moral and material abandonment. It is, therefore, gratifying to note that soon after the commencement of the Constitution, the Act with which we are now concerned, made provisions which seek to carry out the constitutional provisions referred to above, although the Act purports to have been made in pursuance of an International Convention.[1]

1.5. The institution of prostitution is the external manifestation of the failure of man to control his animal will within the limits set by the institution of marriage. The view of Westermarck and many other scholars is that the institution of marriage has existed in human society since time immemorial. This is the generally accepted view. In no period of recorded human history has any civilised society existed,[2] without the institution of marriage in some form or another. With the help of this institution, man has tried to tame and control his brutal instincts and impulses. In this attempt, there has been a fair amount of success, but not full and complete success, because man has not always remained satisfied with the company of his wife and has sometimes sought the pleasures of the flesh by straying beyond the limits of the marital wedlock, with the result that institutions like prostitution and concubinage have existed side by side with marriage since times immemorial. For the greater good of the family and society, man has tolerated these institutions as necessary social evils. In ancient India, concubinage and prostitution were not unknown. In the Rig Veda Samhita, there is reference to the *jara* (paramour) and his concubine. There were heavenly prostitutes also. They were known as *apsaras* and *urvashis*. Quite often they were sent by the king of gods (Indra) and other gods too to entice human being who were engaged in the practice of austere penances for gaining knowledge of the Supreme Reality.

---

[1] Para 2·1, *infra*.

[2] (*a*) Hoebel, Anthropology (1966), page 331.

(*b*) Hobhouse, Morals in Evolution (1951), page 138.

The prostitute was known as *ganika* and *veshya,* etc. Chanakya says, "salajja ganikah nastah" (Shy prostitutes are no good). In the drama "Mrichha Katika", it is stated[1]:

> "Like the pond, creeper or the boat, you, who are a prostitute, you (should) adore every person."

1.6. *Rome*—The late Professor W. W. Buckland[2] has, in his famous book on Roman law, stated:—

> "Concubinatus was a recognised connection short of marriage, which seems to owe its legal recognition to the restrictive legislation of the early Empire on marriage..... It was encouraged by the immorality of Roman women of high rank; men preferred to contract this union with women of lower class but higher character.....".

1.7. *Attempts to stop prostitution not successful*—Any attempt to stop prostitution by legislation or by any other means of social control has always proved abortive. Prostitution has, therefore, been tolerated as a necessary evil. No country in the world has been able to stop this institution successfully. Even if the law stops it, then, in some other insidious and subtle form, it is bound to re-appear in society[3] and that may have greater potentiality of destroying the peace in family life and also in society. The recent institution of call girls seems to be an instance in point.

Hence, instead of banning it totally, the law in every country has tried to regulate it so that it may be kept within its legitimate bounds without unduly encroaching upon the institution of marriage and the family.

---

[1] (Mrichha Katika).

त्वम् वाणीव लतेव नौरिव
वेश्यासि सर्व जनं भज ।

[2] Buckland, Roman Law from Augustus to Justinian (1968), page 129.

[3] See also, para 3·3, *infra*.

CHAPTER 2

HISTORICAL BACKGROUND

2.1. *Brief history of the Act*—The Suppression of Immoral Traffic Act is the first Central Act dealing with commercialised vice in a comprehensive manner, and has taken the place of several Provincial or State Acts[1] that were operative on the subject in the various States. Occasion for passing a Central Act on the subject arose when the International convention dealing with immoral traffic in women and girls was signed in 1950. But, even in the absence of such a Convention, uniformity in this respect would have been desirable; and it is, therefore, convenient that the law is now contained in a Central Act.

2.2. *Early efforts at regulation*—During the days of the East India Company, the Company had regulations dealing with sex offences.[2] In 1668, the Company Authorities issued regulations against prostitution. These were known as "Company Commandments", and compliance with those regulations was strictly required. During the years 1669 and 1677, Governor Anguri issued orders for the control of brothels and for the prevention of soldiers from keeping wenches and loose women. This was the first time that brothels came under the purview of law in the British period. Before the year 1860, there were only a few Regulations on the subject.

In 1860, the Indian Penal Code was enacted, and sections 372 and 373 of the Code were intended to prevent the inducting in prostitution of women under a certain age and against their wish. The Contagious Diseases Act, 1868 aimed at compulsory examination of common prostitutes and their detention in hospitals, till they were cured. This law proved irksome, and was repealed in 1888. The Presidency Town Police Acts and District Police Acts made certain acts pertaining to prostitution penal.

2.3. *Developments in the latter half of 19th century*—It was during the latter half of the 19th century that the Government of India took notice of the evil of prostitution. This was primarily because the Government was concerned about the health of the British soldiers who indulged in the vice. The problem was looked upon more or less as a public health problem, and also as a law and order problem. In 1892, the British House of Commons appointed a Committee to enquire into the practice of prostitution in India and also into the spread of venereal diseases. It was found that special arrangements were made for the supply of women. Medical check up and segregation till the women were cured, was the usual practice. All these efforts were, however, not considered adequate. More vigorous steps were, therefore felt necessary.

---

[1] See para 2·2 and 2·3, *infra*.

[2] Based on Encyclopaedia of Social Work, (1970), Vol. 2, pages 102-103.

An Act aimed at discontinuance of brothels, known as the East Bengal and Assam Disorderly Houses Act, 1907, was passed in 1907. That Act was applicable to certain areas of East Bengal and Assam, and provided for the prosecution of the brothel keepers with the sanction of the District Magistrate or on a report of the Chairman of Municipality or on a complaint of three or more persons living in the neighbourhood. For verifying facts, the police officers were empowered to inspect such houses. For some years after this Act, no action of great significance was taken in relation to this subject.

2.4. *Local legislation since* 1923—In 1923, the Calcutta Suppression of Immoral Traffic and the Bombay Prevention of Prostitution Act were passed. The Calcutta Act was replaced by the Bengal Suppression of Immoral Traffic Act, 1930. In 1923, the Province of U.P. enacted legislation for the suppression of immoral traffic in women and girls. Punjab followed in 1935, and Mysore in 1936.

Heavy penalties were provided by these Acts for living on the earnings of prostitution, for keeping a brothel, for allowing premises to be used as brothel, for procuration, for unlawful detention for prostitution, for importing a female for prostitution and for encouraging or assisting in prostitution.

Legislation dealing with specific aspects of prostitution may also be noted at this stage. For example, the U.P. Naik Girls Protection Act and the Bombay Devadasis Act were passed in 1929 and 1934, respectively. The Children Act passed in Bombay, Madras and Bengal gave some protection to boys and girls in moral danger.

2.5. *Prostitution in ancient civilisations*—As is shown by the discussion in Chamber's Encyclopaedia,[1] religious prostitution was a feature of many ancient civilisations, including those of Persia, Babylonia, Assyria, Egypt and Phoenicia. Among most of these peoples the priests and priestesses were a special class of prostitutes. In Babylonia, however, a compulsory single act of prostitution was required of every woman as part of the worship of the goddess Mylitta. The most plausible explanation of religious prostitution is the belief of the ancients that benefits would be conferred on any one who had intercourse with a god or with one of the god's servitors.[2]

2.6. *First rescue home*—Theodora, wife of Justinian, established the first rescue home for women. Edward Gibbon[3] attributes Justinian's action to his desire to marry Theodora, whose life had been notorious; but, though, no doubt, she influenced him in the matter, Gibbon concedes her virtue after marriage, and gives her credit for "the most benevolent institution" of Justinian's region,—the rescue home for fallen women in Constantinople. Though this institution did not succeed, it marks a turning point in the treatment of a class which had never met with public sympathy before.

---

[1] Chambers Encyclopaedia, (1961), Vol. II, page 257.
[2] Chambers Encyclopaedia, (1961), Vol. II, page 257.
[3] Gibbon, Rise and Fall of the Roman Empire, cited in Encyclopaedia Britannica, (1965) Vol. 18, page 698.

CHAPTER 3

SCOPE OF THE ACT

3.1. *Scope of the Act—three broad categories of offences*—A few observations about the scope of the Act may be made. It is a common misconception amongst laymen,—and sometimes even amongst lawyers—that the Act is intended to prohibit prostitution. The Act, in fact, does not go so far. It deals with prohibition only in some of its aspects. In the first place, if a person promotes prostitution by another person, and derives a monetary benefit therefrom, the Act applies.[1] Again, if a person exploits women and girls and makes them lead a life of vice, the Act is attracted.[2] Finally, if a person solicits customers for prostitution in the specific circumstances, he is punished under the Act.[3] Under section 7, for example, prostitution in the vicinity of public places is punished. In short,[4]—

(i) profiting by the prostitution of another person, or

(ii) exploiting another person for prostitution, or

(iii) soliciting in a public place etc., are the broad categories of the main offences created by the Act. But a woman or girl who offers her body for hire, without soliciting or doing any of the other acts mentioned in the penal sections, is not guilty of an offence under the Act. The Act, thus, stops short of banning prostitution absolutely, and deals with only certain specified and concrete forms of immoral conduct. The ultimate object is, no doubt, to check prostitution, but the methods adopted are limited in their scope. The philosophy reflected in the Act is that the law should stop only where the vice either assumes a commercialised form, so that public policy requires its suppression, or appears in a public place, so that it constitutes a public nuisance. In the absence of such special features, the mere immoral conduct which is known as "prostitution",—and which is defined in the Act also,[5]—is not treated as criminal.

3.2. *Reasons for narrow scope of the Act*—One could think of many reasons that account for the present narrow scope of the Act.

The corresponding law in England—previously, the Vagrancy Acts and the common law as to bawdy houses, and now the Sexual Offences Act, 1956 and the Street Offences Act, 1959—has always been narrowly

[1] Sections 3 and 4.

[2] Sections 5 and 6.

[3] Sections 7 and 8.

[4] For detailed analysis of offences see Chapter 5, *infra*.

[5] Section 2(f)—"prostitution".

drawn. The common law punished, as a public nuisance, the keeping of bawdy houses, and the letting of premises on hire for prostitution, and some offences were added by the statutes mentioned above. But the criminal law in England always steered clear of a total ban on prostitution. Even the Act of 1959 does not go so far. Secondly, it must have been presumed by the legislature that a total ban on prostitution may not be effective. Thirdly, the International Convention on the subject did not go so far, and as we have already noted, it is on the International Convention that the Act is based.[1] Lastly, the pre-existing provincial or State Acts were also narrow in their scope.

3.3. *Abolition not practicable*—There is, however, a deeper reason also. Prostitution, though an evil, has been regarded in almost all societies as an unfortunate but a necessary evil, and Indian society is no exception.[2] Various measures have been adopted from time to time to check the evil effects of prostitution and to control its undesirable aspects, but the inarticulate assumption that the law cannot abolish it effectively, has been the basis of legislation in India as well as in many other countries. Down from 1837, when the Penal Code was taken up on the anvil,[3] to 1956, when the present Act was passed, it has not been considered necessary to go beyond the provisions which we find in the Act.

The Act is, therefore, concerned not with prostitution itself, but with the manner in which the activities of prostitutes and of those associated with them which offend against public order and decency, expose the ordinary citizen to what is offensive or injurious, or involves the exploitation of others.

3.4. *Question of total prohibition*—Theoretically, the question why prostitution should not be totally prohibited, or restricted more intensively than at present, could certainly be raised.

Such a question has, in fact, been raised outside India more than once. This and similar proposals raise vital questions as to how far the law ought to go in regard to interference with the freedom of an individual to act in the sphere of sex. As a general rule, only behaviour which causes harm to the individual or to the community should be prohibited by the criminal law. There is, however, no universal agreement as to what acts cause such harm. That the true object of the penal law is to provide punishment when injury has been inflicted,—ordinarily with the requisite *mens rea*,—is not denied. But the question to be asked in making out the bounds of criminality would be, what constitutes sufficient injury, and when is the imposition of punishment for causing that injury justified. The question, therefore, that arises again and again is: What conduct ought to be declared as a crime?

---

[1] Para 2·1, *supra*.

[2] See Para 1·7, *supra*.

[3] The Penal Code was actually passed in 1860.

3.5. *Two views as to drawing the line*—This necessarily takes us to the well-known controversy whether all behaviour which is deemed to be morally undesirable ought to be punished by the Criminal law. That a line must be drawn between the demands of sexual morality and the requirements of the Penal Code, is not in dispute. But two views prevail in the matter,—that is to say, with reference to the question where precisely the line ought to be drawn. According to the narrower view, the law should reach only acts causing positive harm. According to the wider view, the law should also punish behaviour which, though not causing positive harm to the individual, may damage the cherished moral fabric of the society, and destroy values which are considered worth preserving at all costs. The usual testing ground of this controversy has been the subject of criminal sanctions for certain indecent acts between males; but the controversy is of a recurring nature. In the West, Lord Devlin and Professor Hart have been the chief exponents of these two ideas.[1]

3.6. *Wider view not recommended*—It appears to us that so far as prostitution is concerned, the adoption of a wider view should not be recommended,—in any case at this stage. Conduct of a particular type may be—

(i) approved by law;
(ii) permitted without approval or disapproval by law;
(iii) disapproved but not prohibited by law;
(iv) prohibited by law.

Prostitution falls partly within category (iii) and partly within category (iv) above.[2] The fact that certain types of prostitution are not totally prohibited by law, does not necessarily imply that they are *approved by the law*.

We think that, in principle, in the absence of very strong public opinion to the contrary, the present legislative approach as regards prostitution is, broadly speaking, satisfactory. Prostitution, in so far as it consists of secret acts of consenting individuals without exploitation, and in private, is not appropriate for penal sanctions, and the fact that the pleasure derived from such prostitution is one which is socially disapproved, is not in itself a sufficient ground for the imposition of criminal sanctions.

---

[1] (*a*) H.L.A. Hart, Law Liberty and Morality (1963).

(*b*) R. Dworkin, "Lord Devlin and the Enforcement of morals", (1966) 75 yale L. J. 986.

(*c*) Hart "Social Solidarity and the Enforcement of Morality", (1967) 35 U. CHI. L. Rev.

(*d*) Kadish, "The Crisis of Overcriminalisation" (1967) 374 Annals of the American Academy of Political Sciences 157.

(*e*) Stephen, Liberty, Equality, Fraternity, in Radcliffe (Ed) Limits of Liberty) (1966) p. 435.

(*f*) Rolf, Sarborius, "Enforcement of Morality" (1971) 81 yale L. J. 891.

(*g*) Louch, "Sin and Crime" (1968) 43 Philosphy 38, 45.

(*h*) Rostow, "The Enforcement of Morals" (1960) Cambridge L.J. 174.

[2] Para 3·1 to 3·4 *supra*.

3.7. Moreover, it appears to us that where the law deals with sexual behaviour between consenting parties in private, its enforcement would be difficult. Laws which prohibit sexual acts when committed in private —assuming that the acts are considered appropriate for penal sanctions[1] —can, for obvious reasons, be enforced only to a limited extent, however much the conduct may be, the subject of moral condemnation.[2]

3.8. *Views expressed on the subject of morality and law*—While we are dealing with this aspect, we may refer to the opinion expressed by the Street Offences Committee—[3]

> "As a general proposition it will be universally accepted that the law is not concerned with private morals or with ethical sanctions. On the other hand, the law is plainly concerned with the outward conduct of citizens in so far as that conduct injuriously affects the rights of other citizens. Certain forms of conduct it has always been thought right to bring within the scope of the criminal law on account of the injury which they occasion to the public in general. It is within this category of offences, if anywhere, that public solicitation for immoral purposes finds an appropriate place."

Secondly, as has been observed,[4] "the immorality of an act should never be the decisive factor in making it illegal, since the appropriateness of a moral sanction does not entail the appropriateness of a legal sanction. What is grist to the fine mill of morality, may well escape the clumsy engine of the law or be mangled by it. But any attempt to exclude the immorality of an act as a relevant factor in deciding whether to make it illegal, is both dangerous and futile. It is dangerous, because it leads to the illusion that a legal system can function without the foundation and the frame of reference of a moral system, and it is futile because moral values have a way of infiltrating into even the most antiseptic legal system."

3.9. *Report of earlier Committee in India*—Before we part with this topic, we may note that in 1968, the Government of India appointed a Committee to consider various suggestions that had been received regarding amendment of the Act.[5] The Committee, in due course submitted its Report.[6] Though the recommendations have not been forwarded to us formally, we have had the opportunity of going through them. Recommendations made by the Committee in matters of detail will be

---

[1] Para 3·6, *supra*.

[2] See also para 3·16, *infra*.

[3] Report of the Street Offences Committee (1928), Cmd. 3231, quoted in the Report of the Committee on Homo-sexual offences and Prostitution (1957), Cmd. 247, page 80, para 227.

[4] R.A. Samek, "Enforcement of Morals", (May, 1971) 49 Canadian B.R. 188, 221.

[5] Government of India, Department of Social Welfare, Memorandum No. 14/4/65, S. No. 5, dated 30th March, 1968.

[6] Report of the Committee on Amendments to the Suppression of Immoral Traffic in Women and Girls Act, 1968 (Hereinafter referred to as 'the Committee').

considered at the proper place, but we may state here that the Committee[1] was of the opinion that the objective of the Act is the suppression of Immoral Traffic in women and girls in form of *commercialised prostitution,* and the amendments of the Act should be related to that objective.

3.10. *Profession of call-girls*—We should note, however, that the Committee[2] expressed its concern over the increasing problem of "call-girls and clandestine forms of prostitution". The Committee stressed that it is "only through an integrated programme of public education and community organisation that the moral and social health of the people in general could be ensured". In this connection, the role of the voluntary organisations in creating the necessary social climate for tackling the intricate problem of human degeneration was also emphasised.

The relevant paragraph of the Report, however, ends with the following recommendations—

Recommendation No. 19

> "The terms 'prostitute' and 'prostitution' should be made comprehensive so as to cover all forms of clandestine prostitution including call-girls."

3.11. *Amendment regarding call-girls not recommended*—We have given careful thought to this recommendation. If the intention is that 'call-girls', i.e. girls who are available for prostitution on a *telephonic or other message* being sent to them, should not be allowed to practise their profession if it is carried on for the gain of another person[3] or for the mutual gain of two or more persons,[4] then the amendment would be merely clarificatory, and we shall assume, for the moment, that such a clarification is needed. But, if the intention is that there should be a total ban on call-girls, we are afraid that it would go beyond the general scope of the Act. As we have pointed out above,[5] and as indeed was noted by the Committee also,[6] the scope of the Act is narrow. The Act does not abolish prostitution as such. The main activities which it punishes are prostitution of another person for profit of oneself, or promoting prostitution by letting out a house, exploiting girls for prostitution in specified places and the like.

The fact that the appointment with a girl is made on telephone, or that she is requisitioned to offer her services at the residence of the customer who sends the requisition, would not, in our view, in itself,

---

[1] Report of the Committee on Amendments to the Suppression of Immoral Traffic in Women and Girls Act, paragraph No. 5·2, and Recommendation No. 1.

[2] Report of the Committee on Amendments to the Suppression of Immoral Traffic in Women and Girls Act, para 5·7, and recommendation No. 19.

[3] Of section 2(*a*), definition of 'brothel'.

[4] See also para 3·12, *infra*.

[5] Paragraph 3·6, *supra*.

[6] Paragraph 3·9, *supra*.

justify a departure from the general scheme of the Act, if the call-girl does not parade her charms in the public, or indulge in soliciting or in any of the other prohibited acts. If prostitution is practised in a manner which is offensive to a neighbour, then a civil remedy for nuisance is also available, as such acts cause undue and unreasonable interference with the comfortable and convenient enjoyment of the neighbour's premises,[1] and the whole character of the street might change for the worse.[2] But, so long as prostitution itself is not a crime, the individual act of a girl who offers her services on phone cannot be prohibited. It is hardly necessary to emphasise that these observations are made in the light of the narrow scope of the Act.

3.12. *Call-girl establishments*—Call-girl establishments—i.e. houses or flats to which men go and to which prostitutes are summoned by telephone message or some other arrangement—stand in a different category. In most cases, they would satisfy the existing definition[3] of "brothel", or attract the penal provision relating to living on the earnings of prostitution.

3.13. *Position in some other countries*—We are not unaware that in some of the other countries, prostitution when carried on as a business has been prohibited, and the relevant statutory provisions appear in a wider form than in India.

3.14. *Statutes in some States in the U.S.A.*—For example, in the U.S.A., some modern statutes generally enlarge upon the common law basis.[4] The following extract from one of the statutes in force in Iowa will give some idea of the general pattern adopted by States which go beyond the common law, although the statutes differs substantially in the different states:

> "if any person, for purpose of prostitution or lewdness, resorts to, uses, occupies or inhabits any house of ill-fame or place kept for such purpose, or if any person be found at any hotel, boarding house, cigar store, or other place leading a life of prostitution or lewdness, such person shall be imprisoned in the penitentiary for not more than five years."[5]

3.15. The Model Penal Code of the American Law Institute[6] recommends the following provision:—

> "*Section* 251.2. Prostitution and Related Offences.
>
> (1) Prostitution. A person is guilty of prostitution, a petty misdemeanor, if he or she:
>
> "(a) is an inmate of a house of prostitution *or otherwise engages in sexual activity as a business;* or
>
> (b) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity....."

---

[1] *Thompson Schwab* v. *Costaki*, (1956) 1 W.L.R. 355; (1956) 1 All E.R. 652.
[2] See also Chapter 4, *infra*.
[3] Section 2(*a*); see para 4·2, *infra*.
[4] Perkins, Criminal Law (1957), page 335.
[5] Iowa Code Annotated, article 724·1, cited in Perkins, Criminal Law (1957), page 335.
[6] Model Penal Code, proposed Official Draft, (1962), section 251·2.

3.16. *Effective enforcement not practicable*—We are not, however, satisfied that a wise provision which punishes not only the inmate of a house of prostitution but also a person who "otherwise engages in sexual activity as a business",[1] can be effectively enforced.[2]

3.17. *Prostitution a social problem*—In our view, prostitution like many other evils, is a social problem, and the eradication of such evils cannot be achieved by legislation alone, as it requires the co-operation of every individual citizen as well.

In the dialogue between King Ashwapati and the six Brahmins[3] in one of the Upanishads, there occurs this passage:

> "In my kingdom, there is no thief, no person indulging in dirty and bad actions, no drunkard, no Brahmin who does not keep and worship the Fire, no person who is not learned, no man of loose morals—from where will come any woman of loose morale?"

When the general moral level of the community rises to this exalted idealistic level, prostitution also can be brought down or more effectively reduced. But, as realists, we are not prepared to recommended such radical changes, because we fear that legislation based on such idealism may prove to be an exercise in futility. Besides this, it may go beyond the scope of the Act. The Act, as is shown by the title, is confined to "suppression" of immoral traffic, and a measure prohibiting prostitution would travel far beyond its present scope.

---

[1] Para 315, *supra*.

[2] See also para 3·7, *supra*.

[3] Chhadogyopanishad, 5th Chapter, 11th Part.

CHAPTER 3A

COMPARATIVE POSITION

3A.1. Prostitution being a world-wide phenomenon, it may not be out of place to make a brief comparative survey[1] of the legal position in respect of the problem. It appears that countries of the world can, with reference to the legal attitude towards prostitution, be classified into four broad categories:—

(a) total prohibition;

(b) regulation;

(c) repression;

(d) total toleration.

Countries in category (a) regard prostitution as illegal in all cases. In these countries prostitution *per se* is a crime. Hence, even clandestine misconduct is punishable. Countries in category (b) regulate prostitution by licensing or other measures, but do not prohibit it totally.

Under the traditional system of regulation, licensed brothels are allowed, and the inmates of the brothels are issued cards and may ply their trade subject to certain rules laid down by law. There is also what has been called the "neo-regulationist system", under which brothels are prohibited, but prostitutes hold cards and are supervised by health authorities.

Countries in category (c)—to which India belongs—repress prostitution by forbidding its blatant manifestations; while those in category (d) impose no prohibitions or restrictions on prostitution.

3A.2. *Repressive measures why hampered*—It has been stated[2] that repressive measures[3] against prostitution are hampered by three main considerations: the persistent demand for exclusive physical satisfaction which the prostitute offers; the existence of a type of women who is drawn to prostitution her psycho-neutrotic make up; and the social attitude towards sex. The modern view[4] is that the underlying causes of prostitution today are not economic but psychological, though this does not apply to the period of religious prostitution, or to the period when prostitution was generally condoned, or when no other means of livelihood was open to indigent women. Socio-economic factors are still important in borderline cases. But, with a few exception,[5] prostitutes show an anti-masculine attitude so strong as to be psychoneurotic

[1] For a detailed survey of the laws of other countries, see Appendix.

[2] Chambers Encyclopaedia (1961), Vol. II, pages 258-259.

[3] Para 3 A 1 (*c*), *supra*.

[4] Chambers Encyclopaedia (1961), Vol. II, pages 258-259.

[5] Chambers Encyclopaedia (1961), Vol. II, page 259.

L/P(D)12MofLJ&CA—3

and, for them, the performance of the love act for payment constitutes self-assertion, while at the same time they derive satisfaction from the unique 'independence' of their profession. This inner coercion applies equally to the so-called white slave trade, in which the 'slaves' are generally free agents. Significantly,[1] a survey of 100 prostitutes revealed that married men constituted 70—80% of their clients. It is, therefore, possible to conclude that today prostitution is a necessary evil largely because of an unlightened social attitude resulting in a general lack of understanding of the true place of sex in marriage and in life.

3A.3. *Appendix*—We have, in an Appendix to this Report,[2] set out in detail the comparative position in other countries, and we need not reproduce in this chapter all that is contained in the Appendix.

---

[1] Chambers Encyclopaedia (1961), Vol. 11, page 259.

[2] See Appendix to this Report.

CHAPTER 4

DEFINITIONS

4.1. *Sections of the Act considered*--We now proceed to consider the Act section by section.

4.2. *Section* 2—Section 2 of the Act contains several definitions. The first of these is in clause (a), defining "brothel" as follows:—

> "(a) *Section* 2(a)—"*brothel*"—'brothel' includes any house, room or place or any portion of any house, room or place which is used for purposes of prostitution for the gain of another person or for the mutual gain of two or more prostitutes."

For properly appreciating this definition, it is desirable to refer to the common law.

4.3. *Position at common law*—In common law, a "brothel" is a place[1] where people of opposite sexes are allowed to resort for illicit intercourse, whether the women are common prostitutes or not[2]; and keeping a bawdy house[3] is a nuisance at common law (see 3 Co. Inst. 204) as well as a statutory offence (Sexual Offences Act, 1956, section 33). Indeed a statute over two hundred years old stipulates that any two local inhabitants may give notice of it to a constable of the parish who after taking certain steps, is bound to prosecute on pain of forfeiting £20 to each of them (Disorderly Houses Act, 1751, section 7). Besides, on conviction, each of them is entitled to receive on demand a reward of £10 from the overseers, who, if they fail to pay it, would forfeit double than sum, (Disorderly Houses Act, 1751, section 5). Moreover, a person licensed to sell liquor who knowingly permits his premises to be a brothel is liable to the forfeiture of his licence as well as to a fine, and the house must be closed.[4] So strict is the law on this point that it applies in this context the principle of absolute responsibility. Accordingly the knowledge of a servant in charge is imputed to the master,[5] and an absentee co-licensee is liable for the acts of his co-licensee to whom he has delegated responsibility for controlling the business.[6]

---

[1] Note "Criminal Law", (1959) Vol. 228 Law Times, page 136, 137.

[2] *Winter* v. *woolfe*, (1931) 1 K.B. 549.

[3] See also Chapter 3, para 3·11, *supra*.

[4] Licensing Act, 1953, section 140.

[5] *Allen* v. *Whitehead*, (1930) 1 K.B. 211.

[6] *Linnett* v. *Metropolitan Police Commissioner*, (1946) 1 All E.R. 380.

The law is not less technical towards property owners, for a block of flats inhabited by different women and used by them for prostitution has been condemned as a brothel;[1] though two flats in one building separately let to prostitution, it has been held do not constitute a brothel.[2] Generally, it is an offence for any lessor or landlord or his agent to let premises with the knowledge that any part thereof is to be used as a brothel, or to tolerates such user.[3] The same applies to a tenant or occupier who knowingly permits any part of his premises to be used as a brothel or for the purposes of habitual prostitution; while a conviction puts the lease or contract of tenancy in jeopardy.[4] Finally, notice from a person of credit to a landlord that his house is used as a brothel seems to be sufficient to make him liable, unless he forthwith takes effective steps to stop such user.

The definition in our Act is confined to prostitution, but the policy is substantially the same.

4.4. *Recommendation regarding 'brothel'*—We now consider the suggestions relevant to the definition. There is a suggestion[5] to add the word "conveyance" in the definition of 'brothel'.[6] The reason given is that difficulties have been experienced by police officers dealing with cases in which taxies are regularly used as a brothel for the purposes of prostitution. This situation may also arise in some places where boats may be used for similar purposes. It is also pointed out, that within the meaning of the Act, a 'public place'[7] includes a public conveyance.

We agree with the suggestion, as we think that the reasons given above are sound.

4.5. *Recommendation to amend definition of 'brothel'*-- We, therefore, recommend the following re-draft of section 2, clause (a) which defines the expression 'brothel':—

> "(a) 'brothel' includes any house, room, *conveyance* or place or any portion of any house, room, *conveyance* or place which is used for purposes of prostitution for the gain of another person or for the mutual gain of two or more prostitutes."

4.6. *Question of presumption to be drawn from common agency considered*—The Committee[8] made a recommendation for adding a presumption to the effect that when two or more prostitutes associate under a common agency or link, they do so for their mutual gain or for

---

[1] *Durose* v. *Wilson*, (1907) 96 L.T. Rep. 645.

[2] *Strath* v. *Foxon*, (1955) 3 All E.R. 398.

[3] Sexual Offences Act, 1956, section 34.

[4] Sexual Offences Act, 1956, section 35.

[5] Suggestion of the Central Bureau of Correctional Services.

[6] Para 4·2, *supra*.

[7] Section 2(*n*), 'public place'.

[8] Report of the Committee on amendments to the Suppression of Immoral Traffic Act, para 5·3.

the gain of another person. The object of the suggestion is to facilitate effective prosecution, by shifting the onus of proving to the contrary on the accused. The Committee also stated that the question whether such a presumption could be extended to *one* prostitute or not, may also be examined. The suggestion is relevant to the definition of 'brothel'[1] given in section 2(a).

We have carefully considered the suggestion. We do not, however, see the need for inserting any such presumption. It may be true that when two or more prostitutes associate under a common agency or link, it is more likely than not that they do so either for mutual gain or for the gain of a third person. But it appears to be unnecessary to insert presumptions on so many matters of detail in this Act, or, for that matter, in any other similar Act, unless practical difficulties, disclosed by the reported decisions or otherwise, necessitate the drawing of such presumptions. Moreover, section 114 of the Indian Evidence Act is wide enough to empower the court to draw a presumption, having regard to the various considerations mentioned in that section. A host of inferences are daily drawn by the court about various matters, too numerous to be mentioned here conveniently. The substantive law need not, in the absence of compelling reasons, be made replete with presumptions.

4.7. *Recommendation to insert definition of 'corrective institution'* -- We now come to a point which involves the addition of a new definition. We have, later in this Chapter,[2] discussed the question of revising the definition of 'protective home'. The scheme which we contemplate in this connection will be evident from that discussion. At this stage, we may mention that according to our scheme, the two kinds of institutions should be kept separate. In cases where protection is the primary need, the girl will be sent to a protective institution. Corrective institutions will be reserved for women who need corrective training, and who are criminals rather than victims. In order that this scheme may find a place in the legislative frame-work, a definition of "corrective institution" is needed.

We, therefore, recommend that the following definition of "corrective institution" should be inserted in section 2:—

Revised definition

> "(aa) 'corrective institution' means an institution, by whatever name called, in which women and girls, who are in need of correction, may be detained under this Act, being an institution established or licensed as such under section 21, and includes a shelter where female under trials may be kept in pursuance of this Act."

---

[1] Para 4·2, *supra*.

[2] See para 4·33, *infra* (Protective home).

4.8. *Section 2(b), 'girl'*—Section 2(b) defines "girl" as a female under the age of 21 years.

There is a suggestion that[1] there does not appear to be any rational justification, in the present stage of social development, in not *treating a girl who has completed the age of 18 years* as a woman. It has, therefore, been suggested that section 2(b) may be amended by defining "girl" as a female who has not completed the age of 18 years. This will require a consequential amendment of section 2(j), and section 2(j) may be amended to describe "woman" as a female who has completed the age of 18 years.

We have considered the suggestion carefully, but are not inclined to accept it, as girls between 18 and 21 years also require protection. We may also not that the distinction between "woman" and "girl" becomes material[2] only in sections 15(4), 16(1) and 17(1), which are confined to "girls". The other sections use both the expressions.

The question whether the age should be reduced to 18 years, as has been suggested, is one of policy. Before making the change, the Convention in pursuance of which the Act was passed also may have to be studied. Hence, we are of the view that the matter should be left to the Department.

There is no provision in the Act using *only* the expression "woman", except the definition of "woman". The provisions containing only the expression "girl" are quoted below:—

"15(4) The special police officer entering any premises under sub-section (1) shall be entitled to remove therefrom any girl, if in his opinion she is under the age of twenty-one years and is carrying on or is being made to carry on, or attempts are being made to make her carry on, prostitution."

"16(1) Where a magistrate has reason to believe, from information received from the police or otherwise, that a girl apparently under the age of twenty-one years, is living, or is carrying on, or is being made to carry on prostitution, in a brothel, he may direct the special police officer to enter such brothel, and to remove therefrom such girl and produce her before him."

"17(1) When the special police officer removing a girl under sub-section (4) of section 15 or rescuing a girld under sub-section (1) of section 16, fails to produce her immediately before the magistrate as required by sub-section (5) of section 15 or subsection (2) of section 16, he shall forthwith produce her before the nearest magistrate of any class, who shall pass such orders as he deems proper for her safe custody until she is produced before the appropriate magistrate."

---

[1] S. No. 46 (15th October, 1974) (suggestion of the Department of Social Welfare).

[2] See Appendix 2.

It may also be stated that when section 366A-B, I.P.C., was enacted by Act 20 of 1923, to give effect to certain Articles of the International Convention for the Suppression of Traffic in Women and Children and signed by various nations at Paris on May 4, 1910, a reservation was made. The material articles of the Convention ran as follows:—

"*Article* 1—Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, *a woman or girl under-age,* for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.

Article 2—Whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a *woman or girl over-age,* for immoral purposes, shall also be punished notwithstanding that the various acts constituting the offence may have been committed in different countries.

Article 3—The contracting parties whose legislation may not at present be sufficient to deal with offences contemplated by the two preceding Articles engage to take or to propose to their respective legislatures the necessary steps to punish these offences according to their gravity.[1]"

The Statement of Objects and Reasons for the Bill which led to the amendment Act runs as under:—

"The principles in this International Convention were endorsed in the International Convention regarding the Traffic in Women and Children which was adopted by the Second Assembly of the League of Nations. In Article I of this Convention it is provided that the High Contracting Parties, in the event of their not being already parties to the International Convention of May 4, 1910, shall transmit with the least possible delay their ratifications of, or adhesions to, that instrument in the manner laid down therein. *Further, the term "under-age" which did mean under* 20 *completed years of age, according to paragraph B of the final Protocol of the Convention of* 1910 *is now interpreted as meaning under* 21 *completed years of age by virtue of the provisions of Article* 5 of the International Convention, adopted by the second Assembly of the League of Nations.

"In view of the resolutions adopted by the Council of State on January 31, 1922, and by the Legislative Assembly on February 7, 1922, "the International Convention adopted by the Second Assembly of the League of Nations was signed at Geneva on behalf of the Government of India by His Majesty's Minister at Berne on March 28, 1922, with the following reservation:

---

[1] Gazette of India for 1922, Part V, page 343.

"Inid reserves the right of its discretion to *substitute the age of sixteen years* or any greater age that may be subsequently decided upon for the age limit prescribed in paragraph B of the final Protocol of the Convention of May 4, 1910, and in Article 5 of the present Convention.'"

It is not known whether a similar reservation was made in regard to the Convention of 1950.

4.9. *Section* 2(c)– *"Magistrate"* –The definition of "Magistrate" in clause (c) of section 2, is as follows:–

> "(c) "Magistrate" means a District Magistrate, a Sub-Divisional Magistrate, a Presidency Magistrate or a Magistrate of the first class specially empowered by the State Government by notification in the Official Gazette to exercise jurisdiction under this Act."

The terminology now adopted in the new Criminal Procedure Code[2] in respect of Magistrates in Presidency towns is 'Metropolitan Magistrates', which should, therefore, be substituted in this Act also. Several other amendments are also required[3].

4.10. *Suggestion to delete not accepted– Powers of Magistrates enumerated*—It has been suggested,[4] that section 2(c), which we have quoted above,[5] should be deleted.

The reason given is that the restriction is unnecessary. It creates difficulties in the matter of rescue work, searches and arrests.

The suggestion does not, unfortunately, take account of the detailed provision as to various powers of Magistrates. It appears to us that the matter will require examination with reference to each section in view of separation of judiciary.

The expression "Magistrate" occurs in the following sections of the Suppression of Immoral Traffic Act.

Section	Gist of the section
7(1)	Prostitution in or in the vicinity of public place—public place to be notified by District Magistrate.
11(4)	Trial for breach of the requirement to notify address by a previously convicted offender.
12(4)	Security for good behaviour from habitual offenders.
15(5)	Search without warrant.
16	Rescue of girl.
17	Intermediate custody of girls removed under section 15 or rescued under sectin 16.
18(1)(3) and (4)	Closure of brothels and eviction of offenders from premises.
19	Application for being kept in a protective home.
20(1) and (3)	Removal of prostitutes from any place.
22	Trials.

[1] Gazette of India for 1922, part V, page 343.
[2] See the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).
[3] Para 4·12, *infra*.
[4] Suggestion of the Central Bureau of Correctional Services.
[5] Para 4·9, *supra*.

4.11. *Recommendation as to various powers in view of separation* In view of separation of the judiciary from the executive, our recommendations with reference to each of the powers of Magistrates, as enumerated above, are as follows:—

(i) Power under section 7(1) is, at present, confined to "District Magistrate", and may continue in that form, not being a judicial power.

(ii) As regards the power under section 11(4), it pertains to trial, and should be confined to judicial Magistrates—i.e., Magistrates of the first class or Metropolitan Magistrates who would be Judicial Magistrates.

(iii) The power to require security under section 12(4) is analogous to the power under section 110, Cr.P.C. in 1898 and the corresponding provision in the new Code. In the new Cr.P.C., the power under the provision[1] corresponding to section 110 has been given to Magistrates of the first class, and it would be proper to give the power under section 12(4) also to a Magistrate of the first class, or Metropolitan Magistrates,—who would be judicial Magistrates.

(iv) As regards the power to make orders for custody under sections 15(5) read with section 17(1) and the power to issue orders for rescue of a girl under section 16, these are similar to the power under sections 100 and 552 of the Cr.P.C. 1898. In the new Criminal Procedure Code[2], powers under the corresponding provision are given to the District Magistrate and Sub-Divisional Magistrate (who are Executive Magistrates), as well as to Magistrates of the first class or Metropolitan Magistrates (who are judicial Magistrates). Powers under section 15(5) read with section 17 and powers under section 16 read with section 17 of the Suppression of Immoral Traffic Act may, therefore, also be given to the same Magistrates, i.e. concurrently to both judicial and executive Magistrates.

(iva) Powers under section 18 (closure of brothels and eviction from promises) may be given to Executive Magistrates, being somewhat analogouns[3] to the power under section 20. The powers may be given to District Magistrates and Sub-Divisional Magistrates.

(v) The reasoning applicable to section 16 applies[4] to powers under section 19 of the Act, relating to applications by women for being kept in a protective home. The power may, therefore, be given to both classes of Magistrates.

---

[1] Section 110, Criminal Procedure Code, 1974 (old section 110).
[2] Code of Criminal Procedure 1974, section 97-98 (old sections 100 and 552).
[3] See below as to powers under section 20.
[4] See above-recommendation relating to powers under section 15.

(vi) The power under section 20 is analogous to that under section 133, Cr.P.C., 1898 (prohibition of public nuisances). Under the new Criminal Procedure Code[1], the power under the corresponding provision is given to District Magistrates, Sub-Divisional Magistrates, and Executive Magistrates specially empowered by the State Government, and the power under section 20 may also be given to them.

(vii) Section 22 provides that "No court inferior to that of a Magistrate as defined in clause (c) of section 2 shall try an offence under section 3, section 5, section 6, section 7 or section 8." As this is a judicial power, the power should now be transferred to a Magistrate of the first class or a Metropolitan Magistrate—who are judicial Magistrates.

4.12. *Definition of "Magistrate" to be revised, and schedule of powers to be inserted*—We, therefore, recommend that the definition of "Magistrate" should be revised so as to give effect to our above recommendations. For carrying out the substance of our recommendation, several drafting devices are open. We think that the most suitable device would be to annex a schedule[2], listing the magistrates competent to exercise the powers under each section. The definition of "Magistrate" in section 2c will refer to this schedule[3]. The substantive section would, in general, merely speak of the "Magistrate", without qualifying words.[4]

4.13. *Recommendation as to section* 2(c)—So far as the definition of "Magistrate" in section 2(c) is concerned, it should be revised as under:—

"(c) 'Magistrate', means the Magistrate specified in the Schedule as competent to exercise the powers conferred by the section in which the expression occurs."

4.14. *Section 2(d)—'prescribed'*—Section 2(d), which defines the expression 'prescribed', needs no change.

4.15. *Section 2(e)—'prostitute'*—Section 2(e) defines a 'prostitute' as meaning "a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind". The observations made in the Report of the Committee was that the term should be defined more precisely and clearly, so as to check all possible avenues being used by the anti-social elements indulging in the vice. The recommendation of the Committee was that a proviso should be added to indicate that when a female offers her body for promiscuous sexual intercourse, it may be presumed that the act is motivated by the expectation of reward in form of money or kind. It is stated that the suggested provision "will make prosecution easier, by shifting the burden of proof to the accused."

---

[1] Code of Criminal Procedure, 1974, section 133 (old section 133).
[2] The definition of "Magistrate" will, then merely refere to the Schedule.
[3] See para. 4·13, *infra*.
[4] Section 7(1), 11(4), 12(4), 15(5), 16, 17, 18(1), 18(3), 18(4), 19, 20(1), 20(3), 22 to be amended wherever necessary for the above purpose.

We do not, however, think that it would be desirable to have the suggested presumption. Though discretionary, it is bound to be applied either in all cases or in none at all. There is no evidence that any serious difficulty has been experienced in proving the requirement *about hire*. If prostitution is carried on as a *business*,—with the continuity which a "business" implies,—such a presumption will certainly be drawn, even without an express provision. But where there is no element of business, it is not proper to draw a presumption. It is hardly necessary to add that our reluctance as to incorporating such a presumption does not mean that there is any sympathy with a woman indulging in promiscuity. The reluctance is based on the consideration of impropriety which we have just now mentioned. It is also based on an apprehension that such a presumption may be abused, and may unduly widen the present scope of the Act, and we are not inclined to accept the suggestion. We have already stated that at least for the present we are reluctant to recommend widening of the Act.

4.16. *Suggestion to add "indiscriminate lewdness" in the definition of prostitute*—Then, there is a suggestion[1] to re-draft section 2(e) as follows:—

> "prostitute" means a female who offers her body for *indiscriminate lewdness* for hire whether in money or in *kind offered immediately or otherwise.*"

The reason given for suggesting the above amendment is that difficulties are experienced in establishing actual sexual intercourse. It is stated that the word "promiscuous" makes it necessary to prove more than one such case which makes it still more difficult to establish that a woman is a "prostitute" before action under section 3 or section 4 can be taken. It also becomes difficult to prove that immediate payment of money has been made. Organised commercial vice develops ways of indirect payment. It is urged that the change suggested is on the lines of the Children Act of Bombay, and a U.S. judicial decision.[2] It is added that the proposed criterion of "indiscriminateness," would prove the case even when a single client happens to be involved. "Lewdness" may be established even when a woman is within closed doors with total strangers. At the same time, this definition would not affect a woman giving her favours to one man who is well-known to her, nor would it affect a woman who is promiscuous without reward in cash or kind. Thus, the suggested amendment will help he prosecution without enlarging the scope of the Act. A similar change for adding "lewdness" has been suggested also with reference to the definition of "prostitution".[3] We propose to deal with this point while discussing the definition of "prostitution".

---

[1] Suggestion of the Central Bureau of Correctional Services.

[2] *Kelly* v. *State*, 14 SO. 2nd 599 (cited in the suggestion).

[3] Section 2(*f*) Para 4·18, *infra*.

4.17. *Recommendation to delete section 2(e)*—It appears to us that the best course would be to link up the definition of "prostitute" with that of 'prostitution'. This will avoid the need for amending the one whenever the other is amended. Accordingly, we recommend[1] that, at the end of the definition of 'prostitution', the following words should be added—

> "and the expression 'prostitute' shall be construed accordingly".

This will take the place of the existing definition of "prostitute".

4.18. *Section 2(f)—'prostitution'*—Section 2(f) defines "prostitution" as meaning 'the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind. The Committee[2] recommended the insertion of a presumption in this clause also, to the effect that where a female offers her body for promiscuous sexual intercourse, it may be presumed that she does so with the expectation of a reward in form of money or kind. Our comments with reference to section 2(e)[3] apply to this suggestion of the Committee also.

There is another suggestion in which the following re-draft of clause (g) of section 2 has been suggested[4]:—

> " 'prostitution' means the act of a female offering her body for *indiscriminate lewdness for hire, whether in money or in kind offered immediately or otherwise, and includes* the indulgence of a male in such an offer."

The reason given in support of the suggestion is, that immediate payment (which is required by the present definition) or promiscuous intercourse, is difficult to prove. Hence, it should be provided that the payment may be offered immediately or otherwise. A fresh criterion, viz. that of the indulgence of the male, has also been proposed to be added. It is stated that logically, there can be no prostitution if there is merely an offer. Even in common parlance the term 'prostitution' signifies both the offer and the participation in the same, and involves the male as well as the female. This change will, it is stated, have a significant effect in helping the prosecution. At present, there may be circumstantial proof of indulgence in prostitution with the client on the spot, but the prosecution finds it difficult to establish such intention, if the woman involved has disappeared. This kind of circumstancial evidence, it is stated, is very necessary for the effective implementation of the Act.

---

[1] See recommendation as in section 2(*f*)-definition of 'prostitution', para 4·26 *infra*.

[2] Report of the Committee on amendments to the Suppression etc. Act, paragraph 5·3 Recommendation No. 3.

[3] See discussion as to section 2(*e*), para 4·15, *supra*.

[4] Suggestion of the Central Bureau of Correctional Services

4.19. *Change needed in definition of 'prostitution'*—Several points arise out of this suggestion.[1] The separate suggestion[2] to define the expression "purpose of prostitution", has also to be considered. Finally, it is also necessary to carry out what has been previously stated[3] regarding linking up the definition of "prostitute" and "prostitution". The various points are considered below, one by one.

4.20. *Suggestion to substitute "indiscriminate lewdness" not accepted*—First, the suggestion[4] that the words "indiscriminate lewdness" should be substituted in place of the words "promiscuous sexual intercourse", does not appear to be a sound one. We apprehend that the expression "lewdness" may prove to be too wide a test, in this context.

It would be of interest, in this connection, to trace the origin of the expression "indiscriminate lewdness". In England, causing or encouraging a woman to become a common prostitute is an offence under section 22(1) of the Sexual Offence Act, 1956. Under section 23(1) of the same Act, it is an offence for a person to procure a woman to become a common prostitute. Under section 30, it is an offence for a man knowingly to live wholly or in part on the earnings of prostitution. It has been held by the Court of Criminal Appeal[5] that the words "common prostitute" and "prostitution" are not confined to normal sexual intercourse. Mr. Justice Darling's judgment[6] of 1918, where "prostitution" was taken to mean the offering by a woman of her body for purposes amounting to common lewdness for payment, was, in substance, approved by the Court of Criminal Appeal, and it was pointed out that Darling J. might well have taken these words from the dictionary meaning—Shorter Oxford English Dictionary—whereunder the first meaning given to "prostitution" is the "offering of the body to indiscriminate lewdness for hire".

4.21. *Position in the U.S.A. as to "lewdness"*—In an American study of sexual behaviour and the law[7], the position as to prostitution in the U.S.A. has been briefly stated thus—

> "The sexual act committed by a prostitute is directly punishable under statutes (i) which prohibit 'the commission of prostitution' without other definition, (ii) which provides various broad legislation to reach such activities as 'indiscriminate sexual intercourse or any act of deviate sexual "'conduct for money', 'the offering or receiving of the body for sexual intercourse for hire or.....without hire', or (iii) other conduct which may or may not be limited to 'normal' heterosexual intercourse or to compensated intercourse. The terms 'lewdness' and 'assignation' are commonly used as alternatives to 'prostitu-

---

[1] Para 4·18, *supra*.
4·27 and 4·28 *infra*
[2] See discussion regarding section 2-New definition of "purposes of prostitution", para 4·27 and 4·28 *infra*.
[3] See discussion regarding section 2(e) definition of "prostitute", para 4·17, *supra*.
[4] Para 4·18, *supra*.
[5] *R.* v *Webb*, (1963) 3 All E.R. 177 (C.C.A.).
[6] *R.* b. *D. Munk*, (1918-1919) All E.R. (Re-print) 499 (Darling J.).
[7] Solvanko, Sexual Behaviour and the Law (1962), page 646.

tion', primarily to avoid the possibility of unduly restrictive judicial interpretation which might hold the term 'prostitution' inapplicable to what to a layman, would be a clear case of commercialised vice."

As we have already indicated[1], the word 'lewd' is vague. And, in view of its vagueness, we do not recommend its addition in the definition of 'prostitution'.

4.22. *Payment need not be immediate*—So far as the question of payment for prostitution is concerned, we agree that a clarification to the effect that payment for the intercourse need not be immediate, could be usefully made, for the reasons given by the Committee.[2]

4.23. *Indulgence of the male*—As regards indulgence of a male in prostitution,[3] the question of punishing it raises controversial questions as to what ought to be scope of the Act. In our view, it would not be correct to add such indulgence as a branch of 'prostitution'. The question whether the acquiescence of the male in the prostitution should be punished could, if desirable, be separately considered. But such conduct on the part of the male cannot be clubbed with "prostitution", and notwithstanding any evidentiary difficulties that may arise, it would not be appropriate to do so.

4.24. *Person hiring prostitute whether to be punished*—The question is—Should a person who hires a prostitute, be punished? In other words should the patron of a prostitute be punished? It must be pointed out that such an amendment would go much beyond the present scope of the Act, and mark a radical departure. What the Act punishes, is not "prostitution" in the abstract, but prostitution under certain circumstances. A girl who offers her body for indiscriminate sexual intercourse for hire, may be a prostitute, but, being a prostitute is not, in itself an offence.[4] The expression "prostitution" is defined for the purposes of the Act, but the penal sections do not punish prostitution *per se*.

Whatever view one may hold as to how far a particular society should put up with prostitution, and even if puritanism may impel a difficult to accept the proposition that the *law should punish it as a* particular society to regard prostitution as deserving condemnation, it is *crime on the part of the male patron.*

The trend of legislation—whether one may like it or not—is towards leaving out of the sphere of criminal law conduct which takes place between consenting adults in private. In any case, it is hardly appropriate to add to the law a new provision which will punish the male patron, and we do not recommend any such change.

---

[1] Para 4·18, *supra*.
[2] Para 4·20, *supra*.
[3] Para 4·18, *supra*.
[4] Chapter 3, *supra*.

4.25. *Definition of "prostitute" to be linked up with definiton of "prostitution"*—The definition of 'prostitute' should be linked up with that of "prostitution", as already recommended.[1]

4.26. *Recommendation to revise section 2(f)*—In the light of the above discussion, we recommend that the definition of "prostitution" should be revised as follows:—

> "(f) 'prostitution' means the act of a female offering her body for promiscuous sexual intercourse for hire, *whether in money or in kind, and whether offered immediately or otherwise, and the expression 'prostitute' shall be construed accordingly.*

4.27. *Section 2—new definition of 'purposes of prostitution'—suggestion considered but not accepted*—It has been suggested[2] that a new definition of the expression "purposes of prostitution", should be inserted as follows:—

> "Purposes of prostitution" includes activities and circumstances in furtherance of or ancillary to prostitution.

The reason given in support of the suggestion is that ordinarily, police officers investigating a case find only circumstantial evidence, and cannot establish either that a woman is a 'prostitute' as defined at present in the Act, or that an act of "prostitution" has been committed. The Act, it is stated, has used the expression "purposes of prostitution", in several places. If the expression is explained so as to cover such circumstantial evidence which implicates the accused, then it would help to establish cases against third parties.

4.28. *Change not recommended*—We have carefully considered the suggestion, but have ultimately come to the conclusion that it is not desirable to make the suggested amendment. Taking note of the difficulty said to have been felt,[3] we made an attempt to provide for such cases, but it appeared to us that it would create complications. The concept of "incidental" acts would be very vague. Moreover, since, even under the suggested amendment it would be necessary to establish a *connection* of the incidental acts with prostitution in the narrower sense, it seems that its practical utility would be almost nil. It is for these reasons that we are not recommending any such change.

4.29. *Section 2(g)—"protective home"—Recommendation to amend*—We now take up section 2(g), which defines a "protective home". The Committee[4] recommended that the definition of "protective home" should include an institution for the care and protection of rescued women and girls, by whatever name called, which is so declared. We agree that the clause may be amended to that effect in substance.

---

[1] See recommendation as to section 2(*e*), *supra*.
[2] Suggestion of the Central Bureau of Correctional Services.
[3] Para 4·27, *supra*.
[4] Report of the Committee on amendments to the Suppression etc. Act, para 5·4, Recommendation No. 9.

4.30. We may also note that the present definition is defective, inasmuch as it makes no reference to section 21, under which the establishment and licensing of protective homes is specifically regulated. The definition of "protective home" should refer to that section.

4.31. In one suggestion[1] relating to the definition of "protective home", the following re-draft of the definition has been suggested:—

> "Protective home" means an institution, by whatever name called, in which girls may be kept in pursuance of section 17."

The reason given in support of the suggested amendment is, that one of the most unsatisfactory features of this Act is that girls who are rescued under the Act are required to be kept in the same institutions in which common prostitutes convicted under the Act for various offences are to be kept. It is stated that even if the institutional arrangements are perfect enough to avoid contamination and to provide adequate training, it would be difficult to create the same confidence in the girl, if she is kept in the same institution as prostitutes. The "protective" homes should be entirely protective. These should be specialised training institutions, working for the rehabilitation of rescued girls. We are in broad agreement with this approach.

4.32. As regards under-trial females mentioned in the present definition of "protective home", it is urged in the same suggestion[2] that, on practical considerations, one has to be reconciled to the idea that the court would have to use the female wards of jails for keeping under-trials. If such wards are good enough for being used even for political and security prisoners and for all other types of female under-trials, then, there is no reason why they should be considered unsuitable for purposes of the Act.

We are not, however, inclined to accept this view. In our opinion, it is undesirable to keep together under-trials and girls rescued under the Act. Out of the former, some may be criminals, while out of the latter, most would be victims. In dealing with this problem, the character and category of rescued girls and the object of rescue should be borne in mind.

4.33. *Recommendation*—In view of what is stated above, it would be better to define the expression "protective home" as *excluding* a corrective institution. We, therefore, recommend the following revised definition of "protective home".

Revised definition

"(g) 'protective home' means an institution, by whatever name called, in which women and girls, *who are in need of care and protection,*

---

[1] Suggestion of the Central Bureau of Correctional Services.

[2] Para 4·31, *supra*.

may be kept under this Act, being an institution established or licensed *as such under section* 21, *but does not include*

(i) a shelter where female under-trials may be kept in pursuance of this Act, or

(ii) a corrective institution."

4.34. *Exclusion of 'corrective institution' from the definition of protective home*—The expression "corrective institution", should be reserved[1] for institutions where women and girls who are not rescued but are themselves guilty of offences should be kept. The basic object in keeping 'protective homes' separate from corrective institution is that the former are really meant for women and girls who are victims of circumstances, while the latter are meant for women who have reached a stage of criminality, though it is hoped that they can be reformed by suitable treatment. That is why we are excluding corrective institutions from protective homes[2].

4.35. *Section*[3] *(h)—"Public place"—No change recommended*—Section 2(h) provides that a 'public place' means any place intended for use by or accessible to the public, and includes any conveyance. A recommendation was made by the Committee[3] to the effect that the term 'public place' should include a thoroughfare. We do not, however, accept the suggestion, because there can hardly be any doubt that a thoroughfare is a "place accessible to the public", and would, therefore, fall within the present definition. We see no need for any amendment.

4.36. *Section*[3] *(i)*—Section 2(i) defines the expression "special police officer", and needs no change.

---

[1] Para 4·7, *supra*.

[2] Para 4·33, *supra*.

[3] Report of the Committee to recommend amendments to the Suppression etc. Act.

CHAPTER 5

OFFENCES

5.1. *Section* 3(1)—Having dealt with the definitions contained in the Act, we now proceed to take up the offences. Section 3(1) punishes the act of keeping or managing a brothel, or acting or assisting in the keeping or management of a brothel. The punishment for the offence is as follows:—

> (a) on first conviction—rigorous imprisonment for a term of not less than one year and not more than three years, and fine which may extend to two thousand rupees;
>
> (b) on second or subsequent conviction—rigorous imprisonment for not less than two years and not more than five years, and also fine which may extend to two thousand rupees.

The section needs no change.

5.2. *Section* 3(2)—Section 3(2), punishes a person who allows premises to be used as a brothel. Here also, no change is needed.

5.3. *Section* 3(3)—Under section 3(3), on conviction under section 3(2) in respect of any premises, any lease or agreement under which such premises have been leased out or are held or occupied at the time of commission of the offence shall become void. The sub-section needs no change.

5.4. *Section* 4—*Analysis*—That takes us to section 4, which punishes a person over 18 years who knowingly lives on the earnings of prostitution. This is one of the important sections of the Act. It consists of two sub-sections and a proviso. Sub-section (1) is the operative part of the section, and provides that the offence falling under it shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both. There are two ingredients of the offence prescribed by this sub-section. The first is that the offender must be a person above the age of 18 years, and the second that he must knowingly live, wholly or in part, on the earnings of prostitution of a woman or girl. When these two ingredients are proved, the offence is committed and the offender is liable to be punished as prescribed.

Sub-section (2) of section 4 lays down a rule of evidence under which a rebuttable presumption can be drawn by the Court that persons falling under clauses (a), (b) or (c) of sub-section (2) shall be presumed to be knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1); in other words, where any person falls under one or the other of the three categories prescribed by clause

(a), (b) and (c) of sub-section (2), a rebuttable presumption can be drawn against him that he satisfies the second essential ingredient of sub-section (1).

5.5. *Section* 4(2), *proviso*—Some minor points concerning section 4(2)(b) and section 4(2)(c) will be dealt with later.[1] But a question arises concerning the proviso to section 4(2). The proviso is quoted below:—

> "Provided that no such presumption shall be drawn in the case of a son or daughter of a prostitute, if the son or daughter is below the age of eighteen years."

The question to be considered is whether this proviso is needed at all.

5.6. *Character of circumstances giving rise to presumption*—It would be useful to refer to clause (a) of sub-section (2) to illustrate the character of circumstances from which the presumption under that sub-section can be drawn. Clause (a) provides that where a person is proved to be living with, or to be habitually in the company of, a prostitute, he shall be presumed to be knowingly living on the earnings of prostitution within the meaning of sub-section (1). It will thus be clear that mere proof of the fact that a person lives with, or is habitually in the company of, a prostitute raises the statutory rebuttable presumption that he is doing so knowingly to live on the earnings of prostitution.

5.7. *Essential link between sub-section* (1) *and sub-section* (2)—The scheme of section 4 shows that sub-section (2) has to be read alongwith sub-section (1); and when sub-section (2) refers to "any person", it must, on a fair construction of the two sub-sections read together, refer to any person over the age of 18 years. It is clear that, before the Court proceeds to deal with the evidence relevant under any of the three clauses (a), (b) or (c) of sub-section (2) for determining whether a presumption can be drawn against a person, it must be proved that he is a person above the age of 18 years, because it is only persons who are shown to be above the age of 18 years who can be prosecuted under section 4(1); and they can be convicted after the other essential ingredient of the offence—that they knowingly live on the earnings of prostitution—is also proved; it is in respect of this latter ingredient that a rule of evidence enabling the Court to draw a rebuttable presumption is prescribed by sub-section (2). Therefore, in our opinion, though sub-section (2) refers to "any person", it applies only to a person above the age of 18 years, because a person below the age of 18 years cannot fall within the mischief of section 4(1), and hence there can be no question of applying sub-section (2) of section 4 to such a person. The rebuttable presumption will be drawn only against a person who is above 18 years and who is, therefore, interested in rebutting that presumption.

5.8. *Proviso to section* 4(2) *superfluous*—If that be the true position, the question which needs to be considered is: does the proviso to section

[1] Para 5·14 and 5·15, *infra*.

4(2) serve any useful purpose? The proviso lays down that no "such presumption",—meaning the presumption which can be drawn under sub-section (2),—shall be drawn in the case of a son or daughter of a prostitute if the son or daughter is below the age of eighteen years. The difficulty in accepting the view that this proviso serves any purpose is that cases covered by the proviso cannot fall under section 4(1), and there can, therefore, be no question of considering whether such a person knowingly lives wholly or in part on the earnings of prostitution. We are inclined to think that, in enacting the proviso, this aspect of the matter has apparently not been properly appreciated by the legislature.

5.9. It is possible that a person prosecuted under section 4(1) may plead that he is below the age of 18 years and, in such a case, the Court will have to try, as a preliminary issue, the question about the age of the alleged offender, whether the alleged offender is a son or daughter of a prostitute or any other person living with her; and it is only if it is found that the said person is above the age of 18 years that the stage to require the prosecution to prove that he lives on the earnings of prostitution will be reached. At this stage, sub-section (2) will step in; and, if the case is shown to fall under any of the three clauses (a), (b) or (c) of sub-section (2), a rebuttable presumption will be drawn against that person and he will be required to lead evidence in rebuttal.

It must be borne in mind that the order in which the two ingredients of the offence are mentioned indicates the logical sequence of the issues which call for decision while applying section 4(1). If that be the true position, it would follow that the proviso to section 4(2) really serves no purpose. It may be that the proviso has been added as a matter of abundant caution; but, in view of our conclusion that it is superfluous, we recommend that this proviso should be deleted.

5.10. *Possible arguments considered*—It may be argued that though, on a fair and reasonable construction, sub-section (2) of section 4 applies only to persons above the age of 18 years, the proviso might have been deliberately inserted to make an express provision limited to the cases of sons and daughters of prostitutes, in order to emphasise the fact that such sons or daughters should not be exposed to the risk of moral stigma by being prosecuted under section 4(1) even though they are below 18 years. As we have indicateed[1] unless the prosecution acts inadvertently or deliberately, a person who is below the age of 18 years, including a son or daughter below that age, cannot be prosecuted under section 4(1). In fact, when a person is charged under section 4(1), the relevant facts pertaining to the two ingredients prescribed by that subsection,[2] will have to be specifically alleged, and that means that the prosecution will have to state that the accused is above the age of 18, and lives knowingly on the earnings of prostiuttion. Therefore, the suggestion that, though the proviso may apparently be unnecessary and superfluous, the legislature might have intended to emphasise the special case of sons

[1] See paragraph 5·9, *supra*.

[2] Para 5·7, *supra*.

or daughters of the prostitute, does not appear to us to justify its retention. The possibility that a son or daughter of a prostitute below 18 years may be inadvertently or deliberately exposed to the stigma of being prosecuted under section 4(1) cannot be avoided by attempting to strength the plain provision of sub-section 4(1) by adding the proviso in question.

5.11. *Question of increase in the age under section* 4(2) *proviso*—There is another incidental question which may arise out of the proviso —namely, whether, in regard to a son or daughter of a prostitute, a specific provision should be made that no presumption should be drawn against him or her if he or she is shown to be below 21 years of age. It is urged in support of this view that a son or daughter of a prostitute, who may be living with the mother, should be given additional protection in view of the fact that he or she would inevitably have to stay with the mother, and it would not be unfair or unreasonable to assume that he or she continues to be immature until he or she completes 21 years of age, because, normally, a boy or a girl in that position may not be mature at the age of 18. *Prima facie*, there is some force in this view; but, on the other hand, if the argument of immaturity is regarded as relevant, then, its application cannot be reasonably excluded even in regard to other relatives of the prostitute who are below 21, because, even in their cases, it may, with equal justification, be urged that they are living with the prostitute as a matter of economic necessity and because of near relationship (for instance, sister, nephew, niece, first cousin), and their immaturity upto the age of 21 should also afford them a shield of protection.

5.12. *Recommendation to delete the proviso to section* 4(2)—We have carefully considered the pros and cons of this problem, and we are satisfied that the acceptance of the suggestion[1] would, in a sense, lead to its extension to all persons staying with a prostitute who are below 21, and that would, in effect, amount to a substantial amendment of section 4(1). In our opinion, the adoption of such a course would not be either expedient or justified. Our recommendation, therefore, is that the proviso to section 4(2) should be deleted.

5.13. *Recommendation to amend section* 4(2), *main paragraph*—Having dealt with the controversy created by the proviso to section 4(2), we would also record our view that it is desirable to avoid all future debate as to the scope of section 4(2). To avoid further controversy, therefore, we recommend that in section 4(2), opening line, after the words "any person", the words "over the age of eighteen years" should be inserted.

5.14. *Section* 4(2)(*b*)—We now resume consideration of the main paragraph of section 4(2)(b). With reference to section 4(2)(b), it has been suggested[2] that the words "the movements of" should be removed. The

[1] Para 5.11, *supra*.
[2] Suggestion of the Central Bureau of Correctional Services.

reason given in support of the suggestion is that there is no street-walking in this country. The existing provision, it is stated, is practically meaningless. The proposed amendment will bring, under the purview of law, devious method of control, direction, and influence exercised by organised commercial vice over prostitutes or over women under their sway, and will make the purposes of the Act more effective. We do not, however, accept the suggestion, as, in our view, the word "movement" is wide enough to serve the purpose. Moreover, pimps are covered by existing section 4(2)(c)[1]. No change is, therefore recommended.

5.15. *Section* 4(2)(c)—As to section 4(2)(c), it has been suggested[2] that the words "on behalf of a prostitute" should be replaced by the words "for purposes of prostitution", and the sub-clause may be revised to read—

"to be acting as a tout or pimp for purposes of prostitution".

5.16. The reason given to support the suggestion is that it is not necessary to relate a tout or pimp to one particular prostitute. He may be acting for a large number of them, and his activities may often take the shape of maintaining registers, or offering membership of certain type of clubs, and other activities for the purposes of prostitution. We are, however, of the view that the suggested amendment is unnecessary, because the word "prostitute" is not, in our opinion, confined to the singular.

5.17. *Section* 4(2)—*how to be revised*—In the light of the above discussion, we recommend that section 4(2) should be revised as follows:—

"(2) Where any person *over the age of eighteen years is proved*—

(a) to be living with, or to be habitually in the company of, a prostitute; or

(b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or

(c) to be acting as a tout or pimp "on behalf of a prostitute,

it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1)."

* * *

(Proviso omitted)

---

[1] Para 5·15, *infra*.

[2] Suggestion of the Central Bureau of Correctional Services.

5.18. *Section* 5(1) *and section* 5(2)—Under section 5(1), procuring, inducing or taking a woman or girl for prostitution is punishable with the specified period of imprisonment and the specified amount of fine. It needs no change. Section 5(2) deals with subsequent conviction and needs no change.

5.19. *Section* 5(3)—Section 5(3) provides that an offence under section 5(1) or 5(2) shall be triable in the place from which the woman or girl is procured, induced, etc. or the place to which she may have gone as a result of the inducement. It needs no change.

5.20. *Section* 5—*Suggestion to add 'purchase or sale of girls'*—It has been suggested[1], that a new sub-clause should be added in section 5 as follows—

> "purchases, sells or aids or abets in the purchase or sale of a woman or a girl."

The reason given in support of the suggestion is that there have been cases noticed in which the purchase and sale of adult girls could not be prevented, as the "existing provisions of the law" relate either *to minors or sale for purposes of slavery*. Presumably, sections 372 and 373 of the Indian Penal Code are "the existing provisions of the law" which the suggestion has in mind.

5.21. *Recommendation to amend sections* 372, 373, *Penal Code*—We have carefully considered the suggestion. We agree with the principle of the suggestion. In our view, however, it would be more appropriate to amend those sections of the Penal Code, as the subject matter of mere purchase of girls or woman falls outside the Suppression of Immoral Traffic Act—except where the purchase is for prostitution. In this connection, we may refer to two sections of the Penal Code, dealing with selling and buying minors for the purposes of prostitution, etc.—sections 372 and 373. A person who sells, lets to hire, or otherwise disposes of any person *under the age of* 18 *years* with intent that such person shall at any age be employed for the purposes of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose or with the knowledge that such person will be so employed, is punishable under section 372. Buying such a person is punishable under section 373.

The material part of section 372 of the Indian Penal Code is quoted below:—

> "372. Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purposes of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

[1] Suggestion of the Central Bureau of Correctional Services.

The First Explanation to the section provides as follows:—

> "*Explanation* 1—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution."

Section 373 makes similar provisions for the person who buys etc. minors for purpose of prostitution etc.

In order to achieve the object, it will be necessary to amend sections 372 and 373 of the Indian Penal Code, so as to delete the words "under the age of eighteen years" (and to make consequential changes), in sections 372 and 373. We recommend accordingly[1]

5.21. *Amendment of section 372 appropriate*—We may state here that an amendment of sections 372-373 on the lines suggested above would not be inappropriate. No doubt, at present, under section 372, it is only the sale, etc. of a person under the age of 18 years for the specified purpose which is punishable. In fact, as originally enacted, section 372 prescribed the age limit of 16 years and it was in 1924 that, by an amendment, the age was raised to 18 years. The person under the age of 18 years may be married or unmarried[2]. Normally, the sale or letting to hire or other disposition of a person, as contemplated by the section, will be difficult in the case of a person above the age of 18 years, since he would be expected to resist the disposition effectively. Nevertheless, there is no reason why, if such an act is committed in respect of an adult, it should not be punishable. Sections 372 and 373 are beneficial provisions, and we see no reason why the scope of such mercenary crimes should be limited to acts in respect of minors.

5.21A. It has been pointed out that sections 372 and 373 were originally enacted to deal with "trafficking in innocence"[3]. It has also been stated[4] that these sections protect female minors against their guardians and third parties in respect of acts of disposal for a life of prostitution. These propositions correctly analyse the present section; but they do not, in our view, militate against the extension of these sections to adults, if the kind of control envisaged by the sections is, in practice, found to have been exercised over adults.

It may be noted that the sections of the Penal Code relating to slavery are not confined to minors.[5]

---

[1] To be carried out under section 372-373, I.P.C.

[2] *Crown* v. *Kammu*, (1879) Punjab Record No. 12 (Criminal) 34, 35.

[3] *Dowlat Bee* v. *Sheikh Ali*; 5 Madras High Court Reports 473.

[4] *Venku* v. *Mahalinga*, I.L.R. 11 Madras 393, 402.

[5] Sections 370 and 371, Indian Penal Code.

5.22. *Section* 6(1) *and section* 6(2)—Section 6(1) punishes any person who detains any woman or girl, whether with or without her consent,—

(a) in any brothel, or

(b) in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband.

The offender is punishable, on first conviction, with rigorous imprisonment for a term of not less than one year and not more than two years, and also with fine which may extend to two thousand rupees. It needs no change.

Under sub-section (2), on a second or subsequent conviction for an offence under this section, a person shall be punishable with rigorous imprisonment for a term of not less than two years and not more than five years, and also with fine which may extend to two thousand rupees. It needs no change.

5.23. *Section* 6(3)—Under sub-section (3) of section 6, a person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,

(a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or

(b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

It needs no change.

5.24. *Section* 6(4)—Sub-section (4) of section 6 provides that notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.

It needs no change.

5.25. *Section* 7(1) *–Verbal change recommended*—Under section 7(1), any woman or girl who carries on prostitution and the person with whom such prostitution is carried on, in any premises which are within a distance of two hundred *yards* of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the

Commissioner of Police or District Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

Section 7(1)—Under section 7 we may refer a suggestion[1] providing sterner punishment in the case of "the male partner". A punishment of imprisonment upto one year and a fine upto Rs. 1,000 is suggested in respect of the male partner for the first offence. For the second and subsequent convictions, the imprisonment may be upto 2 years, and the fine amount may be upto Rs. 2,000.

We have found ourselves unable to accept the suggestion. No reasons have been given for the suggestion. Moreover, the suggestions for punishing the male with a higher punishment than the prostitute misses the main object of the section,—preventing prostitution near specified places. The prostitute is as much guilty as the male partner.

Only a verbal "change" is required in this sub-section, namely, in place of the words "yards", the word "meters" should be substituted. We recommend accordingly.

5.26. *Suggestion regarding court to consider probation considered*—It has been suggested[2] with reference to section 7 that a provision should be inserted to the effect that the court by which the person is found guilty shall not sentence her to imprisonment unless it is satisfied that, having regard to the circumstances of the case (including the nature of the offence and the character of the offender), it would not be desirable to deal with her under section 3 or section 4 of the Probation of Offenders Act, 1958 or under section 10 of this Act; and if the court passes any sentence of imprisonment on the offender, it shall record reasons for doing so. Further, it should be provided that for the purpose of satisfying itself whether it would not be desirable to deal with an offender under section 3 or section 4 of the Probation of Offenders Act or under section 10 of this Act, the court shall call for a report from the Probation Officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender. The object is to introduce the probation method.

5.27. *Change recommended*—We are of the view that the suggestion should be accepted in substance, as introducing a salutary principle.

5.28. *Amendment of section 10 recommended*—We are recommending suitable amendment of section 10 for the above purpose.[3]

5.29. *Section* 7(2)—Under section 7(2), any person who—

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remian in such place; or

---

[1] S.No. 46—Suggestion of the Department of Social Welfare.
[2] Suggestion of the Central Bureau of Correctional Services.
[3] See recommendation as to section 10, *infra*.

(b) being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution or

(c) being the owner, lessor or landlord of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same; or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use,

is punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine which may extend to two hundred rupees.

5.30. *Suggestion considered*—There is a suggestion[1] to make the following change in section 7(2), clause (a):—

> "being the keeper of any public place knowingly permits *a woman or a girl* to resort to or remain in such a place *for* purposes of prostitution."

It has been stated that a keeper of a public place may take the plea that he does not know that the woman is a "prostitute" as defined in the Act. The purposes of the Act can, thus, be defeated. Hence the need for amendment.

We do not, however, accept the suggested amendment, as it will not solve the difficulty referred to above. The principal requirement of "purposes of prostitution" will still have to be proved, and the proposed amendment will be of no use in that respect.

5.31. *Section* 7(2)—*Another suggestion considered*—As regards section 7(2)(c), the following re-draft has been suggested[2]:—

> "(c).....may be used for the purposes of prostitution."

It has been stated that the proposed change is necessary, as it may be difficult to prove actual prostitution within the very premises. A place used for operating a call-girl system should (it is stated) also be brought within the scope of this Act. The suggested change however, becomes unnecessary, in view of the wide definition of "prostitution", which is separately recommended by us.

5.32. *Section* 8—Section 8 reads as follows:—

> "8. Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not—

---

[1] Suggestion of the Central Bureau of Correctional Services.

[2] Suggestion of the Central Bureau of Correctional Services.

[3] See discussion as to section 2(*f*) -"prostitution".

(a) by words, gestures, wilful exposure of her person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution or

(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution; shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees."

5.33. *Section 8—Definition of "solicit" not favoured*—The Committee[1] made a recommendation that the expression 'solicits'[2] in section 8 should be defined, so as to determine the action precisely. But we do not think that a definition of this expression would be an improvement, and we do not recommend any such amendment of the Act.

5.34. *Section 8—Punishment*—It has been suggested,[3] as regads the punishment under section 8 that—

(a) the offence should be punishable with imprisonment for a term which may extend to six months (as at present);

(b) but it may be provided that the Court by which the person is found guilty shall not sentence her to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with the offender otherwise;

(c) for the purpose of satisfying itself whether it would not be desirable to deal with the offender under section 3 or section 4 of the Probation of Offenders Act or under section 10 of this Act, the Court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental conditions of the offender.

The reason given for the suggestion is, that both fine and imprisonment are totally unsatisfactory methods for dealing with such offences. The satisfactory methods are probation with its diverse techniques, and corrective training over a period of 2 to 5 years with a provision for release on licence and supervision and after care.

---

[1] Report of the Committee on amendments to the Suppression Act, para 5·3.

[2] Para 5·32 *supra*.

[3] Suggestion of the Central Bureau of Correctional Services.

The suggestion may be accepted in principle, as a progressive one, in respect of first conviction.

5.35. *Amendment of section* 10—We are recommending suitable amendment[1] of section 10, for the above purpose.

5.36. *Section 9—Amendment recommended*—We now come to section 9, which reads—

> "9. (1) Any person who, having the custody, charge or care of any woman or girl, causes or aids or abets the seduction for prostitution of that woman or girl shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years, and also with fine which may extend to one thousand rupees."
>
> (2) In the event of a second or subsequent conviction of an offence under this section a person shall be punishable with imprisonment which may extent to five years and also with a fine which may extend to one thousand rupees."

It has been suggested[2] that in section 9, after the words "having the custody, charge or care of" the words "or a position of authority over .....", be added. The phrase proposed to be added is considered to be a modern need in legislation of this nature, as employers or their agents exercise immoral influence and induce girls to participate in organised commercial vice occasionally. With the provision as it exists, a very large number of offenders are fined. They have to work harder to pay the fine, and the remedy defeats the purpose. "A tolerated system of prostitution with the State realising revenue from the same through fines comes into existence." It is stated that such a development should not be allowed, and we should provide for a scientific correctional approach.

5.37. *Recommendation to amend section* 9(1)—The suggestion is worth acceptance, and sound in principle. We, therefore, recommend that section 9(1) should be revised as follows:—

> "9(1) If any person having the custody, charge or care of any woman or girl, or *standing in a position of authority over any woman or girl*, causes or aids or abets the seduction for prostitution of that woman or girl, he shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years, and also with fine which may extent to one thousand rupees."

5.38. *Section* 10—Section 10 is an important section, and reads as follows:

> "10(1)(a) A person convicted for the first time of any offence under sub-section (2) of section 3, or under section 4, section 5, section 7 or section 8 may, having regard to his age, character,

---

[1] See redraft of section 10, *infra*.

[2] Suggestion of the Central Bureau of Correctional Services.

antecedents and the circumstances in which the offence was committed, be released by the court before which he is convicted on probation of good conduct in the manner provided in sub-section (1) of section 562 of the Code of Criminal Procedure, 1898.

(b) A person convicted for the first time of any offence under section 7 or section 8 may, having regard to his age, character, antecedents and the circumstances in which the offence was committed, also be released with admonition in the manner provided for in sub-section (1A) of section 562 of the Code of Criminal Procedure, 1898.

(c) The provisions of sub-section (2), sub-section (3) and sub-section (4) of section 562 and section 563 and section 564 of the Code of Criminal Procedure, 1898, shall apply to cases referred to in clause (a) and clause (b).

(2) Where a woman or girl is convicted of any offence under section 7 or section 8 and is not released under clause (a) of sub-section (1) on probation of good conduct or under clause (b) of that sub-section with admonition, the court convicting the woman or girl may, having regard to the age, character, antecedents of the woman or girl and the circumstances in which the offence was committed, pass in lieu of the sentence of imprisonment or fine, a sentence of detention in a protective home for a period of not less than two years and not more than five years.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, or any other law for the time being in force, no person convicted under sub-section (1) of section 3 or under section 6 or section 9 shall be released on probation or with admonition."

5.39. *Section 10—Analysis*—On analysis it will be found that section 10 contains two types of provisions[1] applicable to the various offences:

(1) Probation;

(2) Detention in a protective home.

The provisions are spread over a number of sub-sections. The manner in which the section is drafted, does not already bring out the effect of the section on each type of offence. The following analysis has, therefore, been prepared to facilitate a clear understanding:—

Section 3(1) Keeping a brothel	No probation—Section 10(3)
Section 3(2) Allowing premises to be used as a brothel	Probation Section 10(1)(a)
Section 4 Living on the earnings of prostitution	Probation Section 10(1)(a)

[1] Para 5.38, *supra*.

Section 5	Probation
Procuring, inducing or taking woman or girl for prostitution ..	Section 10(1)(*a*)
Section 6	No probation
Detaining a woman or girl in premises where prostitution is carried on	Section 10(3)
Section 7	Probation
Prostitution in or in vicinity of public places	Section 10(1)(*a*) Admonition Section 10(1)(*b*).
Section 8	Probation
Seducing or soliciting for purpose of prostitution	Section 10(1)(*a*) Admonition Section 10(1)(*b*)
Section 9	No probation
Seduction of woman or girl in custody (for prostitution)	Section 10(3).

5.40. *Suggestion for revising section* 10 *considered*—The provision prohibiting probation—found in section 10(3),—raises an important question arising from a suggestion. The suggestion[1] is that though the offences for which probation is disallowed under the Act—e.g. keeping a brothel [section 3(1)] or detaining a girl for prostitution [section 6] or seduction of a girl in custody for prostitution [section 9],—are vicious enough, they could at times, be the result of an ill-considered or ill-bred mind rather than of a well-planned criminal career, and it is desirable that a categorical denial of probation should not find a place in the law.

5.41. *Distinction between "protective home" and "corrective" institution*—That suggestion has also dealt with one other aspect of the matter.[2] We have referred earlier[3] to the suggestion for making a distinction between "protective homes" and "corrective" institutions. Carrying the same approach further, the suggestion now is that the court should, under section 10, have a discretion to send the convicted person to a corrective institution. It is stated that the wording used in the definition —section 2(g)(ii)—for "corrective institutions" is the same as is used normally for Borstal institutions. Borstal institutions are meant not for first offenders or for those who show minor deviant traits, but are intended for those who appear to be taking to life of crime, having already committed two to three offences. In the existing provisions, "corrective institution" is supposed to be a step towards leniency. It has been suggested that such an institution really conform to the standards of Borstal institutions, and seek to train, re-educate and re-adjust the personalities of those who are *seriously disturbed or are disorderly.*

The scheme set forth in the suggestion, therefore, is that ordinarily, the court should—

(i) admonish the person in case of first offence;

(ii) try extra-mural probation, in case a second offence;

[1] Suggestion of the Central Bureau of Correctional Services.

[2] Suggestion of the Central Bureau of Correctional Services.

[3] See discussion relating to section 2(*g*), definition of "protective home".

(iii) order probation with residential requirements (institutionalised probation) in case of a third offence; and

(iv) order corrective training thereafter.

Imprisonment may be used, along with binding down orders under section 12, when the person convicted appears to be incorrigible after receiving corrective training, and supervision, and after care under the same.

Further, the extra-mural probation mentioned above may include compulsory attendance and counselling and guidance services, as well as requirements for joining educational or training institutions or subjecting oneself to medical treatment. The institutionalised probation mentioned above may include Special Homes and Hostels, where vocational as well as social rehabilitation may be attempted by professionally trained persons in small home—like atmosphere affording personal guidance and counselling. All these can be arranged under the Probation of Offenders Act, 1958.

We appreciate the spirit underlying the suggesaion, but it raises several important issues and we proceed to consider the relevant aspects in detail.

5.42. *Connected provisions of Probation Act*—We may, at the outset, note that the *power of the court* to release a person *on probation of good conduct* is now provided for in section 4 of the Probation of Offenders Act, 1958. As regards persons under 21 years of age, section 6 of that Act *requires* the court to release the offender on probation, except in certain cases. Keeping these two provisions of the Probation Act in mind, we may refer to the connected provisions in section 10(1)(a) of the Suppression of Immoral Traffic Act, which relates to the same topic (release on *probation*) as is dealt with in sections 4 and 6 of the Probation Act.

The power of the court to release *on admonition* is now provided for in section 3 of the Probation of Offenders Act. Section 10(1)(b) of the Suppression of Immoral Traffic Act relates to the same topics.

Section 10(1)(c) of the Suppression Act is connected with section 10(1)(a) and (b).

It would be convenient if the section in the Suppression of Immoral Traffic Act makes a reference to the provisions in the Probation of Offenders Act.[1]

5.43. *Amendment of section* 10(1) *to exclude probation for certain offences*—From section 10(1), we propose to remove offences under section 3(2), section 4 and section 5. These are serious offences, not suitable for probation. We propose to add them in section 10(3), which prohibits probation.[2]

---

[1] See redraft in para 5·50, *infra*.

[2] See recommendation as to section 10(3) Para 5·48, *infra*.

5.44. *Section* 10(1), *Suppression Act to be amended and section* 18, *Probation Act, also to be amended*—We considered a suggestion to the effect that section 10(1) should be deleted, in view of the over-lapping between the Probation of Offenders Act and section 10(1). But the suggestion cannot be accepted for reasons which we shall presently state. In this connection, section 18 of the Probation of Offenders Act was also referred to. Section 18 of the Probation of Offenders Act, 1958 (so far as is material), provides as follows:

> "Nothing in this Act shall affect the povisions of..... the Suppression of Immoral Traffic in Women and Girls Act, 1956 .....".

We have come to the conclusion that section 10(1) of the Suppression of Immoral Traffic Act should be retained, but the section should be made into a self-contained provision. After this change, section 18 of the Probation of Offenders Act should be amended, so as to delete the reference to the Suppression of Immoral Traffic Act, as it will become confusing.[1]

5.45. *Reference to new Code to be substituted*—It is also necessary to substitute reference to the new Code of Criminal Procedure, 1973 and the Probation of Offenders Act, 1958 in section 10(1)(a), (b) and (c), in place of the portion referring to the Code of Criminal Procedure, 1898. Incidentally, we may state that the reference to the Code is now required only for areas where the Probation of Offenders Act is not in force.

5.46. *Points summarised*—The net result of the points made above under section 10(1) is that a person convicted for the first time of any offence under section 7 or section 8, may, having regard to his age, character, antecedents and the circumstances in which the offence was committed, be released by the court before which he is convicted with admonition or on probation of good conduct—

> (a) in the manner provided in the Probation of Offenders Act, 1958, if the said Act extends to the State;
>
> (b) in the manner provided in section 360 of the Code of Criminal Procedure, 1974, if the said Act does not extend to the State.

5.47. *Section* 10(2) *to be amended*—Section 10(2) of the Suppression of Immoral Traffic Act provides for detention in a protective home.[2] in respect of persons convicted under sections 7 and 8. In place thereof, we propose that detention in a corrective institution should be provided for[3], since we are of the view that for the offences referred to in section

[1] Section 18, Probation of Offenders Act, 1958, to be amended, so as to remove reference to the Suppression Act.

[2] Para 5•29, *supra*.

[3] See para 5·50, *infra* (proposed new s. 10A).

10(2), the proper institution is a corrective institution where such persons are not released on probation etc. We recommend the insertion of section 10A for the purpose.

5.48. *Section* 10(3) *to be widened*—Section 10(3) prohibits release on probation or with admonition for certain offences, i.e. offences under sections 3(1), 6 and 9. According to the scheme which we contemplate[1], only offences under sections 7 and 8 are suitable for probation, and, consequentially, it is necessary to amplify section 10(3) so as to prohibit release on probation or with admonition for all offences[2] except those under sections 7 and 8.

5.49. *Reasons to be recorded for not granting probation—section* 10 *to be amended*—We consider it desirable to insert a provision that where in any case the court could have dealt with a convicted person by ordering probation, but has not done so, it shall record in its judgment the special reasons for not having done so.[3] This is in regard to the first conviction for offences under sections 7 and 8. Section 10 is the appropriate place for such a provision, and we recommend that it should be amended accordingly.

5.50. *Recommendation as to section* 10 *and to insert s.* 10*A*—In the light of the above discussion, we recommend the following re-draft of section 10, and we also recommend that new section[4]—section 10A—should be inserted, as under:—

Revised Section 10

10. [*Existing section* 10(1)(*a*)(*b*) *in part, modified*]—(1) A person convicted for the first time of any offence under.....section 7 or section 8 may, having regard to his age, character, antecedents and the circumstances in which the offence was committed, be released by the court before which he is convicted on probation of good conduct—

(a) *in the manner provided in section* 4 *of the Probation of Offenders Act,* 1958 *(hereinafter referred to as the "said Act"), if the said Act extends to the State;*

(b) *in the manner provided in sub-section* (1) *of section* 360 *of the Code of Criminal Procedure,* 1974, *if the said Act does not extend to the State.*

(1A) [*Existing section* 10(1)(*a*) *and* (*b*) *in part, modified*]—A person convicted for the first time of an offence under section 7 or section 8 may, having regard to his age, character, antecedents and the circumstances in which the offence was committed, also be released with admonition—

"(a) *in the manner provided in section* 3 *of the said Act, if the said Act extends to the State;*

---

[1] *c.f.* our recommendation as to section 10(1), para 5·43, *supra.*
[2] For the suggested re-draft of sections 10 and 10A, see para 5·50, *infra.*
[3] *c.f.* section, 361, Code of Criminal Procedure, 1974.
[4] Para 5·47, *supra.*

(b) *in the manner provided in sub-section* (2) *of section* 360 *of the Code of Criminal Procedure*, 1974, *if the said Act does not extend to the State.*

Explanation: *In this section, "State" includes a part of a State.*

(1B) *The provisions of sections* 5 *to* 17 *of the said Act (both inclusive) shall apply to the cases referred to in clause* (*a*) *of sub-section* (1) *and clause* (*a*) *of sub-section* (1*A*).

(1C) [*Existing section* 10(1)(*c*), *modified*]—The provisions of *sub-sections* (2) *to* (10) *of section* 360 *of the Code of Criminal Procedure*, 1974, shall apply to the *cases referred to in* clause (b) of *sub-section* (1) *and clause* (*b*) *of sub-section* (1*A*).

(2) [*Existing section* 10(3), *modified*] –Notwithstanding anything contained in the Code of Criminal Pocedure, 1974, or any other law for the time being in force, no person convicted under sub-section (1) or (2) of section 3 or *under section* 4 *or section* 5 or section 6 or section 9 shall be released on probation or with admonition.

(3) (New) *The Court by which the woman or girl is found guilty shall, on first conviction under section* 7 *or section* 8, *deal with her under this section, and shall not sentence her to imprisonment unless the Court is satisfied that, having regard to the circumstances of the case, including the nature of the offence and "the character of the offender it would not be desirable so to deal with her; and if the court passes any sentence of imprisonment on the offender on first conviction, it shall record its reasons for doing so.*

(4) (New) *For the purpose of satisfying itself whether it would not be desirable to deal with such woman or girl under this section, the court shall call for a report from the Probation Officer appointed under the said Act, and shall consider his report, if any, and any other information available to it relating to the character and physical and mental condition of the offender."*

Section 10*A* (*New*)

"10*A*. [*Section* 10(2) modified] (1) Where—

(a) a *female offender* is found guilty of an offence under section 7 or section 8, and is not released under sub-section (1) or (1A) of section 10; and

(b) *the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention* for such term and such instruction and *discipline as are conducive to her correction,*

it shall be lawful for the court to pass, in lieu of a sentence of imprisonment an order for detention in *"a corrective institution*[1] *established*

[1] As to corrective institution, see section 21 as proposed to be amended.

under this Act, for such term, not being less than two years and not being more than five years, as the court thinks fit:

Provided that, before passing such an order—

(i) *the court shall give an opportunity to the offender to be heard, and shall also consider any representation which the offender may make to the court as to the suitability of the case for treatment in such an institution, as also the report of the Probation Officer appointed under the Probation of Offenders Act,* 1958; *and*

(ii) *the court shall record that it is satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to benefit by such instruction and discipline as aforesaid.*

(2) *Subject to the provisions of sub-section* (3), *the provisions of the Code of Criminal Procedure,* 1974, *relating to appeal, reference and revision, and of the Limitation Act,* 1963 *as to the period within which an appeal shall be filed, shall apply in relation to an order of detention, under sub-section* (1) *as if the order had been a sentence of imprisonment for the same period as the period for which the detention was ordered.*

"(3) *Subject to the rules made in this behalf the appropriate Government or any authority authorised in this behalf by such Government may, at any time after the expiration of six months from the date of an order for detention in a corrective institution, if satisfied that there is a reasonable probability that the offender will lead a useful industrious life, discharge her from such an institution, with or without such conditions as may be considered fit, and grant her a written licence in the prescribed form.*

(4) *The conditions on which an offender is discharged on licence may include requirements relating to residence of the offender and supervision over the offender's activities and movements.*"

5.51. *Section* 11—This takes us to section 11. Section 11(1) provides that when any person having been convicted of an offence punishable under this Act or punishable under section 363, section 365, section 366, section 366A, section 366B, section 367, section 368, section 370, section 371, section 372, or section 373 of the Indian Penal Code, with imprisonment for a term of two years or upwards, is within a period of five years after release from prison, again convicted of any offence punishable under this Act or under any of those sections with imprisonment for a term of two years or upwards by a court, such court may, if it thinks fit, at the time of passing the sentence of im-

[1] Amendment of section 18, Probation Act, to be separately considered. See para 5·44 *supra*.

prisonment on such person, also order that his residence, any change of, or absence from, such residence, after release be notified according to rules made under section 23 for a period not exceeding five years from the date of expiration of that sentence. Sections 11(2) and 11(3) contain certain incidental provisions.

Section 11(4) provides that a person charged with a breach of any rule referred to in sub-section (1) may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified as his residence is situated.

The section needs no change.

5.52. *Section* 12—Section 12 deals with security for good behaviour from habitual offenders, and needs no change.

5.53. *Abuse of outhority by police officer—whether provision needed. Sections* 17*A and* 17*B (New)*—We have examined the question whether any specific provision is needed to prevent immoral behaviour by police officers who may be in charge of girls rescued under the Act. Abuse of authority by a public servant in various situations is dealt with in several sections of the Penal code.[1] Sexual misconduct of a particular type by a public servant or others is also dealt with in several other sections[2] in the Code. In particular, inducing any woman to go from any place in order to force or seduce her to illicit intercourse, is punishable under the latter part of section 366, Penal Code.

It may also be noted in this connection that a previous Law Commission[3] has, in its Report on the Penal Code, recommended the addition of certain provisions (in the Chapter on offences affecting the human body) for dealing with sexual misconduct. The object was to punish persons who commit acts, which, though technically not proved to be rape, represent mis-conduct in sexual matters by an abuse of position. The relevant portion of the Report is quoted below:—

"There are certain situations in which, *although force or fraud cannot be established*, the compulsion of the situation is such that the women's will is dominated by the will of the man, and taking an undue advantage of the situation, the man takes liberties with the woman. The woman's submission to sexual intercourse in such a situation is really not a willing consent, and we think that provisions punishing this reprehensible conduct on the part of the man should be included in the Penal Code. We do not, however, wish to make the provisions very wide, because they may furnish a weapon for blackmail in the hands of unscrupulous women or their relations. We would confine it to those situations where the need for throwing a cloak around the woman for protecting her chastity outweighs the opportunity for blackmail. On this principle we recommend the insertion of three new sections as follows:"

[*Sections recommended not quoted here*]

---

[1] *E.g.* section 220, I.P.C.
[2] *E.g.* sections 342, 354, 366, 366A, 376, etc., I.P.C.
[3] 42nd Report, (Penal Code page 279, para 16·123.

5.54. *Recommendation to insert new section*—We have considered the matter carefully. While the recommendation made by a previous Law Commission[1] in its Report on the Penal Code, read with the existing provisions in the Penal Code, furnishes the needed safeguards in general terms, we have come to the conclusion that having regard to the possibility of misconduct in view of the nature of the duties which police officers have to perform under the Act, and other relevant circumstances, a specific provision *in the Act* on the subject is needed. Accordingly, we recommend that the following new section should be inserted in the Act—

> "17A. If a police officer having the charge or custody of a woman or girl under this Act, compels or seduces to illicit sexual intercourse with any such woman or girl, he shall be deemed to be guilty of—
>
> (a) an offence under section 376 of the Indian Penal Code, if he compels her to such intercourse,
>
> (b) an offence under section 376A of that Code, if he seduces her to such intercourse."

We may make it clear that in the above new section, where we refer to section 376A, of the Indian Penal Code, we have in mind the section proposed to be inserted by the I.P.C. (Amendment) Bill, 1972[2], which is now pending before a Joint Committee of Parliament.

5.55. *Delay in the production of girls*—At this stage, we would like also to deal with the question whether a provision is needed to penalise Police Officers who are guilty of delay in the production of rescued girls. We have devoted some thought to the problem because, in our opinion, such a default by the police officers is likely to increase the opportunities for misconduct which are inherent in the very nature of the functions assigned to them by the Act.

The Act contains meticulous provisions for the prompt production before the Magistrate of the girls rescued under sections 15 and 16. These provisions show the anxiety of the legislature to ensure that the girls shall not be detained under the Act for a longer time than is necessary in the circumstances of the case. In view of this anxiety of the legislature as reflected in these provisions,— particularly by the use of the expression "forthwith",—we consider it desirable to recommend the insertion of a suitable provision dealing with non-production, so that the obligation cast on the Police officer to produce the girl promptly does not remain a dead letter.

5.56. *Offences of wrongful confinement discussed*—No doubt, even in the absence of a provision on the subject, a Police officer who

---

[1] Para 5·53, *supra*.

[2] See the I.P.C. me

delays production of the girl would be guilty of the offence of wrongful confinement under the Indian Penal Code[1], because the justification for arrest and detention which is provided by the statutory power under sections 15, 16 and 17 of the Act would not be available if it is established that the detention of the girl is made to extend beyond the limit indicated by the provision for production "forthwith" before the specified Magistrate, as contained in these sections.

5.57. *Effect of illegal confinement—General principle*—It is well-established that confinement under legal authority must conform to the terms of that authority, and cannot exceed those terms, whether in respect of place, duration, manner or otherwise, except in the case of mistake of fact in good faith, dealt with in sections 76 and 79 of the Penal Code [2,3,4] or other specific exceptions created by statute.

Thus, it has been held[5] that police officer is not justified in detaining a person for one single hour, except upon some reasonable ground justified by the circumstances.

5.58. *Two devices considered*—In this connection we thought of two alternative devices: The first device would be to insert, in the Indian Penal Code, a provision that a police officer who fails to produce a woman or girl removed under section 15 or 16, should be deemed to be guilty of wrongful confinement under section 340 of the Indian Penal Code.

The second alternative would be to introduce a rebuttable presumption that such police officer shall be presumed, until the contrary is proved, to have wrongfully confined the woman or girl within the meaning of the aforesaid section. Having carefully considered the matter, we have come to the conclusion that it would be better to frame the provision in accordance with the second alternative, so that the police officer may, if the circumstances of the case so justify, give evidence proving his good faith and thus rebut the presumption. No doubt, cases of failure to produce the girl owing to unavoidable circumstances,—e.g. escape of the girl—would be rare. However, it is not intended that such failure on the part of the police officer should be punishable.

We may, of course, point out that a penal provision punishing delay by the police officer in these circumstances would be in tune with the general principles recognised by judicial decisions under the Penal Code, as already noted[6]. These principles, which have been evolved to protect the personal liberty of those whom public servants or the local authority take in their charge or custody, in general, apply with greater force where females are concerned.

---

[1] Section 340, Indian Penal Code.
[2] *Ram Singh* v. *Emperor*, A.I.R. 1923, All. 34.
[3] *Queen* v. *Behari Singh*, (1867), Sutherland Weekly Reports, Cr. 36 (Cal.).
[4] *In re Dinanath*, A.I.R. 1940 Nag. 186, 190.
[5] *Queen* v. *Suprasonna Ghosal*, 6 Suth. W.R. (Cr.) 88-89 (Kemp & markby JJ).
[6] Para 5·57, *supra*.

5.59. *Recommendation to insert section 17B*—We, therefore, recommend that the following new section should be inserted in the Act:—

"17B. If a police officer, having removed a woman or girl under sub-section (4) of section 15 or sub-section (2) of section 16, fails to produce the woman or girl—

(a) before the appropriate Magistrate as required by sub-section (5) of section 15, or

(b) before the Magistrate issuing the order as required by sub-section (2) of section 16, or

(c) before the nearest Magistrate as required by sub-section (1) of section 17,

it shall be presumed, until the contrary is proved that he has wrongfully confined the woman or girl within the meaning of section 340 of the Indian Penal Code."

CHAPTER 6

PROCEDURAL PROVISIONS

(Sections 13—22)

6.1. *Introduction*—A number of procedural provisions are contained in sections 13—22.

6.2. Section 13 deals with the appointment of special police officers and an advisory body.

6.3. *Section 13 change not suggested*—The Committee recommended[1] that the duties of the Special Police Officer, as enumerated in section 13, should be assigned to an officer not below the rank of Inspector, so that adequate personnel to discharge these functions could be available in the country. But having regard to the wide powers conferred on special police officers, we are opposed to such a change. We give below a list of functions performed by Special Police Officers appointed under section 13:—

(1) Section 14(1)—Arrest without warrant for offences under the Act.

Section 14(2)—The special police officer can also authorise any officer subordinate to him to arrest without warrant.

(2) Section 15—Search of premises without warrant can be done by such officer in certain circumstances.

(3) Section 15(5)—The special police officer who has removed any girl who is in his opinion below 21 years and is carrying on, or made to carry on, prostitution under section 15(4) has to forthwith produce her before the appropriate Magistrate.

(4) Section 16-A—Magistrate may direct the special police officer to enter a brothel and to rescue therefrom such girl, whom he has reasons to believe is below 21 years and produce her before him. The special police officer has to produce the girl before the Magistrate forthwith after taking the girl.

(5) Section 17—When the special police Officer removing a girl under section 15(4) or section 16(1) fails to produce her immediately before the appropriate Magistrate, he has to forthwith produce her before the nearest Magistrate of any class for his orders.

---

[1] Report of the Committee on amendments to the Suppression etc. Act, para 5·3, Recommendation No 7

6.4. *Section* 14—Section 14 provides that offences under the Act shall be cognizable, but also imposes certain restrictions as to the rank of the officers who can effect an arrest without warrant. The Committee recommended[1] that in section 14(ii) and 14(iii), an officer not below the rank of Sub-Inspector should be authorised *to assist the special police officer*. Having regard to the nature of the functions to be performed by the designated police officers, we do not recommend such change.

6.5. *Extension of provisions as to rescue to women above the age of adult women—Sections* 15(4) *and* 16—We now come to a question which, though procedural, is of importance in connection with the effective implementation of the policy of the Act which is the creation of a legislative set up towards achieving social welfare in this particular field. The question concerns the rescue of those women who are made to carry on prostitution and who have completed the age of 21 years. The Act makes a beneficial provision for the rescue of "girls"—i.e., females under the age of 21 years but it is silent as to the rescue of women above the age of 21 years who are made to carry on prostitution.

It may be noted that the Act defines a "woman" as denoting[2] a female who has completed the age of 21 years, and a "girl"[3] as denoting female who has not completed the age of 21 years. In our discussion of the present question we shall use the expression "women" as denoting only adult women, i.e., females who have completed the age of 21 years.

6.6. *Relevant provisions summarised*—We shall first refer briefly to the relevant provisions. Section 15 sub-section (1) authorises the search of premises where any woman or girl is living in respect of whom an offence punishable under the Act has been or is being committed. An offence "in respect of a woman or a girl"—an expression not very precise—could be of several kinds. Prostitution as such is not an offence under the Act but certain acts connected with prostitution are offences, and the definition of "prostitute" is not confined to girls as that expression[4] is defined to mean "a female who offers her body for sexual intercourse" etc.

Thus for example, section 3 which deals with one of the offences under the Act and punishes the keeping of a brothel, may involve girls as well as women. Section 4 which prescribes the punishment for living on the earnings of prostitution would similarly involve any female by virtue of the definition of "prostitution", and in fact, section 4 sub-section (1) makes this clear by using the phrase "prostitution of *a woman or girl*". Under section 5, certain acts,—mainly, procuring, inducing or taking a "woman or girl" for the sake of prostitution—are punishable, and under section 6, detention of a "woman or a

[1] Report of the Committee on amendments to the Suppression etc. Act, paragraph 5·4 Recommendation No. 8.

[2] Section 2(j).

[3] Section 2(*b*).

[4] Section 2, definition of "Prostitution".

girl" in any brothel or in or upon any premises with the specified intent, is punishable. A "woman or a girl" who carries on prostitution in premises within the specified distance of a place of public religious worship, educational institution and the like, is punishable under section 7. Seduction of a "woman or girl" in custody is punished under section 9. This brief resume of the relevant provision shows that section 15(1) is not confined to girls.

6.7. *Deficiency of the law in regard to rescue of woman under section* 15—Now, while in many cases the women carrying on prostitution at the premises searched under section 15(1) would be doing so without any sort of compulsion, it cannot be denied that sometimes women are made to carry on prostitution and they are not voluntary participants in the activity. When such women are found at the premises searched under section 15(1), there ought to be some provision by which they could be rescued. Sub-section (4) of section 15, however, entitles the special police officer entering the premises to remove only a *girl* who, in his opinion, is under the age of 21 years and who is carrying on prostitution or is being made to carry on prostitution, or attempts are being made to make her carry on prostitution. The case of women who are made to carry on prostitution is left out of this beneficial provision for rescue.

6.8. *Same comment on section* 16—The same comment applies to section 16, under which the rescue of a girl who is apparently under the age of 21 years, can be ordered by a magistrate if the girl is living in a brothel or is carrying on prostitution in a brothel or is being made to carry on prostitution in a brothel.

In our view, this power should be available also where a woman of any age is being made to carry on prostitution in a brothel.

Need for amendment—We are therefore of the view that the scope of section 15(4) and section 16 should be widened as above.

No doubt, even after the Act is amended on the above lines, cases of women who are voluntarily carrying on prostitution will remain outside the provisions for rescue in sections 15(4) and 16(1) or the provision for subsequent custody contained in section 17. We do not think that the law could appropriately make a provision for rescuing such women because, *ex hypothesi*, they are carrying on prostitution voluntarily and the question of their "rescue" cannot arise. Since prostitution in the abstract is not an offence punishable under the Act, it would not be proper for the present Act to empower the police or the court to take any action for the removal or custody of such women.

6.10. *Institution to which rescued women should be sent*—Assuming, then, that an amendment extending the scope of section 15(4) and section 16 is to be made as above[1], the connected question arises whether women to be coverd by the extended provision should be sent to

[1] Para 6·9, *supra*.

a protective home, or whether they should be sent to a corrective institution. We have considered this question carefully and are clearly of the view that such women whatever their age, being involuntary participants in prostitution, should be sent to protective homes and not to corrective institutions. Corrective institutions, in our scheme, are meant for women who voluntarily adopt a career of vice and have hardened in that career. At the same time we appreciate that an adult woman whose experience in a life of vice may be much more detestable than that of girls below the age of 21 years should, while in the protective home, be treated on a different footing from such girls and provision for their residence should be made in separate cells. This safeguard could be provided for by the rules to be made under the Act under section 23(2).

6.11. *Amendments needed in sections* 15(4), 16, 17 *and* 23(2) – Implementation of the scheme proposed above will necessitate amendments in sections 15(4) and 16 and consequential amendments in sections 17 and 23(2). We shall indicate at the appropriate place,[1] the precise amendments to be made in sections 15(4), 16 and 17. The amendment of section 13(2) is a minor matter which could be taken care of by the draftsman without further guidance from us[2].

It has been held in a Bombay case[3] that the distinction between young "girls" (aged below 21) and women (above 21) which is made in sections 15(4) and 16(1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956 is a reasonable distinction in the context of prostitution and immoral traffic in sex. The discrimination between them is fully justified by the fact that girls below 21 are likely to be exploited to a greater extent in the market of prostitution. The distinction is therefore germane to the vice which is attempted to be suppressed by the provisions of the Act and cannot be attacked as unreasonable or as prohibited by Article 14 of the Constitution. This case does not, of course, necessitate an amendment of the section.

6.12. *Power under section* 15 *—no change*—Section 15 empowers the special police officer to conduct a search without warrant. The power is unusual; but, having regard to the fact that it is confined to special police officers and also to the fact that no serious complaints of excess or abuse of this power have been voiced, it appears unnecessary to recommend a change in this respect.

6.13. *Section* 15(2)*—Need for appointing women police officers*— With reference to section 15(2), the Committee[4] discussed the various procedural difficulties experienced by the concerned agencies in the implementation of the Act, and observed that the main difficulty in the enforcement of the Act had been lack of adequate co-operation

[1] See amendments recommended in section 15(4), 16 and 17, para 6·25, *infra*.
[2] Section 23(2) to be amended by the draftsman.
[3] *Sayed Andul Khair* v. *State of Maharashtra*, (1974) 76 Bom. L.R. 390 (Vaidya, J.).
[4] Report of the Committee on amendments to the Suppression etc. Act, para 5·6, Recommendation No 18.

from the public. The Act envisages an active participation of the people in tackling the problem of immoral traffic which unfortunately is not generally forthcoming. Owing to the stigma attached to the vice, decent people in the locality shirk their responsibility in bringing culprits to book. The Committee further observed that even the essential requirement of women as witnesses as provided in section 15, could not be met adequately. The Committee therefore made the recommendation that the words "at least one of whom shall be a woman" should be deleted from section 15(2).

We appreciate the practical difficulties experienced in this respect. But we think that the provision as sound and salutary and the difficulties experienced and in its implementation should be met by appointing more women special police officers. If that is done, there will be less reluctance on the part of women to witness the search.

No change in the law is therefore recommended.

6.14. *Section* 16—Section 16 deals with the rescue of girls apparently under the age of twentyone years living in a brothel or carrying on prostitution in a brothel.

6.15. In regard to this section the Committee[1] made a recommendation that "to bring it (section 16) in line with section 20(3), a provision for reference to protective homes of certain types of cases may be made in section 16".

6.16. We have not been able to appreciate this recommendation. So far as sending girls to protective homes is concerned, section 17(2), which applies after action is taken under section 16, already provides for it. The reference (in the above recommendation)[2] to section 20(3) is not intelligible as section 20(3) empowers the Magistrate to pass an order for externment, and does not deal with the power to send to a protective home.

6.17. *Section* 16(1)—*Suggestion to authorise persons empowered by the State Government*—It has been stated[3] in one suggestion that some persons considered suitable for the purpose should be appointed by the appropriate Governments for furnishing information to the Magistrate regarding girls who need to be rescued under the provisions of section 16. This is in fact only an elaboration of a provision which already exists in this sub-section, viz., that the magistrate concerned may not act on information received otherwise than from the Police. Where information involving families of the neighbourhood is concerned, respectable people do not come forward to inform the law enforcement agencies unless appointed by the Government to do so. Ordinarily the only information which the law enforcement agencies get "otherwise", is either out of malice or from people of doubtful character. It is stated that the States have not been in a position to assign any whole-time

[1] Report of the Committee on amendments to the Suppression Act.
[2] Para 6·15, *supra*.
[3] Suggestion of the Central Bureau of Correctional Services.

staff for the purposes of the Act in general or for rescue operations in particular which can be considered adequate enough to notice activities o fthis nature. Reliance may therefore have to be placed largely as voluntary social work in this sphere, not only for making the processes of detention more efficient but also for saving those rescued from stigma. Hence the suggested provision.

6.18. We are of the view that the suggestion should be accepted as introducing a useful feature. No doubt, the existing language appears to be wide enough to cover such information. However an amendment would bring out emphatically the ideas.

6.19. *Recommendation*—We, therefore, recommend that section 16(1) should be revised as follows: —

> "Where a magistrate has reason to believe, from information received from the police or *from any other person authorised by the State Government in this behalf* or otherwise.....(Rest as at present)."

We are incorporating a suitable amendment of sub-section (1) of section 16 on the above point[1], in the redrafts which we give later.

6.20. *Suggestion for verbal changes in section 16(1) regarding the phrase "in a brothel"*—It has also been suggested[2] that in section 16(1), the phrase "in a brothel" should be transposed and brought immediately after the word "living" so that the rest of the situations in which rescue operations may be carried on, *are not restricted to the girls living in brothels*. The Act, it is stated, envisages a number of situations in which a girl has to be rescued prior to her arrival in a brothel, such as those in section 5; and it is urged that for the effective enforcement of such provisions of the Act, it would be necessary to extend section 5 even when the girls are not in brothels.

We find that if section 16(1) is revised as suggested, then the situations in which rescue operations may be carried out when the girl is not living in a brothel, will be the following: —

(a) when she is carrying on prostitution otherwise than in a brothel;

(b) when attempts are being made to make her carry on prostitution; and

(c) when she is being procured for purposes of prostitution or sale.

Category (a) above would considerably widen the powers under section 16(1), This may be abused. We do not, therefore, accept the suggestion.

---

[1] See redraft of sections 15(4), 16(5) etc.; para 6·25, *infra*.

[2] Suggestion of the Central Bureau of Correctional Services.

6.21. *Section* 17(1)—*Amendment recommended*—We now proceed to consider section 17. There are two provisions of the Act,—sections 15 and 16—whereunder a girl under the age of 21 years, who is carrying on or being made to carry on prostitution, can be removed or rescued. Removal of the girl is dealt with in section 16 under which the proceedings are taken by a special police officer by way of search without warrant. Rescue is directed by a magistrate under section 16, and the direction again is issued to the special police officer. In both these sections, there are provisions—section 15(4) and 16(2)—whereunder the special police officer, after removing or rescuing the girl, "shall forthwith produce her" before the appropriate magistrate (in a case governed by section 15) or before the magistrate issuing the order (in a case governed by section 16).

Now, a situation may arise where, owing to unavoidable reasons, the special police officer cannot produce the girl before such magistrate "forthwith". In such a case, section 17(1) requires the police officer to produce the girl before the nearest magistrate of any class. We are not concerned with the substance of this provision in section 17(1) but there appears to be scope for improvement in a point of detail. Section 17(1), when referring to the earlier sections, speaks of the special police officer who "fails to produce her immediately before the magistrate" but the earlier sections themselves use the word "forthwith". Hence the word "immediately" in section 17(1) is inaccurate. To remedy the inaccuracy, we have two alternatives—(i) to substitute the word "forthwith" in place of the word "immediately", or (ii) merely to remove the word "immediately".

If the first device is adopted, the word "forthwith" would occur twice in section 17(1). This repetition would be jarring. We therefore prefer the second alternative, and recommend the word "immediately" should be deleted from section 17(1)[1].

6.22. *Recommendation to amend section* 17(1) *by adding a proviso*—It has been suggested[2] that the following proviso may be added in section 17(1):—

> "Provided that no girl shall be (i) released or placed in custody of a person who may, exercise harmful influence over her, or (ii) be detained in such custody for a period exceeding ten days from the date of such an order."

The suggestion is worth accepting as it is based on a sound principle. We therefore recommend that the following proviso should be added in section 17(1):—

"Provided that no girl shall be—

> (i) detained in custody under this sub-section for a period exceeding ten days from the date of such an order, or

---

[1] For re-draft, see para 6·25, *infra*.

[2] Suggestion of the Central Bureau of Correctional Services.

(ii) restored or placed in the custody of a person who may exercised harmful influence over her."

6.23. *Suggestion regarding section* 17(2).—With reference to section 17(2), a suggestion has been made for revising it. The salient features of the suggested revision are—

(a) appropriate provision regarding intermediate custody;

(b) pre-hearing enquiries by Probation Officers;

(c) introduction of the criterion of the *need for care and protection* for orders by courts instead of the standard of correctness of the information received; and

(d) non-institutional care, guidance and counselling with or without supervision.

It is stated that all these are vitally necessary for the proper disposition of the rescued girls and for employing in it social case work techniques.

6.24. *Recommendation*.—The suggestion is useful and salutary and may be accepted. Section 17(2) should be suitably[1] revised for the purpose. The redraft which we give later will explain the changes needed.

6.24A. *Detention in a protective home of a girl rescued under s. 16 and convicted under s. 17—Suggestion of the Department*.—In one suggestion,[2] it is stated that it has been found by experience that short term of residence in protective homes or corrective institutions does not have the desired impact on the persons concerned. It is therefore suggested that a minimum period of 1 year might be prescribed for detention in a protective home or a correctional institution.

In this connection we may state that the amendment, which we are recommending in section 17 will take care of this aspect.[3]

6.25. *Redrafts of certain sections*.—In the light of the above discussion, we give below redrafts of sections 15(4), 15(5), 16(1), 16(2), 17(1), 17(2), 17(2A), to 17(2E) and section 17(4).

Revised sections 15(4), 15(5), 16(1), 16(2), 17(1), 17(2), 17(2A) *to* 17(2E) *and section* 17(4)

"15. (4) The special police officer entering any premises under subsection (1) shall be entitled to remove therefrom—

(a) any girl if, in his opinion, she is under the age of twenty-one years and is carrying on or is being made to carry on, prostitution or attempts are being made to make her carry on prostitution, or

---

[1] See para 6·25, *infra*.

[2] S. No. 16 (Suggestion of the Department).

[3] Para 6·24, *infra*.

(b) *any woman, if, in his opinion, she is being made to carry on prostitution or attempts are being made to make her carry on prostitution.*[1]

15. (5) The special police officer, after removing the *woman or girl* under sub-section (4), shall forthwith produce her before the appropriate magistrate.

16. (1) Where a magistrate has reason to believe from information received from the *police or from any other person authorised by the State Government in this behalf or otherwise*[2], that—

(a) a girl apparently under the age of twenty-one years, is living, or is carrying on, or is being made to carry on prostitution, in a brothel, *or*

(b) *a woman is being made to carry on* prostitution in a brothel[3]

he may direct the special police officer to enter such brothel, and to remove therefrom *such woman or girl* and produce her before.

"16. (2) The special police officer, after removing the *woman or girl*, shall forthwith produce her before the magistrate issuing the order."

Revised section 17(1)

"17. (1) When the special police officer removing a *woman or girl*[4] under sub-section (4) of section 15 or rescuing a *woman or girl* under sub-section (1) of section 16, fails to produce her.....[5] before the magistrate, as required by sub-section (5) of section 15 or sub-section (2) of section 16, he shall produce her forthwith before the nearest magistrate of any class, who shall pass such orders as he deems proper for her safe custody until she is produced before the appropriate magistrate:

Provided that no woman or girl shall be—

(i) *detained in custody under this sub-section for a period exceeding ten days from the date of the order under this sub-section*; or

(ii) *restored to or placed in the custody of a person who may exercise a harmful influence over her.*[6]

(2) When *the girl* is produced before the appropriate magistrate, he shall, after giving the girl an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1), *the age, character and antecedents of the girl and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely*

---

[1] See para 6·11, *supra*.
[2] See para 6·10, *supra*.
[3] See para 6·11, *supra*.
[4] See para 6·11, *supra*.
[5] See para 6·11, *supra*.
[6] Para 6·22, *supra*.

to have on her if she is restored to the same, and, for this purpose, he may direct a Probation Officer appointed under the Probation of Officers Act, 1958, to inquire into the above circumstances and into the personality of the girl and prospects of rehabilitation of the girl.[1]

"17. (2A) *The magistrate may, while an inquiry is made into a case under sub-section* (2), *pass such orders as he deems proper for the safe custody of the girl;*

Provided that no girl shall be kept in the custody for this purpose for a period exceeding three weeks from the date of such an order, and no girl shall be kept in the custody of a person likely to have a harmful influence on her.[2]

"17. (2B) *When the magistrate is satisfied, after making an inquiry as required in sub-section* (2)—

(a) *that the information received is correct.*

(b) *that the girl is under the age of twenty-one years, and*

(c) *that she is in need of care and protection, he may, subject to the provisions of sub-section* (3), *make an order that such girl be detained for such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home or in such other custody as he, for reasons to be recorded* in writing, shall consider suitable:[3]

Provided that such custody shall not be that of person or body of persons of a religious persuation different from that of the girl, *and that those entrusted with the custody of the girl, including the person in charge of a protective institution, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the girl as well as supervision by a person appointed by the court, which will be in force for a period not exceeding three years..*[4]"

"17. (2C) *When the woman is produced before the appropriate magistrate, he shall, after giving the woman an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section* (1), *the age, character and antecedents of the woman and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely to have on her if she is restored to the same, and for this purpose, he may direct a Probation Officer appointed under the Probation of Offenders Act, 1958, to inquire into the above circumstances and into the personality of the woman and prospects of rehabilitation of the woman.*

---

[1] Para 6·24, *supra.*

[2] Para 6·24, *supra.*

[3] Para 6·24, *supra.*

[4] Para 6·24, *supra.*

"17. (2D) *The Magistrate may, while an inquiry is made into a case under sub-section* (2C), *pass such orders as he deems proper for the safe custody of the woman*:

Provided that no woman shall be kept in the custody for this purpose for a period exceeding three weeks from the date of such an order, and no woman shall be kept in the custody of a person likely to have harmful influence on her.

"17. (2E) *When the magistrate is satisfied, after making an inquiry as required in sub-section* (2D)—

(a) *that the information received is correct and*

(b) *that the woman is above the age of twenty-one years, and*

(c) *that she is in need of care and protection, he may, subject to the provisions of sub-section* (3), *make an order that such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home, or in such other custody* as he, for reasons to be recorded in writing, shall consider suitable:

Provided that such custody shall not be that of a person or body of persons of a religious persuation different from that of the woman, *and that those entrusted with the custody of the woman, including a person in charge of a protective institution, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the woman, as well as supervision by a person appointed by the court, which will be in force for a period not exceeding three years.*"

6.25. [section 17(3)—No change].

"17(4) Against every order under sub-section (2B) or sub-section (2E), an appeal shall lie to the Sessions Judge, whose decision on such appeal shall be final."

6.26. *Sections 17A and 17B (new)*—We have already recommended the insertion of two new sections—17A and 17B—to deal with seduction by police officers of rescued women and girls and non-production of rescued women and girls by police officers acting under the Act.

6.27. *Section* 18—Under section 18(1), a Magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred yards of any public place referred to in sub-section (1) of section 7, is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days

[4] See Para 5·53, *supra*.

of the receipt of the notice why the same should not be attached for improper user thereof. If, after hearing the person concerned, the Magistrate is satisfied that the house, room, place, or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders—

(a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place, or portion;

(b) directing that before letting it out during the period of one year immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the Magistrate.

Under sub-section (2) a court convicting a person of any offence under section 3 or section 7 may pass orders under sub-section (1), without further notice to such person to show cause as required in that sub-section.

These are the important provisions of the section.

6.28. *Suggestion to repeal section* 18 *not accepted*—It has been suggested that section 18 may be repealed[1]. It is stated that instead of issuing notices, punitive action as contemplated in the Act should be taken. "We do not warn thieves before catching them."

We apprehend, however, that the suggestion is based on an incomplete and inaccurate conception of the scope[2] of section 18. The section does not deal with "notice" before prosecution or before punitive action. Its main object is preventive. Moreover, it is wrong to suppose that in every case of conduct amounting to violation of the Act, prosecution is the only remedy. Lastly, sub-section (2) of section 18 of the Act requires no notice, and can operate immediately on conviction. For these reasons we do not accept the suggestion that the section be repealed.

6.29. *Section* 19—Section 19 provides for applications by women and girls for being kept in a protective home, and reads as follows:-

"19. (1) A woman or girl who is carrying on, or is being made to carry on, prostitution, may make an application to the magistrate within the local limits of whose jurisdiction she is carrying on, or is being made to carry on, prostitution, for an order that she may be kept in a protective home."

"(2) If after hearing the applicant and making such inquiry as he may consider necessary, the magistrate is satisfied that an order should be made under this section, then, he shall make an order, for reasons to be recorded, that the applicant be kept in a protective home for such period as may be specified in the order."

---

[1] Suggestion of the Central Bureau of Correctional Services.

[2] Para 6.27A, *supra*.

6.30. *Section* 19(1)—*Suggestion accepted*—It has been suggested,[1] that section 19(1) should contain also a provision for an order that the girl be *provided care and protection by the court*. This suggestion is, in principle, sound, and we accept it.

6.31. *Recommendation*—We, therefore, recommend that for the last 12 words of section 19(1), the following should be substituted:

> "(a) for an order that she may be kept in a protective home, or
>
> (b) for an order that she be provided care and protection by the court in the manner specified in sub-section (2)."

6.32. *Section* 19(1A)—*Recommendation regarding interim custody*—We are of the view that pending an inquiry under section 19(1), the Magistrate should have power to direct that the girl be kept in proper custody. This should be incorporated in section 19, in the form of sub-section (1A), as follows:—

> "(1A) Pending such inquiry, the Magistrate may direct that the girl be kept in such custody as the Magistrate may consider proper, having regard to the circumstances of the case."

6.33. *Section* 19(2)—*Suggestion for inquiry accepted*—It has further suggested[2] that in sub-section (2) of section 19, an inquiry by a Probation Officer into the personality, home and conditions and rehabilitation prospects should be provided for. His report will be before the Magistrate.

If, on such inquiry, the Magistrate is satisfied that an order should be made under this section, then, he shall make an order, for reasons to be recorded, that the applicant be kept in a protective home, *or a corrective institution or under the supervision of a person appointed by him, for such period* as may be specified in the order. It has been stated that in the revised scheme, a protective home has been envisaged as a home for the rescued girls,[3] who should be protected against the very stigma of being considered as having been a prostitute at any period of their lives. In this context, it will not be advisable to send all applicants *under section* 19 to protective homes. A few of them may still justify such a course. Hence, opportunity should be taken to provide for sending such cases to corrective institutions, as well as for keeping them under supervision under a "non-institutional social case work system."

We agree with the principle of the suggestion.

6.34. *Recommendation to amend section* 19(2)—We recommend that to carry out the changes already indicated,[4] sub-section (2) of sec-(2) of section 19 should be revised as follows:—

> "(2) If the magistrate, after hearing the applicant and making such inquiry as he may consider necessary, *including an inquiry*

---

[1] Suggestion of the Central Bureau of Correctional Services

[2] Suggestion of the Central Bureau of Correctional Services.

[3] See discussion as to section 2, "protective home", *supra*.

[4] See para 6·33, *supra*.

by a Probation Officer appointed under the Probation of Officers Act, 1958, into the personality, conditions of home and prospects of rehabilitation, of the applicant, is satisfied that an order should be made under this section, he shall, for reasons to be recorded, make an order that the applicant be kept—

(i) *in a protective home, or*

(ii) *in a corrective institution, or*

(iii) *under the supervision of a person appointed by the magistrate,*

for such period as may be specified in the order."

6.35. *Section* 20—*Removal of prostitutes*—Section 20, which deals with the removal of prostitutes from any place, deserves close consideration. Briefly the scheme of the section is as follows:—

Under sub-sections (1) and (2), a Magistrate, on receiving information that any woman or girl residing in or frequenting any place within the local limits of his jurisdiction is a prostitute, may record the substance of the information received, and issue a notice to such woman or girl requiring her to appear before the magistrate and show cause why she should not be required to remove herself from the place and be prohibited from re-entering it. The notice must be accompanied by a copy of the record referred to above, and the copy is to be served along with the notice on the woman or girl against whom the notice is issued.

Sub-section (3) of section 20 provides as follows:—

"(3) The magistrate shall, after the service of the notice referred to in sub-section (2), proceed to inquire into the truth of the information received, and after giving the woman or girl an opportunity of adducing evidence, take such further evidence as he thinks fit, and if upon such inquiry it appears to him that such woman or girl is a prostitute and *that it is necessary in the interests of the general public that* such woman or girl should be required to remove herself therefrom and be prohibited from re-entering the same, the magistrate shall, by order in writing communicated to the woman or girl in the manner specified therein, require her after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove herself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit her from re-entering the place without the permission in writing of the magistrate having jurisdiction over such place."

Under sub-section (4) of secton 20, a person who—

(a) fails to comply with an order issued under this section, within the period specified therein, or whilst an order prohibiting her from re-entering a place without permission is in force, re-enters the place without such permission, or

(b) knowing that any woman or girl has, under this section, been required to remove herself from the place and has not obtained the requisite permission to re-enter it, harbours or conceals such woman or girl in the place, is punishable with fine of the specified amount.

6.36. *Validity of section 20 upheld*—The validity of section 20 was challenged in the past and in fact, the challenge was partly successful, before the Bombay High Court,[1] as well as before the Allahabad[2] High Court. But the Supreme Court has now upheld validity of the section.[3]

6.37. *Suggestion for repeal considered*—It has been suggested[4] that section 20[5] should be repealed. The reason given in support of the suggestion is, that mobilizing the community interest in reforming and rehabilitating the offender, rather than encouraging an attitude of ostracization, is accepted as the right approach for the purpose of prevention of crime as well as for the treatment of offenders. Section 20 is not in line with this principle. "Such provision could be considered reasonable when prevention was attempted on municipal and local basis; it is obviously a waste of effort all round, when we intend to safeguard every jurisdiction against the malady."

6.38. *Suggestion not accepted*—We are, however, of the view that considerations of public interest should override the reasons set out above. In our view, public interest requires retention of the section, and we do not, therefore, recommend its repeal. We may point out that the power under sub-section (3) is circumscribed.

6.39. *Section 21—Preventive Homes*—Section 21 deals with the establishment and licensing of protective homes. Sub-section (1), (2), (3) and (8) are important for our purposes, and read as follows:—

"(1) The State Government may in its discretion establish as many protective homes under this Act as it thinks fit and such homes, when established, shall be maintained in such manner as may be prescribed.

(2) No person or no authority other than the State Government shall, after the commencement of this Act, establish or maintain any protective home except under and in accordance with the conditions of a licence issued under this section by the State Government.

(3) The State Government, on application made to it in this behalf by a person or authority, issue to such person or authority a licence in the prescribed form for establishing and maintaining or as the case may be, for maintaining a protective home and a licence so issued may contain such conditions as the State Government may think fit to impose in accordance with the rules made under this Act:

---

[1] *Begum* v. *State*, A.I.R. 1963 Bom. 17.

[2] *Shama Bia* v. *State*, A.I.R. 1959 All. 17.

[3] *State of U.P.* v. *Kaushaliya*, A.I.R. 1964 S.C. 416, 521, 422.

[4] Suggestion of the Central Bureau of Correctional Services.

[5] Para 6·35 *supra*.

Provided that any such condition may require that the management of the protective home shall, wherever practicable, be entrusted to women:

Provided further that a person or authority maintaining any protective home at the commencement of this Act shall be allowed a period of six months from such commencement to make an application for such licence.

"(8) Where a licence in respect of a protective home has been revoked under the foregoing sub-section, such protective home shall cease to function from the date of such revocation.

Whoever establishes or maintains a protective home except in accordance with the provision of this section, shall be punishable in the case of a first offence with fine which may extend to one thousand rupees and, in the case of second or subsequent offences, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both."

6.40. *Recommendation to add corrective institution*—In section 21, sub-section (1), (2), (3) and (8), corrective institutions should be added[1], in view of the proposed scheme[2]. We recommend accordingly

6.41. *Section 21 (9A)—Suggestion for power to transfer inmates accepted*—It has been suggested[3], that in section 21, a provision should be added whereby the State Government or an authority authorised by it in this behalf may, subject to any rules that may be made in this behalf, transfer an inmate of a protective home to a corrective institution or vice versa; the person transferred should not be required to stay in the institution to which she is transferred, for a period longer than she was required to stay in the institution from which she is transferred.

6.42. The suggestion may be accepted in principle, as providing a useful procedure.

6.43. *Recommendation to add sub-section (9A) in section 21*—In the light of the above discussion, we recommend that a sub-section should be added in section 21, as follows:

> "(9A) The State Government or an authority authorised by it in this behalf may, subject to any rules that may be made in this behalf, transfer an inmate of a Protective Home to a Corrective Institution or an inmate of a Corrective Institution to a protective home, where such transfer is considered desirable having regard to the conduct of the person to be transferred, the kind of training to be imparted in each institution and the other circumstances of the case:

Provided that

---

[1] *C.f.* compare suggestion of the Central Bureau of Correctional Services.

[2] See discussion regarding section 2, *supra*.

[3] Suggestion of the Central Bureau of Correctional Services.

(a) no woman or girl who is transferred under this sub-section shall be required to stay in the institution to which she is transferred for a period longer than she was required to stay in the institution from which she was transferred;

(b) reasons shall be recorded for every order of transfer under this section."

6.44. *Section* 22—*Trials*—Under section 22, no Court inferior to that of a Magistrate as defined in clause (c) of section 2, shall try any offence under section 3, section 4, section 5, section 6, section 7 or section 8. The expression "Magistrate" is defined in section 2(c) as meaning the District Magistrate or a Magistrate of the first class specially empowered by the Government to exercise jurisdiction.

6.45. *Section* 22—*Amendment recommended*—As already indicated,[1] changes regarding the competent Magistrate, should be made in this section.

6.46. It has been suggested[2] that section 22 should be repealed. It is stated that we should trust all our magistrates—and eventually even Gram Panchayats—when we want to fight commercial vice not only in cities but also in remote rural areas. It is not correct to think that such vice exists only in cities.

The suggestion is based on a misconception. Section 22 does not require that only Magistrates in cities can be empowered. Moreover, Gram Panchayats are not debarred, by *this provision*, from trying an offence, if they are otherwise competent (under the Panchayat Act in force in the State), to try that offence.

---

[1] See discussion regarding section 2, definition of "Magistrate".
[2] Suggestion of the Central Bureau of Correctional Services.

CHAPTER 7

MISCELLANEOUS

(Sections 23 to 25)

7.1. *Section* 23(1) —We deal in this Chapter with the remaining sections of the Act. Section 23 deals with the power to make rules. The power is vested in the State Government, under sub-section (1). It has been suggested[1] that section 23(1) should be amended as follows:—

> "The State Government may, *with the approval of the Central Government*, by notification in the Official Gazette, make rules for carrying out the purposes of this Act."

The object of the suggested amendment is to require the approval of the Central Government before rules are made by the State Government. It, however, appears rather inappropriate to require the approval of the Central Government in this respect. It is rarely[2] the practice to require the approval of the Central Government, for rules to be made by the State Government. Moreover, there is no strong reason for inserting this requirement in this particular Act. Hence, we are unable to accept the suggestion.

7.2. *Section* 23(2)(*b*)—*Change recommended*—Section 23(2) enumerates in detail the matters as to which rules can be made. We shall deal with only those clauses of the sub-section which require discussion. Section 23(2)(b) authorises rules relating to—

> "(b) the placing in custody of women and girls released under sub-section (1) of section 10 or for whose safe custody orders have been passed under sub-section (1) of section 17 and their maintenance"

It may be recalled that section 10(1) deals with release of convicted women and girls on admonition or on probation. The placing in custody of such women and girls so released may sound inconsistent with release on probation, and that is the reason why there is a suggestion[3] to delete this part of the clause. The suggestion is that the words 'released under sub-section (1) of section 10 or' should be deleted.

It is stated that the concept of release from custody is inconsistent with the idea of probation.

We broadly agree with this approach, but we do not accept the suggestion *in toto*. Instead, we recommend that in section 23(2)(b) the words "where the women or girls are without a home" should be added after the words "sub-section (1) of section 10". This will narrow down the scope of this part of section 23(2), clause (b).

---

[1] Suggestion of the Central Bureau of Correctional Services.

[2] One very rare example is found in sections 29 & 30, Registration of Births Act, 1971.

[3] Para 7·6

7.3. *Section* 23(2)(c)—We shall deal later with section 23(2)(c).[1]

7.4. *Section* 23(2)(f)—Section 23(2)(f) relates to rules for carrying out the provisions of section 18. It has been suggested[2] that section 23(2)(f) should be deleted. But, if section 18 is not to be deleted, we do not see any reason why section 23(2)(f) should be deleted. We do not, therefore, recommend any change in this regard.

7.5. *Section* 23(2)—*Rules as to corrective institutions—Addition of*—In consequence of our recommendation[3] for having a separate nomenclature for corrective institutions, it becomes necessary to expand the rule-making powers of the State Government, so as to enable rules to be made on various matters concerning corrective institutions (besides protective homes). In fact, there is also a suggestion[4] which is substantially to the same effect. We proceed to indicate the detailed changes required for the above purpose.

7.6. *Section* 23(2)(c)—*change recommended*—Section 23(2)(c) provides for rules relating to:

> "(c) the detention and keeping in protective homes of women and girls under sub-section (2) of section 10, sub-section (2) of section 17 and section 19 and their maintenance;"

In view of the proposed substitution of corrective homes institutions[5] in section 10(2), the relevant portion of this clause will require change, and we recommend that it should be suitably revised for the purpose[6].

7.7. *Section* 23(2)(g)—Several consequential changes arise for consideration with reference to section 23(2)(g).

(a) Section 23(2)(g)(i) provides for rules relating to—

> "(i) the establishment, maintenance, management and superintendence of protective homes and the appointment, powers and duties of persons employed in such homes;"

We recommend that corrective institutions should be added in this clause.

(b) Section 23(2)(g)(v) provides for rules relating to—

> "(v) the manner in which the accounts of a protective home shall be maintained and audited;"

We recommend that corrective institutions should be added in this clause.

---

[1] Para 7·6, *supra*.

[2] Suggestion of the Central Bureau of Correctional Services.

[3] See recommendation as to section 2(*y*), 'protective home', and section 2-"corrective institution".

[4] Suggestion of the Central Bureau of Correctional Services.

[5] Para 7·4, *supra*.

[6] Draft not annexed.

(c) Section 23(2)(g)(vii) provides for rules as to—

"(vii) the care, treatment, maintenance, training, instruction, control and discipline of the inmates of protective homes;"

We recommend that corrective institutions should be added in this clause.

(d) Section 23(2)(g)(ix) provides for rules as to—

"(ix) the temporary detention of women and girls sentenced to detention in protective homes until arrangements are made for sending them to such homes;"

We recommend that corrective institutions should be added in this clause.

(e) Section 23(2)(g)(xi) and (xii) deal with rules as to—

"(xi) the transfer, in pursuance of an order of the court from a protective home to a prison of a woman or girl found to be incorrigible or exercising bad influence upon other inmates of the protective home and the period of her detention in such prison;

(xii) the transfer to a protective home or women or girls sentenced under section 7 or section 8 and the period of their detention in such homes;"

We recommend that corrective institutions should be added in these clauses, wherever considered suitable.

(f) Section 23(2)(g)(xiii) provides for rules as to—

"(xiii) the discharge of inmates from a protective home either absolutely or subject to conditions, and their arrest in this event of breach of such conditions;"

We recommend that the Corrective institutions should be added in this clause.

(g) Section 23(2)(g)(xv) provides for rules as to—

"(xv) the inspection of protective homes and other institutions in which women and girls may be kept, detained and maintained."

We recommend that corrective institutions should be added in this clause also.

7.8. *Section* 24—This takes us to section 24. It saves laws relating to juvenile offenders, and needs no change.

7.9. *Schedule of powers of Magistrates to be inserted*—In view of what we have stated above, in connection with the definition of "Magistrate[1]", the following Schedule[2] dealing with the powers of Magistrates should be inserted in the Act.

---

[1] See discussion as to section 2(c)-definition of "Magistrate".

[2] See para 4·10, *supra*.

SCHEDULE

Magistrates competent to exercise the powers under various sections of the Act.

Explanatory Note: (1) In regard to offences under the Act, the entries in the second column against a section, the number of which is given in the first column, are not intended as the definition of the offence in the Act, but merely as an indication of the substance of the section.

(2) In this Schedule, (i) the expression "Magistrate of the first class" includes Metropolitan Magistrates, but not Executive Magistrates; (ii) the expression "District Magistrate" includes Chief Metropolitan Magistrates.

Magistrates competent to exercise various powers.[1]

Section	Gist of the section	
7(1)	Prostitution in or in the vicinity of public place to be notified.	District Magistrate.
11(4+	Trial for breach of the requirement to notify address by a previously convicted offender.	Magistrate of the first class
12(4)	Security for good behaviour from habitual offenders.	Magistrate of the first class.
15(5)	Search without warrant ..	Magistrate of the first class, District Magistrate or Sub-divisional Magistrate.
16	Rescue of girl ..	Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate.
17	Intermediate custody of girls removed under section 15 or rescued under section 16.	Magistrate of the first class, District Magistrate or Sub-divisional Magistrate.
18(1)(3) &(4)	Closure of brothels and eviction of offenders from premises.	District Magistrate or Sub-divisional Magistrate.
19 ..	Application for being kept in a protective home.	Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate.
20(1)&(3)	Removal of prostitutes from any place	District Magistrate or Sub-divisional Magistrate of any Executive Magistrate spacially empowered by the State Government.
22 ..	Trials ..	Magistrate of the first class.

[1] See para 4·10 of the Report.

CHAPTER 8

IMPLEMENTATION OF THE ACT—SOME IMPORTANT POINTS

8.1. *Introductory*—We would like to conclude this report by drawing attention to an important aspect of the problem with which the Act is concerned. We wish to emphasise that apart from amendments of the Act, many other measures are needed to mitigate the evil of prostitution. The need for such measures has been stressed in the past[1] also, but what may be conveniently called "non-legislative measures" are so important that we would like to draw attention to some points that require serious attention.

8.2. *Need for well-managed institution*—In the first place, we would like to point out that the Act may be defeated by reason of dearth of well-managed institutions. Implementation of the beneficial provisions of the Act, particularly, the provisions as to the rescue of fallen women and girls, postulates the existence of sufficient number of well-managed institutions. This may sound axiomatic, but we think that it is an aspect of very great importance, which should be borne in mind.

In this connection, it should also be stated that the line of demarcation between institutions for the correction of hardened prostitutes on the one hand, and institutions for the protection of new recruits to this vocation on the other hand should be kept in the forefront. We have discussed this aspect in detail, in the relevant portion of the Report[2].

8.3. *Need for adequate women police officers*—Secondly, we would like to record our view that it should be ensured[3] that the number of women police officers is adequate for the discharge of the duties that may have to be specially entrusted to these police officers under the Act.

8.4. *Proper up-bringing*—Thirdly, it is well-known that many inmates of brothels have children who are brought up in the surroundings in which their mothers live. These children are, therefore, bound to imbibe the undesirable atmosphere of the brothels. This aspect requires paramount and immediate attention. It illustrates how, apart from legislation, other efforts are necessary to prevent the evil of prostitution from assuming a larger dimension.

---

[1] Paras 3, 11,-7, 6·13, 6·17, 6·23, *supra*.

[2] See discussion as to section 2-definition of "corrective institution" and "protective homee". Para 4·7, 4·33, *supra*.

[3] See also para 6·13, *supra*.

The law can deal with serious and blatant manifestations of immorality. But the problem is not only a legal one. We may point out that there are institutions relating to children, and suitable use should be made of these institutions.

If there is any lacuna in the relevant legislation, the matter should be dealt with suitably, by amending the relevant legislation. But, besides legislative action, it is desirable that measures should be taken to protect impressionable girls from imbibing such atmosphere. The enlisting of the co-operation of voluntary agencies is eminently desirable, in this regard.

CHAPTER 9

SUMMARY OF RECOMMENDATIONS

Our recommendations are summarised below:—

I. *The Suppression of Immoral Traffic in Women and Girls Act, 1956—Amendment.*

Section 2(a)—'brothel'—In the definition of 'brothel', the addition of 'conveyance' is recommended.

Section 2—"corrective institution"—The definition of "corrective institution" should be inserted in section 2, to include an institution where women and girls who are in need of correction may be detained[2].

Section 2(c)—'Magistrate'—The term 'Metropolitan Magistrate' should be substituted for 'Magistrate' in the Act, to accord with the terminology adopted in the Criminal Procedure Code, 1973[3].

The definition of "Magistrate" in section 2(c) should be revised so as to refer to a schedule of powers of Magistrates, which is recommended to be inserted in the Act[4].

Section 2(e)—"prostitute"—The definition of 'prostitute' should be linked up with that of 'prostitution'[5].

Section 2(f)—'prostitution'—The definition of 'prostitution' should be revised so as to clarify that the payment for the intercourse need not be immediate. Further, the definition of 'prostitute' should be linked up with that of 'prostitution'[6].

Section 2(g)—'protective home'—Recommendation has been made to amend the definition of 'protective home' so as to include an institution for the care and protection of rescued women and girls, being an institution as is referred to under section 21, but as to exclude a shelter for female under-trials or a corrective institution[7].

Section 4(2)—Recommendation has been made to revise section 4(2), so as to make it clear that it is those persons who are over the age of eighteen years and found in the circumstances mentioned in this sub-section who are punishable under sub-section (1). The proviso to section 4(2) should be deleted, as being superfluous[8].

---

[1] Para 4·5.
[2] Para 4·7.
[3] Para 4·9.
[4] Para 4·12, 7·9.
[5] Paras 4·17 and 4·26.
[6] Para 4·26.
[7] Para 4·33.
[8] Para 5·17.

The point relating to section 5 is considered. An amendment is recommended in sections 372 and 373 of the Indian Penal Code[1], to cover girls above a certain age.

Section 7(1)—*Verbal change*—In section 7(1), for the words "yards" the word "meters"[2] should be substituted.

Section 9(1)—Section 9(1) should be revised so as to punish a person who stands in a position of authority over any woman or girl and who causes or aids or abets in seducing her for prostitution[3].

Section 10(1)—In section 10(1), the offences under section 3(2), section 4 and section 5 should be removed, as these are serious offences and not suitable for probation[4].

Section 10(1)(a), (b) *and* (c)—The reference to the Criminal Procedure Code, 1898 should be replaced by reference to the new Code of Criminal Procedure, 1973 and the Probation of Offenders Act, 1958[5].

Section 10(1) should be revised to provide that a person convicted for the first time under section 7 or 8, may, having regard to his age, character, antecedents and circumstances be released by the court with admonition or probation under the Probation of Offenders Act, 1958 or section 360 of the Criminal Procedure Code, 1973, if the said Act does not extend to the State[6].

Section 10(2) *and Section* 10*A* (*New*)—Section 10(2) should be revised so that persons convicted under sections 7 and 8 should be determined in a corrective institution. For this purpose, a new section 10A should be inserted[7].

Section 10(3)—Section 10(3) should be widened, so as to prohibit release on probation or with admonition for all offences except offences under sections 7 and 8[8].

Section 10—Section 10 should be amended so as to provide that where a court convicting a person could have ordered probation, but has not done so, it shall record the reasons for not having done so[9].

Sections 15(4), 16, 17 *and* 23(2)—The scope of sections 15(4) and 16 should be widened, so as to make the beneficial provision for rescue available also to a woman of any age who is being made to carry on prostitution[10].

Such women, being involuntary participants in prostitution, should be sent to protective homes, and not to corrective institutions[11].

---

[1] Para 5·21.
[2] Para 5·25.
[3] Para 5·37.
[4] Para 5·43.
[5] Para 5·45.
[6] Para 5·46.
[7] Para 5·47.
[8] Para 5·48.
[9] Para 5·49
[10] Paras 6·7, 6·8 and 6·9.
[11] Para 6·10.

However, such adult women, while in the protective home, should be treated on a different footing from girls below the age of 21 years, and suitable provision should be made in this regard in the rules to be made under the Act[1].

In section 17(1), the word "immediately" should be deleted[2]. It is also recommended that a proviso should be added to section 17(1) to the effect that no girl should be detained in custody for more than ten days or be placed in custody of a person who may exercise harmful influence over her[3].

Section 17(2)—Section 17(2) should be revised so as to provide for intermediate custody, enquiries by Probation Officers, need for care and protection of orders by courts and non-institutional care and guidance[4]. A minimum period of one year and not more than three years may be prescribed for detention in a protective home or in such other custody as the court may order[5].

Section 17*A and* 17*B (New)*—The insertion of two new sections—17A and 17B—to deal with seduction and non-production by police officers of rescued women and girls[6] is recommended.

Section 19(1)—Section 19(1) should be revised so as to include a provision for an order that the girl be provided care and protection by the court in a protective home or in the manner specified in section 19(2)[7].

Section 19(1*A*) *(New)—interim custody*—The insertion of a new section 19(1A) regarding the interim custody of the girl, pending an inquiry under section 19(1) is recommended[8].

Section 19(2)—Section 19(2) should be revised so as to include an inquiry by a Probation Officer into the personality, conditions of home and prospects of rehabilitation of the applicant, and the Magistrate may then order her to be kept in a protective home, corrective institution or under the supervision of such person as he appoints[9].

Sections 21(1), 21(2), 21(3) *and* 21(8)—In section 21, sub-sections (1), (2), (3) and (8), dealing with protective homes, corrective institutions should be added[10].

Section 21(9*A*)—*Power to transfer inmates*—*(New)*—The insertion of a new sub-section (9A) in section 21, regarding power to transfer an inmate of a Protective Home to a corrective institution or *vice versa*[11] is recommended.

---

[1] Para 6·10.
[2] Para 6·21.
[3] Para 6·22.
[4] Paras 6·23 and 6·24.
[5] Paras 6·24 and 6·25.
[6] Paras 5 53 and 6·26.
[7] Para 6·31.
[8] Para 6·32.
[9] Para 6·34.
[10] Para 6·40.
[11] Para 6·43.

Section 22—The changes regarding the competent Magistrate should be made in section 22, so as to accord with the recommendations regarding section 2[1].

Section 23(2)(*b*)—In section 23(2)(b) the words "where the women or girls are without a home" should be added after the words "subsection (1) of section 10" in order to narrow down this part, regarding custody[2].

Section 23(2)(*c*)—The relevant portion of section 23(2)(c) should be revised in view of the proposed substitution of corrective institutions in section 10(2)[3].

Section 23(2)(*g*)—The term "corrective institutions" should be added in section 23(2)(g), clauses (i), (v), (vii), (ix), (xiii) and (xv) and in clauses (xi) and (xii), wherever considered suitable.[4]

Schedule of powers of Magistrates to be inserted—A schedule dealing with the powers of Magistrates should be inserted in the Act[5].

II. *The Suppression of Immoral Traffic in Women and Girls Act*, 1956

Implementation—Apart from the implementation of the Suppression of Immoral Traffic in Women and Girls Act, many other non-legislative measures are required to mitigate the evil of prostitution[6]

Need for well managed institutions—The provisions regarding rescue of fallen women and girls postulates the existence of sufficient number of well-managed institutions. This should be borne in mind. The distinction drawn between Corrective Homes and Protective Homes for different categories of prostitutes should also be kept in the forefront[7].

Need for adequate women police officers—The number of women police officers should be adequate to carry out the work entrusted to them under the Act[8].

Proper up-bringing of prostitutes' children—The children of prostitutes are bound to imbibe the undesirable atmosphere of brothel life Here again, institutions relating to children should be suitably used (if necessary, relevant law be amended) and the assistance of voluntary agencies should be enlisted to protect young girls[9] particularly.

---

[1] Para 6·45.
[2] Para 7·2.
[3] Paras 7·3 and 7·6.
[4] Para 7·7.
[5] Para 7·9.
[6] Para 8·1.
[7] Para 8·2.
[8] Para 8·3.
[9] Para 8·4.

III. *Indian Penal Code*, 1860

Sections 372 *and* 373, *Indian Penal Code*—Sections 372 and 373, Indian Penal Code should be amended so as to extend these sections regarding purchase or sale of girls to adults also[1]

IV. *Probation of Offenders Act*, 1958.

Section 18, *Probation of Offenders Act*, 1958—Section 18 of the Probation of Offenders Act should be amended, so as to remove reference to the Suppression of Immoral Traffic Act[2].

We would like to place on record our warm appreciation of the valuable assistance we have received from Shri Bakshi, Member-Secretary of the Commission in the preparation of this Report.

P. B. Gajendragadkar	Chairman
P. K. Tripathi	Member
S. S. Dhavan	Member
S. P. Sen Verma	Member
B. C. Mitra	Member
P. M. Bakshi	Member-Secretary

New Delhi;
7th February, 1975.

---

[1] Paras 5·20 and 5·21.

[2] Para 5·44.

APPENDIX 1

COMPARATIVE POSITION AS TO PROSTITUTION IN OTHER COUNTRIES

Prostitution at common law—At common law, keeping a brothel is not an offence. A prostitute receiving men *only into her own room* could not be convicted of keeping a "brothel".[1]

It may be stated that "scandalous and public" indecent behaviour was, at common law, an offence[2]. The history of the offence of grossly open and notorious "lewdness-indecent exposure" is illustrative of this. To be indictable in earlier times, this act not only had to be public, but had to actually be seen by "more than one" non-consenting persons.[3] The "more than one person" rule was, however, soon relaxed, to the extent that acts were held indictable if they were committed in a place "so situated that what passes there can be seen by a considerable number of people if they happen to look".[4] However, courts, retaining this requirement as so modified, have still refused to indict the act when committed in private before a single non-consenting person[5].

The law on the subject in England has now been modified by a number of enactments[6].

Statutory provisions in England—The main statutory offences in England relevant to prostitution are the following:—

Causing or encouraging women to become prostitutes:

By section 22(1) of the Sexual Offences Act, 1956,—

"It is an offence for a person—

(a) to procure a woman to become, in any part of the world, a common prostitute; or

(b) to procure a woman to leave the United Kingdom, intending her to become an inmate of or frequent a brothel elsewhere; or

(c) to procure a woman to leave her usual place of abode in the United Kingdom, intending her to become an inmate of, or frequent a brothel in any part of the world for the purpose of prostitution."

---

[1] *Singleton* v *Ellison*, (1895) 1 Q B. 607; Archbold (1966), para 3854.

[2] Note "Homo-sexual Conduct", 70 Yale Law Journal 623, 624, and footnote 11.

[3] (*a*) *Regina* v. *Watson*, (1847) 2 Cox Crim. Cas. 376;
(*b*) *Regina* v. *Orchard*, (1848) 3 Cox. Crim. Cas. 248.

[4] (*a*) *Van Houten* v. *State*, 5 N.L.J. 311 (Essex Quarter Sess. 1882), aff'd. 46 N.L.J. 16 (Sup. Ct. 1884) (act committed in store) (U.S.A.);
(*b*) *Regina* v. *Holmes*, (1853) 6 Cox Crim. Cas. 216 (act in omnibus);
(*c*) *Regina* v. *Thallman* (1863) 9 Cox. Crim. Cas. 388 (act in roof).

[5] See (1946) Burdick, Law of Crimes 967, cited in Note,"Homosexual Conduct" 70 Yale L.J. 623, 624 and footnote 11.

[6] See *infra*-"Statutory provisions in England."

The use of Premises for Prostitution:

(a) *Brothel keeping*—By section 33 of the Sexual Offences Act, 1956:

"It is an offence for a person to keep a brothel, or to manage, or act or assist in the management of a brothel."

By Section 34:

"It is an offence for the lessor or landlord of any premises of his agent to let the whole or part of the premises with the knowledge that it is to be used, in whole or in part, as a brothel, or, where the whole or part of the premises is used as a brothel, to be wilfully a party to that use continuing."

And by section 35(1):

"It is an offence for the tenant or occupier, or person in charge, of any premises knowingly to permit the whole or part of the premises to be used as a brothel."

Tenant permitting premises to be used for prostitution:

By section 36 of the Sexual Offences Act, 1956:

"It is an offence for the tenant or occupier of any premises knowingly to permit the whole or part of the premises to be used for the purpose of habitual prostitution."

Living on the Earnings of Prostitution:

By section 30 of the Sexual Offences Act, 1956:

"(1) It is an offence for a man knowingly to live wholly or in part on the earnings of prostitution.

(2) For the purposes of this section a man who lives with or is habitually in the company of a prostitute, or who exercises control, direction or influence over a prostitute's movements in a way which shows he is aiding, abetting or compelling her prostitution with others, shall be presumed to be knowingly living on the earnings of prostitution, unless he proves the contrary."

By section 4 of the Street Offences Act, 1959, the maximum penalty for this offence was increased from two to seven years.

A woman exercising control over a prostitute:

A closely related offence under section 31 of the Sexual Offences Act, 1956, may be committed only by women:

"It is an offence for a woman for purposes of gain to exercise control, direction or influence over a prostitute's movements in a way which shows she is aiding, abetting or compelling her prostitution."

Loitering or Soliciting in Public Places:

In all the offences so far considered, the crime is committed not by the prostitute but by another. The legislation now to be considered is aimed at the prostitute herself. Its object is not the suppression or dicouragement of prostitution, but the elimination of an offence against public order and decency arising from the activities of prostitutes in public places. The present law is to be found in the Street Offences Act, 1959, which provides, in section 1—

> "(1) It shall be an offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution."

Section 1(4) of the Street Offences Act, 1959 provides:

> "For the purposes of this section 'street' includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and the doorways and entrances of premises abutting on a street (as hereinbefore defined), and any ground adjoining and open to a street, shall be treated as forming part of the street."

"Soliciting" takes place in a street or public place where the solicitation takes effect there, even though the accused may be outside the street or public place. In *Smith* v. *Huges*[1] attracted the attention of men in the street by tapping on the window pane, and by gestures invited them and indicated the price of her services. Applying the "mischief rule' of construction, the Divisional Court dismissed her appeal:

> "Every body knows that this was an Act intended to clear up the streets, to enable people to walk along the streets without being "molested or solicited" by common prostitutes. Viewed in that way, it can matter little whether the prostitute is soliciting while in the street or is standing in a doorway or on a balcony, or at the window, or whether the window is shut or open or half open; in each case her solicitation is projected to and addressed to somebody walking in the street."

Of course, a person who is not criminally punished by the law, can still be denied its protection. Thus, the doctrine that the inn-keeper must admit all travellers is not applicable to a prostitute.[2] A landlord who lets a flat for fornication may not recover his rent.[3]

Other countries—Having dealt with English law, we give below a brief summary[4] of the position in a few other countries.

---

[1] *Smith* v. *Hughes* (1960) 2 All E.R. 859, 861

[2] (a) *Raider v. The Dizile Inn* (1923) 198 Ky 248 S.W. 229 (1923) (U.N.A.).
(b) *Sultan Turkish Bath, Inc.* v. *Board of Police Commissioners*, 169 Cal. App. 2d 188, 337 P. 2d 203 (Dist. Ct. App. 1959) (U.S.A.).

[3] *Upfill* v. *Wright*, (1911) 1 K.B. 506.

[4] Material mostly based on International Review of Criminal Policy (October 1958), No. 13.

Cambodia—In Cambodia, a number of licensed brothels and houses of prostitution exist under special regulations other than licensing. Clandestine prostitutes are prosecuted under Article 430 of the Penal Code. Their arrest is the responsibility of the "public morals police", which keeps a special register of persons so arrested and sent to treatment centres, as well as of inmates of licensed or recognised brothels.

Canada—Position as to Canada is dealt with later.[1]

In Chile, on October 4, 1955, the Ministry of Health issued a new regulation concerning the prevention of venereal disease, which provided for the suppression of all brothels in the country and the discontinuance of the medical inspection relating to the occupants of such establishments.

Denmark—In Denmark, prostitution is not an offence as such. The police, may, however, order a prostitute to seek lawful occupation under section 199 of the Criminal Law and if the prostitute fails to comply with the order, she can be imprisoned upto one year. Section 233 of the Criminal Law provides that any person who offends public decency by her way of life, or by importuning other persons, is liable to simple detention or to imprisonment upto one year. The sentence is normally suspended for the first offence.

France—In France, Act of 24th April, 1946, and the decree of 1947 contain the law on the subject. The Ministry of Health has established a Central health and social card index of prostitutes. Prostitution *per se* is not an offence. The Act of 1946 provides for penalties for its public manifestation. Also, the Act punishes procurers of all types, but this law is not effective.

Haiti—In Haiti, prostitution is regulated by the Decree of 13th June, 1927. Prostitutes who are not inmates of recognised brothels are not subjected to general or administrative measures; they are tolerated.

Hungary—In Hungary, registration of prostitutes was abolished in June, 1950.

Ireland—In Ireland, no licensed or recognized brothels nor any system of registration of prostitutes exists. Section 16 of the Criminal Law Amendment Act, 1935 provides that every common prostitute who is found loitering in any street, or other place and soliciting passersby for the purpose of prostitution shall be guilty of an offence and on conviction be liable, in the case of the first offence, to a fine not exceeding two pounds or in case of subsequent offences to imprisonment for a term not exceeding six months.

Poland—In Poland, heterosexual prostitution is not a punishable offence. But, as regards homosexual prostitution, article 207 of the Penal Code provides that any person who offers himself for reasons of profit to a person *of the same sex* for the purpose of committing an

[1] See below under "U.S.A. and Canada".

immoral act shall be liable to a term of imprisonment for 3 years. Under further provisions of the Penal Code, consorting with relatives in the direct line, with a brother or sister or with minors, exploiting the prostitution of others and inducing another person to engage professionally in immoral acts, are punishable offences. In a number of cities where the problem of prostitution is acute, names of all prostitutes who had committed an offence were previously entered in a special card register which also contains personal data e.g. education, age etc. This system was abolished in April, 1956, and now no system of registration exists in Poland.

Spain—In Spain, the Penal Code provides for the offences of protecting or abetting prostitutes, and inducing other persons by deception, violence or threats to satisfy the unlawful desires of others. If the woman involved is under 21 years, offenders are liable to heavier penalties, and any person who fails to place under restraint a minor subject to his legal authority who is, to his knowledge, engaging in prostitution or residing in a house or place of illfame, is liable to arrest on a major charge, and may be disqualified from acting as guardian and deprived of his parental authority. Persons engaged in clandestine prostitution as a means of livelihood, and the protectors of such person, are also liable to sentence of confinement or special supervision under the Vagrants and Beggars Law. The legislative Decree of 3rd March, 1956 declares prostitution to be an illicit traffic and prohibits brothels and other similar establishments.

Sri Lanka—In Sri Lanka, there are no licensed or recognised brothels, and prostitutes are not subject to registration. Prostitution is an offence under the Brothels Ordinance and the Vagrants Ordinance. The Brothels Ordinance does not provide for the punishment of the women found in a brothel presumably for the purpose of prostitution, but a charge could be made against them under section 9(1A) of the Vagrants Ordinance. Such a charge, however, is extremely difficult to prove, and a great handicap to the raiding of such houses arises from the fact that the courts frown on the police practice of using "decoys" in order to trap the women.

U.S.A. and Canada—Under the different laws in force in the U.S.A. and Canada, the term "prostitution" is generally construed to mean the offering or receiving of the body *for hire* for the purpose of sexual intercourse. In some States, a further qualification is added; the term "prostitution" includes the offering or receiving of the body for indiscriminate sexual intercourse, *without hire*. It may be assumed that a "promiscuous" woman (as distinct from a prostitute) shows some degree of discrimination and emotional involvement, and that payment to her does not take form of a fee for services rendered, although some less tangible consideration may be received. The line of demarcation, however, (between promiscuity and prostitution) is not a hard or fast one. Further, the same woman may shift back and forth between "prostitution" and "promiscuity" as the economic and other conditions of her life change.

Generally speaking, the prostitute group includes women who derive entire earnings from this, as well as those who are waitresses, barmaids, dance hall girls etc.

The Federal Act in the U.S.A. (known as the White Slave Traffic Act) prohibits and penalises, as a felony, the act of any person who transports, causes to be transported, or aids or assists in transporting any woman or girl in *inter-state or foreign commerce* for the purpose of prostitution or debauchery or any other immoral purpose, or who knowingly procures or obtains, causes to be procured or obtained, or aids or assists in procuring or obtaining any ticket or tickets or any form of transportation to be used by any woman or girl in inter-state or foreign commerce for the purpose of prostitution or debauchery or for any other immoral purpose[1]. Knowingly to persuade, induce, entice, or coerce, or to aid or assist in persuading, inducing, enticing, or coercing any woman to go from one place to another in inter-state or foreign commerce for the purpose of prostitution, debauchery, or other immoral purpose[2], or knowingly to persuade, induce, entice, or coerce any woman or girl under the age of eighteen years from any state or territory or from the District of Columbia to any other state or territory or District of Columbia, with the purpose and intent to induce or coerce her or that she shall be induced or coerced to engage in prostitution or debauchery or any other immoral practice, or in furtherance of such purpose knowingly to induce or cause her to go and to be carried or transported as a passenger in inter-state commerce upon the line or route of any comomn carrier or carriers[3] are also declared to constitute felonies.

Prostitution in one form or another has existed on the North American continent since the very early days of its history. In the 19th century, the white slave traffic prospered in business and residential areas. Brothel keepers and pimps grew rich, but the prostitutes themselves were always in debt to the brothel owners.

With the dawn of the 20th century, there was public awakening, in Western Europe, particularly in England and in France. In London, the first International Conference for the Suppression of Traffic in Women in 1899 was held. In 1902, the first International Conference for the Suppression of the White Slave Traffic met in Paris to draft a Treaty. By 1904, an international agreement for suppressing the international traffic in women had been adopted by 13 nations: Belgium, Denmark, France, Germany, Italy, Great Britain, the Netherlands, Norway, Portugal, Russia, Spain, Sweden and Switzerland. The U.S. accepted to it in 1906. In 1917, the U.S. Congress passed an Act which prohibited prostitution within a prescribed area around military or naval installations. Following these, several states enacted laws against all phases of commercialised prostitution, and passed 'injunction and abatement' laws. The laws against traffic in

[1] 18 U.S. Code s. 397.
[2] 18 U.S. Code s. 398.
[3] 18 U.S. Code s. 400.

women and girls aimed at the prosecution of procurers and other promoters of vice. The 'injunction and abatement' laws provided for the suppression of disorderly houses as public nuisance. These resulted, in many states, in the closing of many houses of prostitution; this marked the beginning of the end of these districts as an American institution.

By 1948, every State in the U.S.A. had enacted some kind of improved vice-repressive laws. By defining "prostitution" so as to include both the giving as well as taking of the body in indiscriminate sexual intercourse for hire, and by *penalising the customer as well as the prostitute*, some States[1] marked a long step forward in legislation in this field.

Between the two World Wars, there was growing interest in public health and a campaign for control of venereal disease and for vice-repressive laws was adopted. The May Act, 1941—"to prohibit prostitution within such reasonable distance of military and/or naval establishments as the Secretary of War and/or Navy shall determine to be needful to the efficiency, health and welfare of the Army and/or Navy" is worth particular notice.

By 1948, every State in the U.S.A. had enacted some kind of repressive legislation.

The "regulationist" system, involving the registration of prostitute and the regulation of brothels, had been tried out in one form or another in the United States and Canada. This proved ineffective, and was abandoned in favour of a policy of strict repression. The American point of view on regulation was influenced by the fact that (1) "regulation does not regulate" but simply increases the demand for prostitution, and (2) the regulationist system involves the Governments concerned as partners in licence fees and levying taxes.

At present, the federal law in Canada against commercialised prostitution and the State laws in the U.S.A. classify prostitution and traffic in persons as a crime, and call for its strict repression. The trend is towards decreased *commercialised prostitution*, because of effective law enforcement, and improvement in economic conditions.

In the U.S.A., the Federal Government may enact special legislation to protect servicemen from the threat of prostitution activities, and the commanding officers of army, navy and air force installations may place out of bounds to servicemen the neighbouring brothels and other resorts where illegal sex contracts are made or attempted. However, the role of the Federal Government is restricted largely to the Immigration and Naturalisation Service, and to the F.B.I. which takes action only when the traffic in persons crosses state lines.

State attorneys can take action where the law is not complied with. Further, state health authorities may bring pressure on municipal governments to secure the enforcement of these laws.

---

[1] E.g. Arizona, Florida, New Hampshire and Wisconsin.

The State laws differ. In New York City, for example, a prostitute when apprehended is taken to the police station, where she is charged and if of a legal age taken to a house of detention to await trial. A minor is placed temporarily in a home for delinquent girls. With least possible delay, they are brought before the Court for Women Vagrants, or if under age, before the Juvenile Court; bail may be granted; the Court moves quickly. If it is a first offence and evidence is sufficient to warrant conviction, a suspended sentence may be given, or the convict may be placed on probation. If she is a recidivist and of legal age, she is often given prison sentence of 30 days to a year. If she is a minor, she is given an indeterminate sentence in a rehabilitative institution. New York does not fine convicted prostitutes. A large fine is found to be a deterrent, but a smaller fine is useless.

Law in New York—Sections 230.00 230.05 and 230.10 of the 1965 New York State Penal Law read as follows[1]:—

"*Section* 230.00 *Prostitution.*

A person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

[Prostitution is a violation. L. 1965, c. 1030, eff. Sept. 1, 1967].

A person is guilty of patronizing a prostitute when:

1. Pursuant to a prior understanding, he pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him; or

2. He pays or agrees to pay a fee to another person pursuant to an understanding that in return therefore such person or a third person will engage in sexual conduct, with him; or

3. He solicits or requests another person to engage in sexual conduct with him in return for a fee.

Patronizing a prostitute is a violation[2].

Section 230.10 *Prostitution, and patronizing a prostitute.*

Sex no defence.

If any prosecution for prostitution or patronizing a prostitute, the sex "of the two parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial, and it is no defence that:

1. Such persons were of the same sex; or

---

[1] See Pemola. A. Roby, "Politics and Criminal Law-Revision of New State Penal Law on Prostitution", (1969 Summer), Vol. 17, No. 1, Social Problems 83, 85.

[2] L. 1965, c. 1030, eff. Sept. 1, 1967.

2. The person who received, agreed to receive or solicited a fee with a male and the person who paid or agreed or offered to pay such fee was a female[1] [2].

It was after public hearing that the New York Penal Law and Criminal Revision Commission added section 230.05, concerning patrons. In its comments on article 230, the Commission termed the addition of the New offence, "Patronizing a Prostitute", the most important change in the article. In explaining the change, the Commission wrote[3]:

> "Though not presently an offence in New York, such 'patronizing' conduct is prescribed in various forms by the penal codes of several other jurisdiction, including the recently revised Codes of Illinois and Wisconsin.

"At the public hearings held by the Commission with respect to the proposed Penal Law and in conferences and correspondence with the Commission and its staff, a number of persons and organizations have strongly urged the inclusion of a "patronizing" offence. The reasons most vigorously advanced are:

(1) that criminal sanctions against the patron as well as the prostitute should aid in the curtailment of prostitution; and (2) that to penalize the prostitute and exempt the equally culpable patron is inherently unjust.

"After consideration of these contentions, the Commission decided to include the indicated patronizing offence in the new bill as a proper corollary to prostitution."

The power of forces opposing the "patron's" penalty was discussed by Flexner[4] in the twenties:

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

In 1966, Davis wrote, "Although the service is illegitimate, the citizen cannot ordinarily be held guilty, for it is inadvisable to punish a large portion of the populace for a crime ..... that has no political significance. Each such citizen participates in the basic activities of the society, in business, government, the home, the church, etc.

---

1. L. 1965, c. 1030, eff. Sept. 1, 1967.

2. Also see B. George, "Legal, Medical and Psychiatric Consideration in the Control of Prostitution", (1962), 60 Mich. Law Review.

3. New York Penal Law, Comments S. 230.05 (Mckinney 1965) cited by Eamela A. Roby 'Politics and Criminal Law, (1969 Summer), Vol. 17 Social Problems No. 1, 83.92.

4. Flexner, Prostitution in Europe. (1920) pages 108, cited in Pamela A. Roby, "Politics and Criminal Law (1969) (Summer), Vol. 17, No 1, Social Problems 83, 108, footnote.

To disrupt all of these by throwing him in jail for a mere vice would cause more social disruption and inefficiency than correcting the alleged crimed would be worth[1]."

In 1968, in New York State (contrary to Davis' expectations), the patron can be held guilty, but the theory upon which Davis based his expectations remains true, for the law is seldom enforced.[2]

Model Penal Code—The Model Penal Code[3], original draft, section 207.12, was as follows:—

"S. 207.12—*Prostitution and related offences.*

(1) Prostitution. A person who engages, or offers or agrees to engage in sexual activity for hire, or is an inmate of a house of prostitution, or enters this state or any political sub-division thereof to engage in prostitution, commits a petty misdemeanor....."

The following comment was annexed to the draft.

"Although prostitution appears to respond to a widespread demand, and despite indications that a substantial proportion of prostitutes are victims of social and psychic conditions beyond their control, most students of the problem favour penal repression of commercialized sex. Religious and moral ideas undoubtedly "are the main forces behind the demand for repression, but utilitarian arguments are also available. Prostitution is an important source of venereal disease, although some contend that the "amateurs" to whom men turn in lieu of prostitutes present a great danger in this respect. It has been observed that prostitution is a source of profit and power for criminal groups who commonly combine it with illicit trade in drugs and liquor, illegal gambling and even robbery and extortion. Prostitution is also a source of corrupt influence on government and law enforcement machinery. Its promoters are willing and able to pay for police protection; and unscrupulous officials and politicians find them an easy mark for extortion. Finally, some view prostitution as a significant factor in social disorganisation, encouraging sex delinquency and undermining marriage, the home, and individual character.

"Counter-arguments have been made by some students of the problem, who favour legislation of prostitution under public supervision. Regulation rather than total repression has been advocated on the following grounds:

(1) Prostitution cannot be eliminated by law.

---

[1] Davis, "Sexual Behaviour", in R. Merton and Nisbet, Contemporary Social Problems (1966) 358 cited in Pamela A. Roby, "Politics and Criminal Law etc., "(1969) (Summer) Vol. 17, No. 1, Social Problems, 83, 108.

[2] Pamela, A. Roby "Politics and Criminal Law etc., (1969) (Summer) Vol. 17, No. 1 Social Problems, 83, 108.

[3] Model Penal Code (American Law Institute), Tentative Draft No. 9(1959) Comments at pages 170 to 174, quoted in Paulson and Kadish, Criminal Law and its processes (1969), page

(2) Sumptuary laws that cannot be generally enforced lend themselves to extortion and arbitrary and episodic prosecution.

"(3) Failure to provide a professional outlet for male sexuality will result in more rape and other sexual crimes.

(4) Registration and periodic health inspection are the best means of controlling venereal disease; disease is much more likely to be spread by the promiscuous amateur than by professional prostitutes concerned and instructed to avoid infection.

(5) Legalised prostitution offers less opportunity for official corruption than an unrealistic effort at total repression.

(6) By confining prostitution to particular neighbourhood police surveillance is facilitated and the safety of the general community is promoted.....

"Many of the issues between those who favour repression and those who would tolerate some prostitution cannot be resolved on the basis of available evidence. However, on the question of medical risk, the record is persuasive that inspection of licensed prostitutes would give no assurance against venereal infection .....

"Accordingly, the Institute's proposals on prostitution, embodied in Section 207.12, pursue the same basic policy of repressing commercialised sexual activity, as does present American law ....."

Later, however, a modified draft was adopted, as follows:

"*Section* 251.2 Prostitution and Related Offences.

(1) Prostitution. A person is guilty of prostitution, a petty misdemeanor, if he or she:

(a) is an inmate of a house of prostitution or otherwise engages in sexual activity as a business; or

(b) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity ....."

APPENDIX 2

LIST OF SECTIONS CONTAINING THE EXPRESSION "WOMAN" OR "GIRL" OR BOTH THE EXPRESSIONS

Section	Reference to "Woman" only	Reference to "Girl" only	Reference to "Woman or girl".
S. 2(*b*)— definition of "girl"		Girl	
S. 2(*j*)— definition of "Woman"	Woman		
S. 4— Punishment for living on the earnings of "prostitution" of a woman or girl.			Woman or girl
S. 5— Punishment for procuring, inducing or taking woman or girl for prostitution.			Woman or girl
S. 6— Punishment for detaining a woman or girl in premises where prostitution is carried on.			Woman or girl
S. 16(1)— Rescue by Magistrate of a girl living or carrying on in brothel.		Girl	
S. 17— Immediate custody of girls removed under s. 15(4) or rescued under s. 16(1).		Girl	
S. 19— Application for being kept in a protective home.			Woman or girl
S.20—Removal of prostitute from any place by a Magistrate.			Woman or girl
S. 7 (1)—Woman or girl carrying on prostitution in or in the vicinity of public places.			Woman or girl
S. 9—Seduction for prostitution of a woman or girl by person having her custody, charge or care.			Woman or girl
S. 15(1)—Search without warrant of premises where offence under the Act committed in respect of a woman or girl living* there.			Woman or girl
S. 15(4)—The special police officer can remove any girl from premises searched under s. 15(1) who is carrying on or being made to carry on prostitution.		Girl	

*Section 15(2) requires the presence of at least one "woman", at the search.

(P)12MofLJ&CA—000—9.4.76—GIPS