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Report # 4

PROSTITUTION AND PORNOGRAPHY IN SELECTED COUNTRIES

by
C.H.S. Jayewardene,
T.J. Juliani and
C.K. Talbot

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PROSTITUTION AND PORNOGRAPHY

IN

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C.H.S. Jayewardene

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and

C.K. Talbot

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Crimcare Inc.

P.O. Box 125
Station A
Ottawa, Ontario
K1N 8V1

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1.1. Introductory Remarks

Under contract with the Department of Justice, Canada, Kiederowski and von Dijk (1984) prepared a report describing the experiences with pornography and prostitution in five countries in the European Economic Community -- Denmark, France, West Germany, The Netherlands and Sweden. As that report points out, the study was commissioned because the Department of Justice, Canada, desired the information "to aid in making effective policy decisions and to address the concerns of the Special Committee on Prostitution and Pornography". While the experience of countries in the European Community would be of particular interest in the formulation of policy in Canada, there were other countries in the world, whose experience with prostitution and pornography may have been of interest to the Department of Justice and of assistance in the formulation of Canadian policy on the subject even though the culture of these countries be so vastly different. Consequently, the description of the experience of these countries was considered a worthwhile project.

When this idea was conceived, criminologists in a number of Eastern European, Asian, Latin American, African and Australian countries were approached seeking their assistance as resource persons. As the time given them to collect the necessary information was very limited, a number of them found it difficult to participate and consequently information was obtained only from a few countries. Sometimes the information was not as complete as required and sometimes, because of the necessity to meet a deadline, the

information was sent in the language of the country -- Spanish, Japanese and Arabic. These posed problems of translation and clarification.

1.2 Methodology

In our original inquiry, the task that had to be performed was described as detailing the situation in the country regarding:

(1) the law on prostitution;

(2) the law on pornography;

(3) the extent to which the law on prostitution was enforced;

(4) the extent to which the law on pornography was enforced;

(5) the problems encountered in the enforcement of the laws on prostitution;

(6) the problems encountered in the enforcement of the laws on pornograpy;

(7) the extent of prostitution as determined both officially and unofficially;

(8) the extent of pornography as determined both officially and unofficially;

(9) the public attitude towards prostitution;

(10) the public attitude towards pornography;

(11) the existence of any movements to change the laws on prostitution; and

(12) the existence of any movements to change the laws on pornography.

When the respondents were chosen and contracted to supply us with the required information, the following document was sent to be used as a guideline.

STUDY ON PROSTITUTION AND PORNOGRAPHY

This document represents guidelines indicating the information that is sought. It deals with the subjects of prostitution and pornography separately. On each subject information is sought on (a) legislation; (b) law enforcement policies; and (c) public opinion and attitudes. The guidelines take the form of questions which should be answered as fully as as specifically as possible.

Most of the questions could be answered by consulting books, documents and research reports. Sometimes, it might be necessary and even easier to consult a specialist, especially a police officer dealing with the subject. You are at liberty to obtain the information in any manner you think it best. We would, however, like you to submit a complete list of the literature that you have used and, in instances where personal communications are used as a source, the name and function of the spokesman.

It is quite possible that some of the questions are irrelevant in the legal and social frame of your country. Please do not hesitate to say so. On the other hand, it is also possible that certain aspects of the subject which seem to be of importance in your eyes may have been overlooked. Please elaborate on these aspects as much as possible.

I. PROSTITUTION

For the purposes of this study, prostitution has been defined as sexual services for financial reward, whatever the sex of the participants may be, and all acts directly related to such sexual services: operation of bawdy houses (brothels), living on the avails (pimps), etc.

1. What is the existing law on Prostitution?

   Please cite the relevant sections of the penal code.

2. Have there been any significant alterations to the law such as decriminalization, legalization, criminalization, alteration in punishment in the law on prostitution?

   Please state the change and cite the sections of the penal code that were changed, giving dates and a brief summary of the arguments proferred to produce the change.

3. Is there any significant jurisprudence on the subject?

   Please give a brief summary of the cases and the findings of the court. If possible, please indicate how the judgment affected enforcement.

4. Is there a problem of prostitution in your country?

   (a) in your opinion?

   (b) in the opinion of the police?

   (c) in the opinion of the public?

   For (b) please interview a police officer for the information —giving his name and rank — and for (c) please give results of public opinion polls, giving the relevant references.

   For all, please give an indication of what the problem is. Is it the

incidence of the phenomenon, the violation of conditions of operation, the spread of disease, etc.?

5. What is the official extent of the problem?

   Please cite official statistics -- crimes known to the police and conviction rates -- to indicate (a) the present state and (b) the trend, giving the relevant references.

6. What is the attitude to the problem of

   (a) the police?

   (b) the public?

   For (a) please interview a police officer for information — giving his name and rank — and for (b) please give results of public opinion polls giving the relevant information.

7. Are there any public movements to

   (a) change the legislation?

   (b) get better enforcement of the existing law?

   Please give a brief summary of the movements with an indication of when they started and how strong they are.

8. Have there been any special studies undertaken on prostitution in your country?

   Please give a brief summary of the studies together with the relevant references.

II. PORNOGRAPHY

For the purposes of this study, pornography is considered as materials, publications, films, etc., and/or performances of a sexual nature considered to be obscene, indecent, etc.

1. What is the existing law on Pornography?

   Please cite the relevant sections of the penal code.

2. Have there been any significant alterations to the law such as decriminalization, legalization, criminalization, alteration in punishment in the law on pornography?

   Please state the change and cite the sections of the penal code that were changed, giving the dates and a brief summary of the arguments proferred to produce the change.

3. Is there any significant jurisprudence on the subject?

   Please give a brief summary of the cases and the findings of the court. If possible, please indicate how the judgments affected enforcement.

4. Is there a problem of pornography in your country?

   (a) in your opinion?

   (b) in the opinion of the police?

   (c) in the opinion of the public?

   For (b) please interview a police officer for the information —giving his name and rank -- and for (c) please give results of public opinion polls giving the relevant references.

   For all, please give an indication of what the problem is. Is it the incidence of the phenomenon, the violation of conditions of

operation, the spread of disease, etc.?

5. What is the official extent of the problem?

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6. What is the attitude to the problem of

   (a) the police?

   (b) the public?

   For (a) please interview a police officer for the information -- giving his name and rank -- and for (b) please give the results of public opinion polls, giving the relevant references.

7. Are there any public movements to

   (a) change the legislation?

   (b) get better enforcement of the existing law?

   Please give a brief summary of the movements with an indication of when they started and how strong they are.

8. Have there been any special studies undertaken on pornography in your country?

   Please give a brief summary of the studies together with the relevant information.

1.3 Structure of the Report

The information that has been received from the respondents in a country has been collected and collated in a chapter which:

1. describes the existing law on prostitution and pornography;
2. describes any significant changes such as decriminalization, criminalization and alterations of punishment that have occurred in the law on prostitution and pornography;
3. identifies the dimensions of the problems of prostitution and pornography;
4. assesses the extent of the problems in terms of police estimates and public estimates;
5. assesses the official reaction to the problems in terms of charges laid and convictions obtained;
6. describes the public attitude to the problem with attempts at explanations for that attitude;
7. describes the police attitude to the problems and the phenomena with attempts at explanation of that attitude;
8. describes the public interest in the phenomena; and
9. describes any special studies that have been made of prostitution and pornography.

Attempts have been made to make the chapters, as far as possible, comparable to each other. However, because of the difference in the information that was obtained, this has not always been possible. All the information from all the countries has been brought together and presented in a final Conclusions chapter.

1.4 References

J.S. Kiederowski and J.J.M. van Dijk: Pornography and Prostitution in Denmark, France, West Germany, The Netherlands and Sweden. (Ottawa: Unpublished Report, 1984).

1.5. Acknowledgments

This report has been written under contract for the Department of Justice, Canada.

The authors wish to express their thanks to Mrs. Lenore Dewan for typing services.

II. POLAND

2.1 Introductory Remarks

Poland is an independent Republic in East Europe falling within the Communist sphere. An irregularly oval shaped country, the Polish People's Republic covers an area of 119,734 square miles and has a population of 36,062,000 (1982 figure). For administrative purposes it is divided into 46 provinces and voivodships and three cities -- Warsaw, Ludz and Krakow -- which have also been granted voivodship. The supreme organ of the state is the Sejm -- an unicameral legislature comprising 460 delegates elected by secret ballot for a four-year term. There are three recognized political parties -- the United Peasants' Party, the Democratic Party and the Communist Party -- but they field a single list of candidates. However, as there are considerably more candidates than there are seats to be filled, the voters have a substantial scope of expressing their electoral preferences.

The enactment of laws and the supervision of other organs of government and administration is the chief business of the Sejm which is obliged by law to meet at least twice a year. However, it does most of its business through Standing Committees which are equivalent to Ministries in democractic countries. The Sejm is dominated by the Communist Party -- officially known as the Polish United Workers' Party (Polska Zjednuczena Partia Robotnicza -- PZPR) which is itself controlled by the Politburo and by the Secretariat of the Central Committee under the direction of the Party First Secretary. Local administration is carried out through a hierarchical system of People's Councils which function in effect as the executors of policies and programs determined by the PZPR.

There is a Council of State, a collective body comprised of a Chairman, a Deputy Chairman, a Secretary and eleven other members, which is recognized as the Head of State, and, functioning as a Praesidium of Sejm, is empowered to issue decrees, having the force of law. It is not a policy making body but vested with the authority to issue binding legislation without the prior approval of the Sejm, it is the organ which enables the Communist regime to implement its will with speed and efficiency while maintaining the appearance of a parliamentary system. There is also a Council of Ministers entrusted with the responsibility of enforcing law, maintaining order and protecting the interests of the State and of individuals. A third body of importance is the Supreme Control Chamber created by a constitutional amendment in 1957, functioning in a watch dog capacity.

The judicial system of Poland is a three-tiered formal court system. The highest judicial organ is the Supreme Court devoting itself exclusively to appeals from the lower courts. It has four chambers — one for each main field of law — civil, criminal, military and labour and social security cases. Courts of original jurisdiction are the Provincial and County Courts. The court of first instance is usually the County Court, thought the more serious cases may be tried in the Provincial Court. Apart from its original jurisdiction, Provincial Courts have an appellate function, hearing appeals against judgments rendered by the County Courts. The judiciary is theoretically independent, but responsible in practice to the Council of State, it serves to give legal expression to the Communist system and ensure the fulfilment of party policies.

The legal traditions are based primarily on English common law with the accused held innocent until proven guilty, the burden of proof lying with the accused and the accused guaranteed the right to legal counsel. However, the

proceedings do not follow the British tradition of a contest between prosecution and defence. Instead, they assume the form of an investigation in which the judges take an active part in the examination of evidence and the interrogation of witnesses. There are no juries, but the judges are assisted by lay assessors representing interests of the local community. A network of unofficial social courts was established in 1960 and granted official status in 1965 to deal with minor disputes and offences in economic enterprises and places of work.

Prosecution is the responsibility of the Prosecutor General operating through a network of Provincial and County offices functioning independently of the Provincial and County Peoples' Councils. Revision of the Penal Code in 1970 saw prescribed penalties reassessed in terms of the concept of social danger so that the crimes endangering the state carried the most severe punishment and crimes committed against the person, especially those considered to be one time acts and thought to be of a lesser danger to society as a whole, carried lesser penalties. Nevertheless, there are 18 crimes which carry the death penalty. These include murder, treason, terrorism and espionage.

2.2 Legal Rules Concerning Prostitution

Prostitution is not a crime in Poland. The Penal Code does not use the term prostitution. It uses the term "indecent act" (nierzad) which commentators of the Polish Penal Code consider a synonym of the word prostitution (Bafia, Mioduska and Siewierski, 1977).

The sole case of prostitution which can become a punishable act in Poland is the situation foreseen in Article 142 of the Polish Code of Violations which reads:

> Whoever importunately or by intruding oneself, or by other means violating the law and order proposes to another person to commit an indecent act, with the purpose of obtaining a material benefit, shall be subject to a penalty of arrest or liberty deprivation or a fine.

Also a situation where a prostitute could incur penal liability can be imagined in Article 162, Section 1 of the Polish Penal Code. This section reads:

> Whoever, being afflicted with a venereal disease, exposes another person to infection from that disease, shall be subject to the penalty of deprivation of liberty for up to three years.

Although prostitution is not an offence in Poland, the Polish legislation does outlaw certain behaviours likely to contribute to the spreading of the phenomenon and to the exploitation of women with an aim of obtaining a material benefit. These behaviours are mentioned in Article 174 of the Polish Penal Code and identified as "Proxenitism". Section 1 of this article reads:

> Whoever induces another person to practice prostitution, shall be subject to the penalty of deprivation of liberty for 1 to 10 years.

and section 2 of the Article reads:

> Whoever deprives a material benefit from someone else's prostitution, or with the purpose of obtaining a material benefit, facilitates someone else's prostitution, shall be subject to the same penalty.

Thus, though prostitution itself is not a crime, the Polish Penal Code has criminalized inducing others to practise prostitution and living off the earnings of prostitutes. Prostitution, consequently, has not been legalized in Poland.

2.3 The Scope of Law Enforcement Regarding Prostitution

Although prostitution is not a crime, the police do maintain a surveillance of prostitutes. This is mainly due to the association established between prostitution and other violations of the law. Jasinska (1967) compared the criminality of young female adults before and after they began their career as prostitutes. Only 15% of the women studied did not commit any offence as prostitutes. The involvement in crime of the other 85% increased after they commenced their career in prostitution. The offences committed by young adult prostitutes were predominantly theft, resistance to police and authorities, exposing another to infection from venereal disease, and robbery. On the basis of this research, Jasinsk (1967) concluded that there were specific types of offences committed by women involved in the practice of prostitution. These offences were mostly theft and hooliganism. The milieu of the prostitute was thought to have a tremendous effect on the commission of these crimes. Only 34% of the prostitutes were involved in theft prior to the beginning of their career in prostitution: 65% were involved after.

An analysis of the criminal behaviour of 8905 prostitutes recorded by the Civic Militia during the year 1967 showed that penal proceedings were launched against 1332 of them -- only 14.96% of them -- and that mostly for crimes against property (Biczysko, 1968). Data available from the headquarters of the Civic Militia indicate that in 1983 criminal proceedings (motions for punishment submitted to magistrates) was launched against 2819 prostitutes mainly for misdemeanours defined in Article 51 of the Code of Violations:

> Whoever breaches the peace, law and order, or night rest, by shouting, hooting or by other pranks, or causes a scandal in a public place. . . .

In addition to this there were proceedings launched against 954 prostitutes for misdemeanours against residence registration and 147 for impudent advances as defined in Article 142 of the Code of Violations. Proceedings were launched against 1243 prostitutes for involvement in crimes such as theft, robberies, burglaries and house breakings.

With regards to acts connected with the exploitation of prostitution, the number of persons brought to court is insignificant in comparison to the number of known prostitutes. In the years 1978 to 1982, there have been respectively 47, 42, 73, 34 and 18 persons accused of living off the earnings of prostitutes or of proxenitism as defined in Article 174, section 2 of the Penal Code. Once charged, the number of people who are acquitted is negligible and the penalty inflicted is mainly deprivation of liberty with a conditional suspension of the sentence. In 1978, 60% of the cases were so punished and in 1982, 95.4% of the cases. Occasionally there is also a fine imposed.

Persons charged under section 1 of Article 174 are even fewer. During the period 1978 - 1982, there were respectively 4, 2, 3, 2 and 2 such cases. In these cases the punishment imposed is deprivation of liberty with conditional suspension of its execution.

It should be noted that the scope of enforcement of the penal law in connection with the exploitation of prostitution is very small. It results, above all, from the difficulties encountered by criminal justice to prove the commission of these offences. It is a consequence of mutual solidarity and the ties existing between the prostitutes on the one hand and the persons practising proxenitism and living on the earnings of prostitutes on the other.

2.4 Difficulties in Law Enforcement Regarding Prostitution

The only law concerning prostitution which has to be enforced in Poland is that dealing with proxenitism and living off the earnings of prostitutes. When the total number of prostitutes known, a number that is in itself deficient, is taken into consideration, the enforcement of these laws is a drop in the bucket of these kinds of offences actually committed. The difficulties in the enforcement regarding these categories of offences results from the fact that they are committed in a specific demi-monde, with its distinct criminal subculture. The organization of contemporary forms of co-operation of prostitute's protectors and panders with the prostitutes makes it difficult to combat these offenders as well as the phenomenon of prostitution. In many cases, the prostitutes are the initiators of the paid assistance of men.

2.5 Official and Unofficial Extent of the Phenomenon of Prostitution

The only source of information on the official extent of prostitution in Poland is the Civic Militia Files. These files cannot reflect the actual extent of this phenomenon. The figures cover three types of persons: (1) those prostitutes who have violated the law and have been taken to court for the commission of an offence or a misdemeanour. These constitute the majority recorded in the files; (2) those prostitutes whose personal matters are connected with the activity of various public assistance bodies such as medical treatment, the care of children and the like; and (3) those summoned by special committees of the People's Councils since they neither work nor learn.

The extent of prostitution in Poland on the basis of the Civic Militia files is illustrated in Table 2.1. The Figures show a gradual increase from 1957. It should be noted that though these figures do not present a complete picture

Table 2.1 The Extent of Prostitution in Poland. 1957-1983

Year	Number of Persons	Year	Number of Persons
1957	3,137	1968	n.a.
1958	5,313	1969	n.a.
1959	6,565	1970	10,408
1960	6,474	1971	11,209
1961	7,002	1972	11,558
1962	7,487	1973	12,310
1963	7,921	1974	12,600
1964	8,060	1975	11,939
1965	8,216	1976	11,898
1966	8,573	1977	11,675
1967	8,905	1978	12,054

Year	Number of Persons
1979	11,675
1980	12,770
1981	12,570
1982	12,539
1983	12,418

Source: Civic Militia.

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of the situation in Poland, there being necessarily a dark or unknown number, they do present a much more complete picture of the situation than do official statistics in most other countries.

The actual extent of prostitution is a question that is very difficult to answer even with an estimation. Most research work concerning prostitution deals with the problem only in a fragmentary way. Furthermore, the starting point of most of these studies in Poland are the official data recorded in the Civic Militia files. Nevertheless, the authors of these studies (Biczysko, 1968;

Jasinka, 1967) unanimously agree that the actual extent of prostitution in Poland is undoubtedly much higher than what the official figures indicate.

There have been no attempts to determine the dark number of prostitution.

2.6 Attitudes of the Public towards Prostitution

In Polish society there is generally a positive relation between rigorism and punitiveness, on the one hand, and the law in force, on the other hand. A higher rigorism and punitiveness accompany, as a rule, those behaviours which are prohibited and made punishable by law. Research in Poland, however, reveals prostitution constitutes a deviation from this principle. It is a behaviour that is severely condemned though it is not punishable. Such a rigoristic approach of the public towards prostitution can be, among others, the effect of the belief in the magnitude and the social noxiousness of the phenomenon. About 75% of the public believes that prostitution exists in Poland in a form constituting a social problem. The belief that prostitution constitutes a very serious social danger occurs more frequently among women than men (Wodz, 1973).

The belief in the social noxiousness of prostitution derives mainly from the opinion that it causes disintegration of the family, it makes the education of young girls difficult because it lures them to easy money and it contributes to the spread of venereal disease. In Polish society, the noxiousness also has a moral connotation (Wodz, 1973).

Research conducted in Poland indicates that prostitution is very severely condemned by more than half of the samples studied. More severely condemned than prostitution are group rape, murder, drug addiction, alcoholism

and abuse of power. Just as strongly and as often condemned as prostitution is pornography and homsexuality (Kwasniewski and Kojder, 1979).

The effect of this severe condemnation of prostitution is the social response to the phenomenon. Here can be observed two distinct trends in the field. There is, on the one hand, a trend to penalize prostitution. There is, on the other hand, a trend not to punish prostitution but to control the phenomenon by putting prostitutes to work.

The preponderance of public opinion (about 85% of the samples studied) seems to be that prostitution should be penalized, that it should be made a punishable offence. There are many who believe that it is so even now, perhaps mistaking the penal measures applied for crimes committed by prostitutes as punishment for prostitution. These people feel that the punishments handed out, such as fines and short term incarceration, are not effective enough. A study of the attitudes of Polish and Italian people towards prostitution has revealed that while the Poles would like prostitution penalized, the Italians prefer to see the problem handled through medical and educational measures (Kwasniewski, 1973).

Though small, there is a body of opinion that feels that the phenomenon could be controlled by introducing compulsory work for prostitutes. This view stems from the consideration of a prostitute as one who is leading a parasitic mode of life. A similar proposal has been made for dealing with persons who do not fulfil their duties of alimony or allowance for the support of children. The idea has been incorporated in draft legislation but it was not enacted as such a rule would be contrary to the provisions of the International Convention of 1950 concerning White Slave Trade and the Exploitation of Prostitution, which was ratified by Poland. Nonetheless, the belief that it

would be an effective measure for the protection of society and a deterrent towards prostitution continues to exist.

2.7 Movement towards Changing Legal Rules Concerning Prostitution

In Poland, as a rule, there is no public clamour for alteration of the laws concerning prostituion. One does, however, encounter in the literature postulates for increasing the effectiveness of prosecution of violators of Article 174, sections 1 and 2 of the Penal Code. There are also postulates for decreasing the sanctions for those living off the earnings of prostitutes and for inducing another person to engage in prostitution. Such proposals were actually made in the draft of the changes of the Penal Code in 1981.

2.8 Legal Rules Concerning Pornography

Legislation in Poland bans the production and distribution of objects of a pornographic character. The rules concerning pornography have been laid down according the the Geneva Convention on combatting the distribution and traffic of pornographic publications in 1923 which was ratified in Poland in 1926. The relevant law is found in Article 213 of the Penal Code of 1932 and later in its homologue Article 173 of the Penal Code of 1969. This article reads:

> 1. Whoever disseminates writings, printed matter, photographs or other objects having a pornographic character, shall be subject to the penalty of deprivation of liberty for up to two years, limitation of liberty or a fine.
>
> 2. Whoever with the purpose of disseminating such writings, printed matter, photographs or objects, produces, stores, transfers, dispatches or transports them, shall be subject to the same penalty.

A complementary to this rule in Article 141 of the Code of Violations:

> Whoever places indecent advertisement, inscription or design or uses indecent words incurs penalty liability of limitation of liberty, a fine up to 3000 zlotys or to a remand.

These bans have been confirmed in the rule contained in item 10 of Article 2 of 31st August 1981 concerning the control of publications and shows. This rule reads:

> one cannot propogate the contents noxious morally, and in particular, alcoholism, drug addiction, cruelty and pornography.

2.9 The Scope of Law Enforcement Regarding Pornography

In Poland the prosecution of the offence of spreading pornography has been always of an incidental character. There has been a constant decrease in the number of convictions of this offence. This decrease has been characteristically regular. The data from the Ministry of Justice indicates that in 1954 the number of such convictions amounted to 62, in 1961 to 36, and after the year 1963 their number never reached 20. It was 11 in 1978, 19 in 1979, 11 in 1980, 6 in 1981 and 13 in 1982.

Another characteristic of this type of offence is the fact that courts have considered it fit, most often, only to impose a fine or a conditional discontinuance of criminal proceedings, which are the most lenient penal measures. In the case of fines, the courts have rarely imposed a fine higher than 10,000 zlotys. Taking these facts into consideration, it would be correct to say that the penal policy in this field has been decidedly liberalized.

2.10 Difficulties in Law Enforcement Regarding Pornography

The application of Article 173 of the Penal Code presents many difficulties in practice especially in connection with the interpretation of the term pornography and dissemination of pornography. One suggestion is to consider pornography as that which could spur the sexual excitability -- a definition that is not sufficiently precise. Further, it is difficult to distinguish works of art from pornographic productions because much depends on the reception of the content of the work and the perception of the spectator.

It could perhaps be presumed that the small number of convictions for offences related to pornography results from legal technicalities and difficulties associated with the definition of the offence. But also to be taken into consideration is the fact that, due to the unavailability of pornographic material in the Polish market, its display and distribution must necessarily occur in a very narrow and informal circle. Hence, prosecution becomes difficult because nobody among the persons participating is interested in reporting the crime to the criminal justice agencies.

2.11 Official and Unofficial Extent of Pornography

The statistical data of the Ministry of Justice indicates that the offence defined in Article 173 of the Penal Code was one of very rare occurrence. Only about a dozen persons appear before the courts annually. Very little is known about the unofficial extent of the offence but one can suppose, in spite of the lack of scientific research in the sphere, that the dark number is not too high. This is the opinion expressed by one student of the problem (Filar, 1979).

2.12 Attitudes of the Public Toward Pornography

Opinions and attitudes of the Polish public towards pornography are not exactly known. There is a lack of comprehensive research on the subject. However, one public opinion study has been conducted (Walsazek-Henzel and Filar, 1983). According to this study, the public concept of pornography consists of four determinants: nudity, vulgarization of sex, sexual acts and the lack of intimacy. A decisive criterion is the kind of sexual presentation. A classical sexual situation, natural and modest, is evaluated as pornography only to a small degree while the presentation of sexual acts wandering away from generally admitted patterns of sexual behaviour are evaluated as highly pornographic.

Polish society appears to be characterized by an average tolerance for pornography. There is a small group of people with a low tolerance for it as well as an equally small group with a high degree of tolerance. A slightly higher tolerance is characteristic of younger people, people with a higher education, irreligious people and people with a greater sexual excitability and smaller sexual inhibitions. The research also shows that contact with pornography leads to an increase rather than a decrease in the tolerance of this phenomenon. With the increase in education, urbanization and secularization of Polish society coupled with the simultaneous insignificant supply of pornographic materials, one could foresee the group of people having negative feelings about pornography decreasing and the tolerance of pornography increasing.

2.13 Movements Toward Changing the Legal Rules Concerning Pornography

Changes in the law concerning pornography in Poland has been suggested. The trust of these changes has been a total depenalization of the offence. The opinion has been expressed that making it a misdemeanour would not be sufficient (Filar, 1979). The basis of the proposal for depenalization are the arguments that:

1. the prosecution of the offence has always been incidental in Poland and there has been, in addition, a decreasing trend in these offences observed over the years;
2. the negative effects of pornography for individual and social moral standards has not been established. Neither has it been established that it constitutes a social danger. The penalization of the offence, consequently, has unfounded premises as its base. It is also contrary to the guidelines of legislative moderation;
3. the supply of pornographic material in Poland does not exist on a significant scale for the society and there is no indication that it will increase to a considerable extent in the future if the offence was to be depenalized;
4. given the availability of pornographic material in Poland, contact with pornographic material is not only absolutely voluntary, it even involves an active involvement of the individual.

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2.15 Acknowledgement

This chapter is based on information provided by Professor Dr. Brunon Holyst of the Institute of Crime Problems, Warsaw. The data for the Introductory Remarks was gathered by Miss Tamara Perera.

III. YUGOSLAVIA

3.1 Introductory Remarks

The Socialist Federal Republic of Yugoslavia is situated in the Balkan Peninsula and bordered on the north by Austria and Hungary, on the south by Greece and Albania, on the east by Romania and Bulgaria and on the west by Albania. It covers an area of 98,766 square miles and had a population of 22,418,300 in 1982. It is a multi-national state with a socialistic structure, composed of six constituent republics and two autonomous provinces.

Under the Constitution of 1974, the Government consists of a multi-chambered Federal Assembly (i.e. the Parliament), a President and a Federal Executive Council. The Government operates under a system of self management by member republics and local government organs. However, effective authority and control remain in the hands of the Communist Party known officially as the Yugoslav League of Communists.

Legislative power is vested in the bicameral national legislative body, the Federal Assembly, comprising the Federal Chamber and the Chamber of Republics and Provinces. The Federal Chamber consists of 30 deputies from each of Yugoslavia's six constituent republics and 20 from each of the two autonomous provinces, to give a total membership of 220. Delegates are nominated by the Socialist Alliance of the Working People, the country's only legal mass political organization, which is also directly under the control of the League of Communists. Although candidates need not belong to the League, the League controls the entire electoral process and no other political parties are permitted to operate. The Chamber of Republics and Provinces consists of

12 delegates from each Republican Assembly and eight from each Provincial Assembly to give a total of 88 members.

Prior to 1971, the executive government was headed by a President elected by the Legislative. Constitutional amendments passed in 1971 provided for a 22-member Collective Presidency. The Collective Presidency is composed of Republican and Provincial members chosen for five-year terms at a joint session of all the Chambers of the Republican and Provincial Assemblies. No delegate is permitted to serve more than two consecutive terms in the Collective Presidency. One member of the Collective Presidency is elected in rotation to act as titular Head of State for one year at a time. The country is governed, however, by the Collective itself.

A Federal Executive Council (i.e. Cabinet) has responsibility for the execution of policies determined by the Assembly. Its broad jurisdiction extends to all facets of the Federal system and marks it as the most important body in the government.

Yugoslavia has a four-tiered court system. There are Communal Courts, District Courts, Republican Supreme Courts and the Federal Supreme Court. In addition to these, there are Economic Courts, Military Courts and Special Constitutional Courts.

The lowest level of the system are the Communal Courts and the District Courts. Original jurisdiction in civil and criminal matters belongs to these courts unless another higher court has specifically been given jurisdiction to hear a particular case. The District Courts also serve as Appellate Courts for appeals on judgments rendered by the Communal Courts. The Republican Supreme Courts are the next level and at the top of the system are the Federal Supreme Court which supervises the administration of the law by all the courts

except the Constitutional Courts. These latter Courts were established in 1963 and are the only courts that have the authority to rule on matters of constitutionality.

The jury system does not exist in Yugoslavia. Cases are heard by professional judges and by lay or juror judges. The system was designed to provide citizens with a role in the administration of justice. All citizens over the age of 27 are theoretically eligible to sit as juror judges.

Prosecution of criminal cases is carried out by the Office of the Public Prosecutor, which is an autonomous body. There are Public Prosecutors in the Republics. They are appointed by the Republican Assemblies. However, they receive instructions from Federal Prosecution Officers.

The basic penalties for offences are the death penalty, strict imprisonment which involves minimum privileges and hard manual labour, limitation of civil rights, deprivation of the right to exercise a specified occupation or profession, confiscation of properties and fines. Although not classified as punishments, certain security measures are also provided for in the Penal Code that could be imposed coincidental with any punishment. These measures include placement in a hospital for custody, observation or treatment, forfeiture of personal property used in the commission of the crime and banishment of a convicted alien.

The death penalty, strict imprisonment and imprisonment can be imposed only as principal penalties and only when prescribed by law. The other punishments are imposed as accessory penalties.

Persons unde the age of 14 are not held criminally liable for offences. All criminally responsible minors, 14 to 18 years of age, are subject to

trial but educational rehabilitation rather than penal detention is stressed as the preferred form of sentence.

Since 1977 each republic and province has its own criminal code. However, there is also the Criminal Code of the Socialist Federal Republic of Yugoslavia.

3.2 Existing Legislation on Prostitution

Prostitution per se is not a felony in Yugoslavia. It is only a misdemeanour against General Peace and Order. As such, it is under the jurisdiction of each socialist republic and autonomous province. Although the law does not differ considerably from one republic to another, there are differences especially in sanctions. The relevant sections are as follows:

SR Slovenia (Article 10/5):

> Anybody who indulges in prostitution, participates in prostitution, authorizes it or supports it shall be punished by imprisonment for not more than two months.

SR Croatia (Article 2/19):

> Anybody who indulges in prostitution shall be punished for misdemeanour by imprisoment for not more than 30 days.

SR Bosnia and Herzegovina (Article 2/19, 20):

> Anybody who indulges in prostitution or who hires or cedes place for performing prostitution, anybody who misleads another to make a living by prostitution or who is accessory to the occurrence of prostitution shall be punished for misdemeanour by imprisonment for not more than 60 days.

SR Serbia (Article 2/19):

> Anybody who indulges in prostitution or cedes place for performing prostitution shall be punished for misdemeanour against public order and peace by imprisonment for not more than 30 days.

SR Montenegro (Article 2/19):

> Anybody who indulges in prostitution, anybody who misleads another to make a living by prostitution, cedes place for performing these activities or is in some other way accessory to the occurrence of prostitution shall be punished for misdemeanour by imprisonment for not more than two months.

SR Macedonia (Article 22):

> Anybody who indulges in prostitution, misleads another to make a living by prostitution or who is an accessory to the occurrence of prostitution, as well as anybody who hires or cedes place for performing prostitution shall be punished by a fine from 300 to 500 dinars or by imprisonment for not more than 60 days. By a fine of 500 to 5,000 dinars shall be punished the hotel, guest house organization or private guest house worker and by a fine of 500 dinars shall be punished the responsible person in the tourist organization if he hires or cedes place for performing prostitution.

Some other acts directly related to providing sexual services for financial reward are incriminated either as felonies in the Federal Penal Code of in the Penal Code of each Republic. These acts are incriminated in the Federal Penal Code as "Intermediation in the Exercise of Prostitution" and in the Penal Codes of the Republics as Procuring. The relevant sections are:

Penal Code of SFRY: (Article 151) -- Intermediation in the Exercise of Prostitution:

> Whoever recruits, induces, incites or lures female persons into prostitution, or whoever partakes in any way in turning a female over to another for the exercise of prostitution, shall be punished by imprisonment for a period from three months to five years.
>
> If the offence described in paragraph 1 of this article has been committed against a female under age or by force, threat or ruse, the perpetrator shall be punished by imprisonment for a period of one year to ten years.

This article is in accordance with the International Convention on Repression and Abolition of White Slave Traffic and Exploitation of Prostitution Performed by Others of 2.12.1949 and was adopted by Yugoslavia on 28th December 1950.

Penal Code of SR Slovenia: (Article 105) -- Procuring (alinea 2):

> Anybody who for reward procures a female or procures opportunity for sexual intercourse or other sexual acts shall be punished by imprisonment for not more than three years.

Penal Code of SR Croatia: (Article 91) -- Procuring (: alinea 1, 2):

> Anybody who procures a juvenile person shall be punished by imprisonment from three months to three years.
>
> By the sentence from alinea 1 shall be punished anybody who is for reward occupied with procuring females, or whoever for reward procures opportunities for illicit sex relations.

Penal Code of SR Bosnia and Herzegovina: (Article 96) -- Procuring (alinea 3):

> Anybody who for reward procures a female or whoever for reward procures opportunities for illicit sex relations, shall be punished by imprisonment for not more than three years.

Penal Code of SR Serbia: (Article 111) -- Procuring and Procuring Opportunities for Illicit Sex Relations (alinea 2 and 3):

> Anybody who procures opportunities for illicit sex relations with a juvenile person shall be punished by imprisonment for not more than three years.
>
> By the sentence from alinea 2 of this article shall be punished anybody who for reward procures a female or whoever for reward procures opportunities for illicit sex relations.

Penal Code of SR Macedonia: (Article 102) -- Procuring and Pandering (alinea 3):

> Anybody who for reward procures a female or whoever for reward procures opportunities for illicit sex relations shall be punished by imprisonment for not more than three years.

Penal Code of SR Montenegro: (Article 100) -- Procuring and Procuring Opportunities for Illicit Sex Relations (alinea 3 and 4):

> Anybody who for reward procures an adult female person or whoever for reward procures opportunities for illicit sex relations shall be punished by imprisonment for not more than three years.
>
> If the acts outlined in alinea 3 of the Article are committed against a juvenile person, the perpetrator shall be punished with imprisonment from one to ten years.

The new Criminal Codes came into effect in 1977. They contain, as far as prostitution is concerned, substantially the same provisions as the old Code which applied to all Yugoslavia. Since 1977 there have been no changes in the law on prostitution.

3.3 Scope of Law Enforcement Concerning Prostitution

Up to 1966 at each police station there were special teams of investigators dealing with the so-called offences such as prostitution, other sexual offences, pornography and the like. These teams kept a tab on these types of activities and occasionally conducted raids. After 1966, these squads were disbanded and the control of these offences passed into the hands of the regular police. Since now, no one really works on the problem except in cases where it was connected with some other crimes, no one pays much attention to it and hence the number of cases of prostitution known to the police has dropped significantly. Of course, there may be other reasons too for this drop.

Prostitution has changed its form considerably. In the past, prostitution was extant only in the big cities and harbours, now it has spread into the smaller towns as well. This spread has been mainly due to the patronage that has been given it by the tourist trade. There is a demand for it from foreigners and because of the financial gain that is involved, prostitution is tolerated and even encouraged by tourist workers, cab drivers, porters, waiters and the like who work for the tourist industry. Even so prostitution has not assumed considerable proportions nor could it be said to have become an alarming problem. Actually, the general opinion is that it has been decreasing in the last decade or two.

With regards to the scope of law enforcement in prostitution, there are a number of facts that have to be considered. First, prostitution is now not public in Yugoslavia. There are no street prostitutes and there are no prostitutes in public places. Their absence in public makes it not a threat to public morality and not a matter of public concern. The second factor that is worth consideration is the fact that prostitution has become modernized and

has assumed a business-like posture. As a result of this, prostitution is not associated with those other social problems such as alcoholism, child abuse and disease which really made prostitution the problem that it was. Third, is the fact that there has been a sexual revolution in the country and people have more opportunities for sexual relations. Hence the need for prostitution to cater to the needs of the local population has disappeared. Now, it caters mainly to tourists and mainly in tourist resorts on the Adriatic coast, in the ski resorts in the Alps and the like. Fourth, prostitution has found a place in the business world. Foreign businessmen come to Yugoslavia and ask for escort services which are sometimes provided by the company itself. Also there is a small white slave trade indulged in by foreigners.

3.4 Official and Unofficial Extent of the Problem of Prostitution

Official statistics do not represent the real incidence of prostitution in the country. These statistics reflect more police work and prosecution policy. The number of persons convicted under the Misdemeanours against General Peace and Order: Prostitution, Providing Places for Prostitution and being an accessory to Prostitution, in Yugoslavia and in the SR Slovenia during the period 1977 through 1983 are shown in Table 3.1. Apparently about 70% of those accused of prostitution are convicted. Babic (1971) reported that there were in 1968, 1,848 persons accused of prostitution and of these 1,338 or 72% were convicted. Hence, the number of persons charged for prostitution and prostitution related offences are not much different. The numbers convicted of the criminal offence under Article 251 of the Criminal Code of SFRY and Article 105 of the Penal Code of SR Slovena are shown in Table 3.2. These figures indicate the problem to be officially of very small dimensions.

Table 3.1 Number of Persons Charged under Misdemeanours against General Peace and Order: Prostitution Providing places for Prostitution and being Accessory to Prostitution in Yugoslavia

Year	Yugoslavia	Slovenia
1977	475	54
1978	572	40
1979	527	26
1980	355	11
1981	285	3
1982	343	16
1983	448	5

Table 3.2 Number of Persons Convicted under Article 251 of the Criminal Code and Article 105 of the Penal Code of SR Slovenia in Yugoslavia

Year	Yugoslavia	Slovenia
1977	5	1
1978	4	1
1979	0	1
1980	3	0
1981	3	1
1982	2	1

A study made by Kuhajda (1974) revealed the number of prostitutes in the autonomous province of Vojvadina during the period 1966 through 1968 to be 392, 416 and 217 respectively. The number suffering from venereal disease among them were found to be 39 in 1966, 48 in 1967 and 43 in 1968. In 1966, 41 of the prostitutes were found to have been alcoholics, in 1967, 24 and in 1968, 17.

Pihler (1974) analyzed criminal offences against human dignity and morals in SR Serbia. He found that during the period 1963 through 1972 there were only 18 cases of "intermediation in the exercise of prostitution" and 40 cases of "procuring". Thomasevic analyzed misdemeanours connected with prostitution in his study of "Tourist Crime" in Dalmatia during the period 1971 through 1975. The total number of such offences was 324 with the highest number of 72 occurring in 1971 and 1974 and the lowest of 50 occurring in 1972. Most of the offences were committed in the big tourist cities like Split, Dubrovnik and Zadar. Until 1960 Split, which is a big tourist resort and harbour, had what was called port prostitution. The police started registering the prostitutes. That year, 1960, there were 149 registered. Thereafter there was a decrease in the number of prostitutes. In 1971 there were only 43 registered. There was also a decrease in street prostitution.

3.5 Public Attitudes Towards Prostitution

There have not been many public opinion polls conducted on the subject of prostituion in Yugoslavia. There was one study of public opinion conducted in the autonomous province of Vojvodina. This study showed that the people had a negative attitude towards prostitution and that many felt that there was a problem of prostitution in the country. They also felt that

prostitution was immoral, not good for the younger generation and was conducive to the generation of social problems and the spread of venereal diseases (Kuhajda, 1974).

A small public opinion survey undertaken specifically for this study in Ljubljana revealed that 40% of the people believed that there was no problem of prostitution in Yugoslavia, 26% believed that there was a problem and 34% either did not want to answer or did not know whether a problem existed or not.

3.6 Public Movements in Connection with Prostitution

There are, in Yugoslavia, no public movements either to change the existing law on prostitution or to get better enforcement of the existing law.

3.7 Existing Law on Pornography

The offences connected with pornography are under federal jurisdiction. Production and dissemination of obscene writings is a felony and is incriminated in Article 252 of the Criminal Code of SFRY. Article 252, Production and Dissemination of Obscene Writings, reads:

> Whoever produces, sells, disseminates, publicly exhibits, or procures or keeps in his possession for sale, writings, pictures or other objects grossly offensive to morality shall be punished by fine or imprisonment for one more than one year.
>
> Objects enumerated in paragraph 1 of this article shall be confiscated.

This law has not been changed with the new criminal legislation, in 1977. It is the same as it used to be in the old Criminal Code of 1951. It is based on the Agreement on Repression of Trade of Immoral Publications adopted in Paris in

1910 and on the International Convention on the Repression of Traffic and Trade with Immoral Publications adopted in Geneva in 1923, both of which were amended in 1947 and 1949 and ratified by Yugoslavia in 1951.

3.8 Scope of Law Enforcement Regarding Pornography

There is, in Yugoslavia, some soft core pornography in weekly magazines and journals and though there is some criticism of them there is no real objection and has not involved any judicial action either. There are also films which could be classified as "soft porn" films -- films like Emmanuelle -- which are presented daily in Yugoslavian cinemas.

As far as hard core pornography is concerned it is not possible to buy it legally in Yugoslavia nor is it readily available in the country. People sometimes bring films, brochures, video-cassettes and books from other countries but these are mainly for their personal use and shared among friends and relatives. These are not readily available in the country.

The police do not have a problem with pornography. There have been only a few cases. However, this does not mean that there is no "dark field".

There have been some questions of interpretation about the terms displaying and dissemination. In this connection, courts have held that displaying pornographic pictures to acquaintances who were seated at the same table in a coffee house was in fact a public exhibition in the sense of Article 252 (Decision of Municipal Court in Arilj K n. 12/70 and in Pirot K no. 243/70). The courts have also decided that a presentation of a short pornographic film to a limited group of people in the place where they were employed was a public exhibition in the sense of Article 252 (Decision of Municipal Court in Titova

Uzice, K no. 187/70). The same court decided that making a present of a black and white pornographic film to an acquaintance was dissemination in the sense of Article 252. These decisions have been criticized as being too narrow (Stojanovic, 1977).

3.9 The Official and Unofficial Extent of the Problem of Pornography

The official statistics of persons convicted of the felony connected with pornography is presented in Table 3.3. The figures show a decrease during the period 1962 through 1982. Though the decrease does indicate in the strict

Table 3.3 Number of Persons Convicted under Article 252 of the Criminal Code of a Felony connected with Pornography in Yugoslavia

Year	Number
1962	43
1963	37
1964	19
1965	24
1966	15
1967	11
1968	13
1969	7
1970	15
1971	10
1977	15
1978	5
1979	0
1980	5
1981	5
1982	2

sense a decrease in incidence, it could reflect, as well, a more tolerant attitude of public prosecutors and courts (Stojanovic, 1977). It can also reflect a more tolerant public attitude.

In connection with the incidence of this offence, it should be noted that there are no special officers assigned to investigate these offences. The problem is left to the regular police officers who seem to believe that it would be sufficient if only the sale and distribution of great quantities of pornographic literature were prosecuted.

3.10 Public Attitude Towards Pornography

There have been some public opinion polls taken regarding attitudes towards the publication of nude pictures in magazines like Playboy as well as in daily newspapers and magazines published in Yugoslavia. In a poll conducted by the Institute of Social Sciences in Belgrade in 1970 the question was asked whether pictures and articles about sexual relations bothered the respondent. Against such publication was 37% of the sample. Considering the publication a good thing was 10% mostly the young and intellectuals. Indifferent about such publication was 44%.

There have also been come critical articles against the use of erotic pictures and about the discussion of sexual matters in the daily newspapers and magazines (Lovric, 1976; Drakulic-Ilic, 1982).

A study of public opinion towards pornography conducted by the Institute of Sociology in Ljubjana showed that students were very tolerant towards what was considered pornographic. Almost 30% of them thought that there was no pornography at all while most of them thought that the question was really one of aesthetics rather than one of morality (Jazernik, 1979).

The public opinion study conducted specifically for this study found 61% of the sample expressing a tolerant attitude towards pornography, 21% found such material obnoxious while 18% approved of it.

3.11 Movements to Change the Laws Regarding Pornography or to Get Better Enforcement of Existing Laws

There are really no such moves but there are authors who think that Article 252 should be altered. They think that making these materials available to minors should be criminalized (Stojanovic, 1977).

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IV. HUNGARY

4.1 Introductory Remarks

The Hungarian People's Republic is a small landlocked state in central Europe occupying most of the low-lying central portion of the middle basin of the Danube River. It covers an area of 35,920 square miles and had a population of 10,702,000 in 1982. It belongs politically, militarily and economically to the block of Soviet satellites that fringe the western borders of the U.S.S.R. It has been under communist rule since the end of World War II.

Under the Constitution of 1949, which is, for the most part, a verbatim translation of that of the U.S.S.R., Hungary is a People's Republic of the conventional type. It has a bipartite government consisting of the parliament (the National Assembly) and the Council of Ministers which serves as the executive. Real power, however, is held by the Communist Party, headed by its First Secretary, the Politburo and the Central Committees.

Constitutionally, the highest organs of state power are the National Assembly and the Presidential Council. The National Assembly is an unicameral chamber consisting of 349 members elected for a four-year term by universal adult franchise. It only meets three or four times a year and that, too, for a short period of time, just long enough to approve what has been done by the executive. The Presidential Council is a 21-man body elected by the National Assembly. It supervises the administration of the State and assumes legislative authority when parliament is not in session.

The top administrative organ is the Council of Ministers whose members are elected and removed by parliament on the advice of the Presidential Council. It consists of 24 members and is responsible for the

direction of the work of the country's 16 ministries. It often issues decrees which carry the force of law even though they have not been submitted to and passed by parliament.

The President of the Presidential Council is the Head of State. The Chairman of the Council of Ministers is the country's Premier. The real control of the country lies in the hands of the Communist Party, officially known as the Hungarian Socialist Workers' Party. Theoretically, the supreme body of the party is its Congress which meets once in four years to elect the Central Committee which in turn elects the Politburo and the three Party Secretaries. In practice, the First Party Secretary holds the greatest power in the country.

Economic, social and cultural activities on the local level are administered by a hierarchy of locally elected councils, each of which is responsible to the territorial authority immediately above it. Hungary has 24 major administrative units — 19 counties and five cities with county status, all of whose councils are responsible directly to the Central Council of Ministers.

The court system of Hungary is modelled after that of the Soviet Union and consists of three levels — the Supreme Court, County Courts and District Courts. Military Courts and Labour Courts fall into a special category. The District Courts serve as courts of first instance in all types of disputes. The Labour Courts are largely concerned with judging appeals from the decisions of Labour Affairs Arbitration Committees, which deal with workers' matters. Military Courts deal with all crimes committed by members of the armed forces and also those committed by civilians which are considered harmful to the national interests. Appeals from these courts are carried directly to the Supreme Court.

The County Court acts as the court of first instance in serious cases such as murder, wilful homicide and grave crimes against social property and in civil suits of a certain magnitude directed against the State, government officials of socialist enterprises. The Supreme Court acts as the final court of appeal for all lower courts. It is divided into five councils for this purpose -- civil, criminal, economic, labour affairs and military. Important cases may be heard by the Supreme Court in the first instance.

Supervision of the court system is granted the Supreme Court and the Ministry of Justice. The Supreme Court is given the power to issue guideline principles or decisions in principle in the interests of guaranteeing uniformity of judicial practice. The Minister of Justice supervises the general operation of the courts.

Supervision of the observance of law is vested in the Supreme Prosecutor. He heads a hierarchy of public prosecution offices organized on the national, county and district levels. He is responsible for criminal investigation and prosecution as well as the supervision over the legality of the actions of the state, social and cooperative organs. Only the highest organs of the state are excluded from the authority of the public prosecutor.

Crimes against the State, the socialist party, or society in general are considered more serious than those against the person or private property. In the early 50s, the political police kept all Hungarians under surveillance and routinely arrested people without legal justification. The accused were forced to admit their guilt at show trials based on falsified evidence and were sentenced to death or long terms of imprisonment. After 1958 these political crimes have decreased greatly and in the 1970s there have been only one or two such cases investigated each year.

Alcoholism is a major problem in Hungary. A large percentage of crimes are committed under the influence of alcohol. The country had the highest suicide rate in the world in the 1970s.

4.2 The Existing Law on Prostitution

The law dealing with prostitution is found in the Penal Code -- Act IV of 1978. Section 204 of this Code reads:

> A person who has sexual intercourse or performs sexual acts as a trade commits a misdemeanour and shall be punished with deprivation of liberty up to one year or with reformatory and educative labour or with a fine. Local banishment may be applied as a supplementary punishment.

According to this section the perpetrator of prostitution may be either a man or a woman. Sexual acts between men and women as well as between persons of the same sex, may constitute the perpetration of the act. Sexual act is to be understood as any gravely obscene act fit to arouse sexual desire to to satisfy that desire, but does not include sexual intercourse. A person has sexual intercourse or performs sexual acts as a trade if the purpose of such conduct is to achieve a regular financial gain.

Prostitution is perpetrated for financial gain. The perpetrator enters into sexual contact with different persons more or less casually and is uninterested in the person of his or her sexual partner. The offence as defined in section 204 is not committed if the sexual affair is not or is not completely based on financial factors and has some more imtimate emotional factors also involved. A person who changes his or her sexual partners for reasons that are not of a financial nature may not be punished for this offence.

According to the Code, the criminal offence is constituted only if a person engages in the mentioned sexual activities several different times. The conduct displayed one single time, however, may qualify as an administrative infraction.

If prostitution is perpetrated by a person under 18 years of age, the instigator shall be punished for the graver offence of Endangering a Minor under section 195 or the Sexual Corruption of Minors under section 201.

Section 204 of the Penal Code reads:

> A person who permits his home to be used by another person for the purpose of prostitution commits a misdemeanour and shall be punished with deprivation of liberty up to five years.
>
> A person who induces another to take up prostitution or runs or operates a house of prostitution, commits a felony and shall be punished with deprivation of liberty up to three years.

Paragraph 1 of this section declares conduct which is conceptually aiding prostitution to be "sui generis" a criminal offence. The perpetrator of the offence can be anybody, who has a place of dwelling — owner, tenant, subtenant, etc. Home is to be understood as any room of the place of dwelling.

The permission to use the home may be given for a single occasion or for a longer period of time or permanently. The permission must be given for the purpose of prostitution. However, it does not necessarily mean the criminal offence of prostitution. The person giving the permission is responsible under section 205 even if the committed prostitution is only an administrative infraction or the perpetrator is not punishable due to any other reason. The definition of the act does not make it necessary that the home is permitted to be used for payment, although that is the situation in the typical case.

The first part of paragraph 2 is made to be a "sui generis" offence in order to render possible the employment of a more severe punishment than in the case of section 204.

The second part of paragraph 2 defines a criminal offence that practically can never be committed in Hungary for all forms of prostitution are prohibited in the country. Its inclusion in the Code is explained in terms of the New York Convention of March 21, 1950 and enacted in Hungary by Law Decree No. 34 of 1955.

Section 206 reads:

> A person who permits himself to be kept, entirely or partly, by a prostitute commits a felony and shall be punished with deprivation of liberty up to three years. Local banishment may be applied as a supplementary punishment.

Being kept by a prostitute represents an illegal source of income. The offence is not committed by the person whom the prostitute is obligated to support by the virtue of law.

Being kept entirely by a prostitute calls for no explanation. Being kept partially by a prostitute means receiving regular and not insignificant financial benefits which substantially improve the living standards of the kept person. The perpetration is not excluded by the fact that the perpetrator has an income from other sources that provides him with adequate means of living.

If the violator of this section, in addition to being kept, instigated the prostitute to commit prostitution, he is not considered to have committed two separate offences. Neither is it a separate offence if he also permitted the use of his or her home for the purposes of prostitution. Neither is the offender

considered to have committed the offence of Penal Unwillingness to Work in association with the violation of this section.

Section 207 reads:

> A person who, with the purpose of gaining profit, procures a person for another for sexual intercourse or for a sexual act, commits a felony and shall be punished with deprivation of liberty up to three years.
>
> The punishment is deprivation of liberty from one to five years when procuring is committed as a trade.
>
> The punishment is deprivation of liberty from two to eight years if procuring is committed:
>
> a. to the injury of a kin, or a person under the eduction, in the charge or care of the perpetrator, or to the injury of a person who is less than 18 years old;
> b. by deception, duress or direct threat against life or bodily integrity;
>
> A person who agrees to the perpetration of procuring defined in paragraph 2 commits a felony and shall be punished with deprivation of liberty up to three years.

Paragraph 1 defines the basic varieties of procuring. The victim of the offence may be a man or a woman. Among the elements of the definition, sexual act means both heterosexual as well as homosexual activity.

Procuring is a broader concept than persuading someone to have sexual intercourse or to perform sexual acts. It includes all types of conduct by which the perpetrator creates the possibility for others to have sexual contact, whether the partners agreed to have the contact or not.

One of the persons put into contact by the procurer may be a prostitute. In addition to procuring, the instigation of this person to commit prostitution may not be taken separately into account neither may the offence defined in section 205, paragraph 1.

The offence of being kept by a prostitute and the basic variety of procuring may be cumulated if the kept person having that relation with the prostitute procured the partners for each other.

According to paragraph 2 procuring performed as a trade shall be punished more severely since it is a particularly dangerous form of offence. For the concept of performing "as a trade" the rule included in section 137, item 7, is governing.

Item a of paragraph 3 defines a graver variety, evaluating the fact that the perpetrator committed the offence against a victim for whom he or she has increased responsibility or against someone who needs stronger protection.

Item b of paragraph 3 prescribes more severe punishment for the forms of procuring that are particularly dangerous owing to the manner of perpetration. With the deception, the perpetrator causes the victim to be mistaken or wrong about the perpetrator's real intentions.

For the interpretation of duress and direct threat against life of bodily integrity, the explanations given by the motivations for section 197 are governing.

Paragraph 4 of section 207 orders the punishment for making an agreement for committing procuring as an extremely dangerous form of conduct of preparation.

4.3 Changes in the Law on Prostitution: Historical Antecedents

Before World War II, prostitution was tolerated in Hungary and was placed under state administrative supervision and medical control. In 1943 there were 3412 professional registered prostitutes in Budapest. In 1947 only

1363 persons registered and applied for a licence to carry on prostitution. The number of registered prostitutes was gradually declining. In 1949, the number registered and licensed as prostitutes was only 460.

On June 28th, 1950, a decree was issued that ordered the brothels to be closed and terminate their operations. The closing down of the brothels led to clandestine prostitution. For that reason Law Decree No. 17 of 1955 declared prostitution to be a criminal offence. According to section 6 of this Law Decree

> A person who engages in prostitution or allows his home to be used for the purpose of prostitution commits a criminal offence and shall be punished with imprisonment up to two years.

In 1961, Act V which described in detail the criminal offences related to prostitution was passed. Section 283 of this Act reads:

> A person who has sexual intercourse, performs homosexual acts or other sexual acts as a trade shall be punished with deprivation of liberty up to one year.
>
> The punishment shall be deprivation of liberty up to three years if the perpetrator is a recidivist. Recidivism shall be interpreted according to Section 214, paragraph 3.

Section 284 reads:

> A person who induces another to commit prostitution shall be punished with deprivation of liberty from six months to five years.

Section 285:

> A person who lets his home be used by another person for practising prostitution shall be punished with

deprivation of liberty up to three years.

The same punishment shall apply to a person who operates or runs a house of prostitution or provides the financial funds for such an operation or participates in providing such funds.

Section 286:

A person who allows himself to be kept entirely or partly by a prostitute shall be punished with deprivation of liberty up to three years.

The punishment shall be deprivation of liberty from six months to five years if the perpetrator is a recidivist. Recidivism shall be understood in accordance with Section 214, paragraph 3.

Section 287:

A person who, with the purpose of gaining profit, procures a person for another for sexual intercourse out of wedlock or for homosexual or other sexual act shall be punished with deprivation of liberty up to three years.

The punishment shall be deprivation of liberty from six months to five years if the perpetrator

a. carries on procuring as a trade;
b. is a recidivist. Recidivism shall be understood in accordance with Section 214, paragraph 3.

The punishment shall be deprivation of liberty from two years to eight years if procuring

a. is committed to the injury of the perpetrator's kin or to the injury of a person under the education, supervision or care of the perpetrator or to the injury of a person under 20 years of age;
b. is committed through deception, duress or by employing direct threats against life or bodily integrity.

A person who engages in forming an association with the aim of committing procuring as defined in item a. of paragraph 2 shall be punished with deprivation of liberty up to three years.

This Act, thus, criminalizes prostitution (section 283), inducing prostitution (section 284), facilitating prostitution (section 285), being kept by a prostitute (section 286), and procuring (section 287). This Code prescribed more severe punishments than the Penal Code in force at the present time. In the Penal Code, in addition to the less severe deprivation of liberty, other sanctions such as fines, reformatory educative work and the like also appear.

4.4 The Scope of Law Enforcement

Phenomena belonging to the realm of prostitution are infrequently reported to the police because it is in the interest of both the prostitute and the client that their contact be kept secret. Prostitution, however, is brought to the attention of the police in a number of ways. The client of the prostitute could bring the prostitution to the notice of the police if the prostitute commits some criminal offence against the customer. There is a connection between prostitution and many other forms of criminality and customers might find themselves robbed or their bodily integrity endangered by the prostitute and her accomplices.

A second way in which the police become aware of prostitution is when people in the neighbourhood of the prostitute's place of operation complain about the activity. The police can also stumble on prostitution in the course of their regular or routine operations.

Prostitution can be committed individually by a single prostitute or by loosely organized small groups of prostitutes. Group prostitution occurs exclusively in big cities, mostly in Budapest. The groups are formed around apartments suitable for prostitution, around a single room or around an empty

shop. Sometimes the group members are connected to one another through a kept man or pimp or a common procurer. Form the point of view of public safety and criminality, prostitution committed in groups showing a certain level of organization represents a primary danger. For this reason, when a complaint is made or information regarding prostitution or a subsidary offence is received, it is investigated fully, even though there may be no organized group behind it.

The police also obtain information regarding prostitution through "workshy" persons — persons who are charged with the offence of a criminal unwillingness to work. A significant percentage of the women operating as prostitutes have regular employment. There are however, some who do not work. They get all their income from prostitution. The part time prostitutes also get the major part of their income from prostitution.

There are some who have expressed the view that the customer of a prostitute should also be called to account as an accomplice since it is the customers who render the operations of prostitutes possible. This view has, however, not been accepted as legal policy.

One obstacle to the enforcement of the law has been the delay in disposing of these cases and the levity of the punishment that is handed out to prostitutes. In recent years the punishment meted out in prostitution cases was one year deprivation of liberty in general. It is not infrequent that the punishment is only six or eight months. The sentences imposed by the courts do not have adequate restraining force. Also the disposition of the cases takes a long time. Oftimes it takes one or two years. Meanwhile the prostitute who is not under detention is able to carry on her prostitution.

4.5 The Extent of Prostitution

The number of persons convicted of prostitution during the period 1973 through 1983 is shown in Table 4.1. The figures are from the national statistical data of the Ministry of Justice. It should be noted that if the prostitute is charged with a graver offence as well, then the statistics show only the graver offence. Consequently, prostitution is in reality a much greater problem than these figures indicate.

Table 4.1 Number of Persons convicted of Prostitution in Hungary

Year	Number
1973	142
1974	134
1975	95
1976	68
1977	117
1978	65
1979	60
1980	65
1981	63
1982	42
1983	50

Source: National Statistic data of the Ministry of Justice.

The number of cases of prostitution and related offences in Belgrade are shown in Table 4.2. The figures show considerable annual variations which is attributable to changes in the intensity of police activity. The data concerning Budapest accounts for about 80% of the national data.

Table 4.2 Cases of Prostitution and related offences in Budapest

Year	Prostitution	Facilitating Prostitution	Procuring	Being Kept by a Prositute
1973	136	29	29	15
1974	123	26	26	10
1975	81	13	13	4
1976	114	17	17	13
1977	126	18	3	16
1978	81	13	1	4
1979	74	39	2	16
1980	68	7	3	5
1981	80	27	1	25
1982	58	34	0	11
1983	59	26	5	31

Whatever the figures indicate, the likelihood is that the incidence of prostitution has not changed much during the last ten years.

4.6 Problems Connected with Prostitution

There are several types of prostitution in Hungary. First of all there are the prostitutes who cater to tourists. This group came into being from about 1964. At the beginning it comprised mainly educated women but not there appears to be more uneducated women in this group.

The second type of prostitute is the street prostitute who picks up the customer from the streets. This group appears to be spreading to other public places as well and they are being found in first class places of entertainment. This development raises the possibility of a union between prostitution and other criminal elements.

A third group that is developing is what is called latent prostitution. The people engaged in this type of prostitution have proper homes and work and engage in prostitution only occasionally for the extra money that they can make.

One of the major problems associated with prostitution is the spread of venereal disease. By the end of the 50s, venereal diseases were practically eliminated in Hungary but from about the middle of the 60s the almost eliminated venereal diseases began to appear again. The number of patients treated for venereal diseases 1980 - 1984 in Budapest is shown in Table 4.3. No accurate data are available for the earlier years.

Table 4.3 Number of Patients treated with Venereal Disease in Budapest

Year	Syphilis	Gonorrhea	Other
1980	204	3811	n.a.
1981	341	4857	n.a.
1982	337	4722	n.a.
1983	185	4421	2306
1984*	66	1231	800

* January through April.

4.7 Movements for the Change of Laws or Enforcement of Laws

There is a demand on the part of the police for the better implementation of the laws but so far as the public is concerned there is no such demand. They appear to be unaware of the existence of any problem.

4.8 Existing Laws Against Pornography

The existing law on pornography is found in the Penal Code, Act IV of 1978. Section 272, the relevant section, reads:

> A person who puts on the market or exhibits obscene objects or produces or acquires such with the aim of putting them on the market or of exhibiting them, commits a misdemeanour and shall be punished with deprivation of liberty up to one year.

The Code classifies this misdemeanour, called commonly pornography, among offences against public order, more specifically among offences against public peace.

In the explanation of the section, identified as Ministerial Motivations for the Act, is stated:

> Both sanctimonious hypocrisy and the extreme uninhibited sexual indecency are far removed from socialist morals. Socialist morality is for openness and for the enlightenmnet of the masses also in issues related to sexual life but it disapproves of sexual looseness and particularly of the business oriented exploitation of sexuality. The means of criminal law are also used against creations bearing only the semblance of art and not having intellectual content that could in the better case draw the attention of the young from more valuable aims or, in the worse case, could render young people to be slaves of harmful and unhealthy habits or aberrations.
>
> An obscene object is a thing related to sexual life or a literary work of similar contents that offends the sexual

morals prevailing in society. In turn, works dealing with sexual life with scientific or educative aims do not belong among obscene objects, neither are obscene objects the representations of the human body with the same aims or for artistice purposes. Of course, a definition of such precision on the basis of which scientific and artistic creations, on the one hand, and pseudo-scientific pornography and immorality represented on the pretense of art, on the other hand, could be clearly distinguished, cannot be formulated. Such issues have to be decided by the trier of the issue.

The products of pornography are commodities by nature of their subject matter. They become dangerous to public order when their marketing or exhibition creates a way for them to get to the public. Without that they do not disturb public peace.

For this reason, the Draft orders for the production or acquisition of obscene objects to be punished if it is done with the purpose of putting them on the market or of exhibiting them. Their exhibition or marketing, themselves, are punishable acts in any case.

4.9 Changes in the Law on Pornography

In the earlier Hungarian Penal Codes, the definitions of offences aimed at the control or pornography were regulated, included among offences against sexual morals. In the first decade of this century, due particularly to the development of printing and film technology, the various ways of representing sexuality and selling pornographic material became a wide-spread practice. On September 12, 1923, several European states signed an international convention on the control of the circulation of obscene objects. Hungary enacted the resolutions of the convention in 1929 by Act VII, satisfying the requirements of employing the uniform means of criminal law against pornography. Essentially it was the penal provisions of that time which have provided the foundations of the provisions of penal law in force at present.

In 1961, pornography was defined as an offence against decency in Chapter XV of Act V of 1961 — the Penal Code of 1961. Section 288 of that Code reads:

> A person who puts an obscene object on the market, lends such objects as a business enterprise, exhibits an obscene object or promotes its circulation, produces or acquirees such an object with the purpose of marketing or exhibiting it, shall be punished with deprivation of liberty up to one year.
>
> If a graver offence has not been committed, the same punishment shall apply to the person who commits an obscenity in the presence of others on more than one occasion.

4.10 The Scope of the Problem of Pornography

Recently as a result of the development of the tourist industry, there has been an increase in the frequency of the appearance of pornographic literature and films. These are brought in sometimes by foreigners visiting Hungary and sometimes by returning Hungarian tourists travelling abroad. This pornographic material is not put into circulation. Rather it is shown among friends.

Unauthenticated information indicates that during the last few years, certain privately managed catering units, show, strictly behind closed doors, sex or porno films to trustworthy persons.

4.11 Extent of the Problem of Pornography

During the last ten years there has been no person charged or convicted of pornography in Hungary.

4.12 Public Attitude Towards the Problem

No polls have been conducted and no data is available.

4.13 Movements to Change the Law of its Enforcement

None known.

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V. VENEZUELA

5.1 Introductory Remarks

The Republic of Venezuela is located in the north of the South American continent. It has a 1,244 mile coastline on the Caribbean Sea on the north and extends inland to the borders of Columbia on the west, Brazil in the south and south east and Guayana in the east. The country has a total area of 352,144 square miles and is divided into 20 states and two territories -- a federal district consisting of 72 islands in the Caribbean. The population of Venezuela was 14,714,400 in 1982.

Governmental power is constitutionally divided between the national government and the states and municipalities. However, the national government is clearly the dominant partner. The executive, legislative and judicial branches of the federal or national government are separate and independent but certain checks and balances do exist.

The executive branch of the government is headed by a President who is both Head of State and Chief Executive. Elected by a plurality vote through direct and universal suffrage, the President serves a five-year term and may not be re-elected until after two additional terms have passed. Ex-presidents automatically become members of the Senate. The office of President entails considerable powers. The Constitution grants the president the power to declare a state of emergency and to declare the restriction or suspension of constitutional guarantees in the event of public disorder or national crisis. The President's powers of appointment, are extensive and do much to enhance his overall authority. Much of the nations extensive bureaucracy is controlled by the President or his appointees. Members of he

Council of Ministers, as well as Governors of the States are appointed by and serve at the pleasure of the President.

The legislative powers of the President are not extensive but are nevertheless significant. He gives an annual State of the Union address before Congress, may call special Congressional meetings, introduce administrative legislation through his ministers and use executive decrees to interpret legislation.

The Venezuelan Congress is structured like that of the United States and although it is not as powerful as that of the United States, it is one of the most effective in Latin America. It is a bicameral body consisting of the Senate and the Chamber of Deputies. The number of legislators vary with each election. At least two Senators are elected from each state. Deputies are selected by a system of proportional representation. All legislators are elected by direct and universal suffrage for a five-year term. The major functions of the legislature are to consider, debate, approve, reject or alter legislation and to oversee the executive branch and its agencies.

The States are guaranteed wide powers by the constitution, which in theory allow them to regulate their own affairs. In practice, however, the states are rigidly controlled by the national government.

The judiciary in Venezuela differs from that of most other federal states in that there is no dual organization of national and state courts. Under the Constitution of 1961, the entire court system falls under the authority of the national government. The Supreme Court is the highest judicial authority sitting as a whole only when considering constitutional matters. At other times it is divided into three chambers -- (1) the political-administrative chamber, (2) the civil chamber, and (3) the criminal chamber, hearing appeals from the lower

courts. In addition to its appellate function, it has the power to settle jurisdictional disputes between the lower courts, to declare whether there are grounds for prosecution of members of the executive, the Congress, state governors or high judicial officers and to conduct such trials in the case of serious cases.

For judicial purposes the country is divided into 20 districts roughly corresponding the a state. Each district has a Superior Court serving as an appellate court in both criminal and civil cases. They also have courts of first instance -- the Municipal Courts -- which deal with most criminal and civil matters. In addition to these courts there are the Courts of Instruction which are really not courts as such but perform a vital function in the initial stages of all court cases. They issue the indictments, oversee the investigation to determine whether the case merits the attention of the court and if so issues the warrant for arrest. There are also Military Tribunals, Fiscal Tribunals and Juvenile Courts.

The entire judicial system is supervised by the Council of the Judiciary which has members from each of the three branches of Government. It has a vague constitutional mandate designed so as to ensure the independence, efficiency and overall conduct of the court system.

5.2 Legislation Concerning Prostitution

The exchange of sexual services for financial reward is not criminalized in Venezuela. Rather one observes in this country what may be termed a legal permissiveness, evident in the absence of direct concern for the activity and expressed in the norms which control its practice. What is criminalized is the exploitation of prostitution by third parties as an economic

concern or for the pleasure of others and the corruption or prostitution of minors. The Venezuelan Criminal Code, in its Title No. 8 (Crimes against Moral Customs and against Orderly Family Life), Chapter 3, Article 388, refers to the inducement of prostitution in minors:

> He who, in order to satisfy the passions of another, induces prostitution or acts of corruption in a minor will be punished by imprisonment from three to 18 months. Imprisonment will be from one to four years if the crime has been committed: 1. against a person who is not yet 12 years old; 2. by means of fraud or trickery; 3. by forbears (in direct ascent), by the adopted father or mother, by the spouse, guardian or other person charged with care, instruction and discipline of the minor even if only temporarily.
>
> If a number of these circumstances concur, imprisonment will be from two to five years.

This means that the average punishment is 10 1/2 months under ordinary circumstances, 2 1/2 years when one of the aggravating circumstances is present, and 3 1/2 years when more than one of the aggravating circumstances are present.

Article 389 of the Criminal Code refers to those who aid in the process of prostituting or corrupting a minor:

> Any person who, to satisfy the passions of another, has aided or encouraged the prostitution of corruption of a minor, in whatever form, and in whichever of the circumstances mentioned in the previous article, will be punished by imprisonment from three to 12 months. In cases referred to in the last section of Article 388, imprisonment will be from three to 18 months.

Article 390 of the Criminal Code refers to forced prostitution or corruption in adults or minors, as a result of threats or violence:

> The parent, other person in ascendent line, husband or guardian, who by the use of violence or threats has induced prostitution or corruption in a descendent or spouse, whether adult or minor, will be punished by imprisonment (presidio) for four to six years.
>
> If the ascendent or spouse has used fraud or trickery in corrupting, the punishment will be imprisonment (presidio) for three to five years.

It is important to point out that presidio differs from ordinary imprisonment in the following manner:

imprisonment of Presidio is in the National Prisons;

the prisoner loses a number of civil and political rights;

the prisoner must spend a certain proportion of his time in solitary confinement;

the prisoner must undertake forced labour.

Article 382 of the Criminal Code refers to the practice of pimping. In its second paragraph it states:

> Anyone who repeatedly, or for economic gain, and to satisfy the passions of others, aids in the prostitution or corruption of a person will be imprisoned for one to six years. If this crime involves the prostitution or corruption of a minor, the punishment will be three to six years imprisonment.

As can be seen, the Criminal Code (which was passed in 1926 and modified in 1964) does not define or criminalize the central and sexual element of prostitution, but rather refers to the act of prostituting, corrupting or of pimping. More recent legislation has generally followed the same practice.

The Vagrancy Law, passed in 1939, in its second Article considers as vagrants all those who live at the expense of persons who practice prostitution. The Law against Venereal Contamination, passed in 1941, declares prostitution

to be an illicit but not an illegal form of living (Article 18), and assigns the responsibility of controlling it to the police. The Law Approving the Agreement on the Repression of Trafficking in Persons and Exploitation of Prostitution, passed in 1968, proposes legislatory reforms to criminalize and strengthen action against pimping and all others who aid in the organization of prostitution. However, no action has been taken to date on this point and no legislation proposed or introduced.

The police have the responsibility for controlling prostitution. They are organized at the level of the state and have their activities governed by the Police Code, which is approved by the legislature of the state and applies only to the state which approved it. Though the Police Code of one state varies from the Code of another, as far as the regulations connected with prostitution are concerned there are no significant differences.

The Police Code of Zulia State, the largest state in Venezuela, views prostitution as a matter to be dealt with by administrative authorities rather than by tribunals. Article 50 of the Code enjoins the police to prevent the prostitution of minors. Through respect of morality and families, they are also required to ensure that there are no brothels in residential districts. Brothels are permitted to operate in isolated areas outside the residential districts and in what are called public tolerated zones. This is what Article 53 dictates.

Article 52 empowers sanitary and medical authorities to enter and inspect brothels and ensure that a satisfactory level of hygiene is maintained. Article 50 requires the police to ensure that females under 15 years and males under 14 years do not enter a brothel.

The Police Code for Merida State also contains almost the same provisions. It charges the police with the control of those who enter brothels, prohibiting females under 15 years of age and males under 14 years of age from entering. In the case of females, the Code leaves the measures to be taken to the discretion of the police. In the case of males, the parent or guardian of the boy must be informed. The Code also states that brothels must be regularly inspected by Public Health officials in order to check on hygiene. Resistence to the entry of such an official brings a fine or temporary imprisonment to the brothel owner or administrator.

The laws on Vagrants and Perverts, which have been referred to earlier, are also administrative rather than criminal in perspective. They have been designed to re-educate and re-habilitate the vagrants and perverts but the re-education work centres are not only in a deplorable condition but are the most feared places in the country.

The Venezuelan Penal Code, it should perhaps be pointed out, is a copy of the Italian Zanardelli Code of 1879 with minor changes.

There have been no changes in the law on prostitution either in the Penal Code or in the Police Codes since their enactment. The lack of change may be viewed as a reflection of the general slow rate of legislative change in Venezuela. It could also be that prostitution is not considered a pressing social or political problem in the country.

5.3 Scope of Law Enforcement Regarding Prostitution

Police involvement in the control of prostitution involves three areas:

a. The National Guard, together with the uniformed police, maintains certain control over the functioning of brothels, and collaborates with the Ministry of Health in carrying out checkups and implementing measures against the spread of venereal disease.

b. In the larger cities, street prostitution is at times seen to be problematic, both for its moral consequences and its potential threat to orderly behaviour. Police patrols will therefore arrest and prosecute prostitutes for working in this way, largely because they do not comply with the stipulations of law in relation to the location of prostitution and in relation to health controls.

c. The involvement of prostitutes in crime is not great, neither are the crimes committed by them very serious. Occasionally, the police will be called in to investigate minor thefts, minor assaults or quarrels in bars but nothing more.

For the police, prostitution does not represent a serious problem because, on the one hand, there are few incidents relating to prostitution in which the police have to intervene and, on the other hand, the police have much higher priorities relating to public order and to more serious and frequent crimes such as theft, robbery and assault.

Prostitution is not considered a serious problem in Venezuela, either by the government or by the public. This may be due to the fact that though prostitution can be legitimately considered associated with such other social problems as criminality, alcoholism and drug addiction, in Venezuela, it is only the possibility of the spread of venereal disease that causes concern. In this connection, the Police Code provides for the inspection of brothels by Health Officials and for a regular checkup for prostitutes. The possible moral and

social consequences of prostitution, in terms of public nuisance, scandals or corrupting effects are partially controlled by a series of norms which state that brothels must be located outside urban limits. Similarly, concern for the possible moral or social consequences for the women involved in prostitution is perhaps less than it would otherwise be, since most of the prostitutes that work in brothels are foreigners, coming from either Colombia or the Caribbean Islands.

The police adopt a tolerant attitude towards prostitution and consider it an accepted sexual custom. However, they believe that it is important to maintain effective control over the phenomenon so as to restrict the spread of venereal disease and also to avoid any liaison between prostitutes and criminals.

5.4 Problems Associated With Law Enforcement

With regards prostitution, legal action can originate only on the complaint or accusation by the injured party. Thus, legal proceedings against those accused of prostitution or corruption requires that the victims take the initiative. Legal representatives of the victims such as parents, other family members, guardians or attorneys or procurators for minors, can, of course, act on their behalf in making the complaint or accusation.

In practice this procedure has meant that those aspects of prostitution and corruption which are of concern to the law are rarely punished. For this reason, there has been little or no court involvement in the interpretation of the prostitution laws. Also accused persons have been able to escape the consequences of the law by obtaining a pardon from the victim or his/her legal representative or by marrying her.

There is a slight difference with relation to pimping. This crime requires a public trial. However, such trials are extremely infrequent since the State appears to operate with a tacit compliance allowing the systematic exploitation of prostitution and there is little interest in enforcing the law.

5.5 Official and Unofficial Extent of the Phenomenon of Prostitution

It is extremely difficult to estimate the extent of the problem of prostitution since there are very few statistics available in Venezuela and those that do exist are both irregular and refer only to partial aspects of the phenomenon.

The Ministry of Health and Social Welfare maintains a control over active prostitutes by registering them in each city and obliging them to undergo periodic examinations for venereal disease. However, information on the number of prostitutes registered is not always published. Neither are the number of examinations carried out. Even if they were, it would not allow an inference to be made about prostitutes in general since a substantial proportion of the prostitutes may not be registered with the Ministry. Information from the Division of Venereology of the Ministry of Health estimates the number of prostitutes at 383,821 in a population of approximately 14,000,000. Of this number, only 165,178 submitted themselves for medical examination and of them only 1,024 were found to be suffering from venereal disease.

As the practice of exchanging sexual services for economic gain is not itself criminalized in Venezuela and although the Law against Venereal Disease declares it to be illicit, most contacts between the police and prostitutes refer to activities such as theft, assault and the like which are related to the prostitution and not to prostitution itself. In 1983, there were 800

prostitutes detained by the police in the Federal District -- i.e., the national capital region. In Zulia State, which is the largest state in the country, there were 217 and in all other states there were 740, giving a total for the country of 1,757. These figures are only approximates and have been obtained from Policy Coordination State Section of the Ministry of Internal Relations.

Pimping is a crime and may be prosecuted by the State. From 1979 onwards, the national statistics which are annually published by the judicial police include the category "Corruptores" making no distinction between them and pimps. No information is available before the year 1970. Between the years 1970 and 1975 inclusive there were no cases recorded. Since then there were 2, 28, 25, 10, 31 and 19 reported in each of the years 1976, 1977, 1978, 1979, 1980 and 1981, constituting 0,002%, 0.03%, 0.03%, 0.01%, 0.02% and 0.02% of all registered cases respectively.

Although there is evidence that the number of cases of "corruptores" known to the police increased throughout the last decade, there is no way of knowing how many of these cases relate to prostitution. Furthermore, there is every indication that the police statistics reflect only a limited proportion of the real number of cases.

Although pimping is specifically denoted as a crime, it is not specified in police statistics and hence no information is available on their numbers. The Vagrancy Law also refers to pimping. Yet there are no statistics available indicating how many people were detained by the police on that account. A detailed study of criminal records undertaken by Mayorca (1977) found that only four people had been prosecuted for pimping during the period 1970-1973 (one in 1970 and three in 1971). This study also estimated the

number of prostitutes in Caracas, with a population of 2,654,000 at 11,988. On the basis of this estimate, estimates have been made for other cities as well.

5.6 Attitude of the Public Towards Prostitution

No public opinion polls on prostitution have been conducted in Venezuela. One survey on law included questions on the perceived gravity of adultery (Gabaldon, 1978), but it is not possible to infer much about the public opinion on prostitution from its results. Another survey (Aniyar de Castro, 1977) on the social reaction to deviance conducted in the City of Maracaibo, which is the second largest city in the country, revealed that 13.37% of the population wanted prostitution criminalized, 23.00% depenalized, 31.50% dealt with in a non-judicial manner, and 8.2% wanted it treated as normal behaviour. Not responding to the question was 23.8% of the sample.

A mini-survey conducted in Merida, specifically for this study, suggests that the public opinion is that prostitution in Venezuela is a minor problem and one which is disappearing due to social changes and consequent liberalization of sexual norms, which gives greater sexual freedom to the individual.

5.7 Movements Towards Changing Legal Rules Concerning Prostitution

Currently there are no public movements in Venezuela to change the legislation or achieve better enforcement of the law. The State, through the Department of Social Protection (supervised by the Attorney General), the Department of Crime Prevention, the National Children's Institute, and the National Guard and other police forces, maintains controls and organizes campaigns to prevent prostitution but these, dealing mainly with crime, are

concerned with prostitution only as far as that activity is related to other types of crime such as drug addiction, assault or homicide.

The various feminist groups in the country include the question of prostitution in their discussion but no protests or opinion regarding the subject has yet been made public by such groups.

5.8 The Law Concerning Pornography

The Venezuelan Criminal Code makes no mention of pornography, but it does contain one article which captures its general sense. Chapter 1 of Title 8 has Article 383 which refers to offences against modesty:

> Any person who has offended modesty with written materials, drawings or other obscene objects, which have in some manner been distributed, exposed to public view or offered for sale, will be punished by imprisonment for three to six months. If the crime has been committed for economic gain, imprisonment will be from six months to one year.

No other reference to pornography is to be found in the Criminal Code.

Perhaps the reason why the term is not found in the Criminal Code may be because it had not found its way into the national vocabulary. However, by 1939 it was obviously in use since a reference to pornography is made in the third article of the Vagrancy Law. This article defines miscreants, among whom are to be found

> those who trade in pornographic objects or place them in public view. . . .

The same law also classifies as vagrants (Article 2):

> those who, while working, engaging in a profession or possessing property or independent income, also live at the expense of persons dedicated to prostitution, or to other illegal activities. For the purposes of this law, such activities are generally defined as those which go against moral conduct.

The Vagrancy Law, as has been pointed out earlier, is not dealt with by the courts but is the responsibility of the District Prefects, Governors and the Minister of Justice. These bodies have a variety of measures and sanctions at their disposal, such as warning, sending the malcreant back to his place of birth, internment in a rehabilitation centre or internment in a special agricultural colony.

It should be mentioned that in the Penal Code, in the Titles Acts against Public Decency, there is Article 538 which makes the presentation of words, songs, gestures or improper acts against public decency a minor offence threatening it with punishment of a fine of 10 to 30 bolivares or with detention in the police station up to one month.

Reference to pornography is made in the Police Codes. The Police Code of the State of Zulia contains Article 37:

> Printed material, photographs, manuscripts, pictures or cards or any other publication which expresses or repesents obscenities and which are exposed to public view or offered for sale will be collected by the police an burnt at the place. Those responsible for it will be subject to a fine of 40 bolivares or arrest for an equivalent period.

Article 38:

> All persons who in a public place make obscene utterances will be punished with a fine of 10 to 50 bolivares or arrest. If such utterances are made in the

presence of females or directed towards females, the penalty will be increased to 20 bolivares.

Article 39

Whoever behaves himself in a public place or a street in an indecent manner with gestures or signs or improper or immoral conduct and offends public decency will be punished with a fine of 20 to 50 bolivares or arrest. Likewise punishable will be those who appear on the beach an in bathing resorts without the customary bathing suits and those who dance in bathing suits.

Also punishable are the owners of those estabishments who do not enforce these regulations.

The Police Code in Merida State refers to pornography in Title III, Article 34:

Those printed materials, drawings, manuscripts, engravings or any other type of publication which express or repesent obscenities, and which are exposed to public view or offered for sale, will be collected by the police and burned. Those responsible for this infringement will be fined 40 bolivares or arrested for an equivalent period.

Title XXIV, Article 20 of the Police Code which deals with General Dispositions states that the conversion of fines to arrests is made on the basis that 10 bolivares is equivalent to one day's arrest.

In addition to these, there are Municipal Ordinances which specify that all films must be viewed by a Board of Censors and classified according to the audience to which they could be shown. In Caracas, at least, the National Officer of the Direction of Crime Prevention has, since 1983, been examining imported magazines such as Playboy with a view to recommending controls on its distribution. However, this activity seems only to refer to the capital and it is not clear how far the recommendations are binding.

The Post Office Law prohibits the post office from delivering written or printed obscene material.

As in the case of prostitution, there have been no changes in the law on pornography. The only recent innovation, which is not in itself legislative, would appear to be the activity undertaken by the Direction of Crime Prevention.

5.9 Scope of Law Enforcement Regarding Pornography

While pornography is defined as a crime in the Penal Code, state action is largely concentrated in the area of direct police control and censorship. Thus, it is the police that generally receive complaints regarding pornographic material and who are empowered to confiscate them. In terms of censorship, each District has its own Board of Censors which must review and classify films to be shown in the District. Of the four categories into which these films could be classified, Category D refers to pornographic films which can be seen by adults only. If the film is particularly obscene or indecent, the Board of Censors will prohibit its showing.

Problems relating to the enforcement of the laws on pornography thus relate to censorship. Recently there was the case in which the Board of Censors in Caracas in 1972 prohibited the showing of the film, "Last Tango in Paris". The film, notwithstanding the prohibition of its showing in Caracas, was permitted to be shown in other cities such as Maracaibo, Barquisimento and San Cristobal.

Police officers do not consider pornography to be a serious problem largely because there are strict police control over the entry and circulation of such materials. However, they do believe that it would be a problem if such

police controls did not exist. The National Guard which mans the frontier posts keeps a relatively close watch out for obscene books, films and video tapes which could enter the country while the uniformed police maintains a close watch out for them in towns and cities.

Currently the majority of pornographic material which reaches Venezuela is in the form of films and magazines. Films are controlled by the Censors. The magazines which arrive are those which are internationally accepted and are sold on the street to a limited and select clientelle. There are no major problems with the international distributors of pornography and the local production of pornography is extremely unsophisticated and almost non-existent.

Pornography can in no way be considered a serious problem in Venezuela. This is partly because moral standards have become more liberal and thus what was considered earlier as pornographic is not longer so considered. For example, nudity in publications is considered to be normal where the context requires. Information about sex is also relatively freely available and there are a number of publications which deal with or explain sexual relations. Magazines such as Playboy can also be bought on the street and are generally considered to be as much erotic art as pornography.

A second reason why pornography is not a problem is that police control, censorship and other preventive measures keep the amount of pornographic literature relatively limited. A third possible reason is the idiosyncrasy of Venezuelans, the majority of whom are nominally Catholics and who do not display a marked interest in pornography per se. Although there are undoubtedly clandestine groups which deal in and enjoy pornography, there is no perceived serious problem at the national level.

One current concern and which is increasingly evident relates to children and juveniles. In this, pornography is included within more general measures designed to regulate the amount of violence or sex which minors are permitted to read about or watch. Not only do norms regarding censorship place great emphasis on the age groups which can and cannot watch a particular film, there are also other complementary and broader measures. While television is not allowed to broadcast programs which are either too violent or pornographic, programs are classified according to the audience that they are designed for. This classification is threefold: programs for children, programs for all ages and programs for adults. Before broadcasting each program, the T.V. station is required by law to state for which age group that program is destined. In the case of programs for adults, it is also specified that if children watch, then the program must be discussed with them by the parents or guardians. This is the law, but to what extent it is observed, no one really knows.

To ensure the greater protection of children, the Ministry of Youth and the National Children's Institute have, since 1982, organized intensified campaigns in favour of greater state intervention in the diffusion of literature, art and films in order to control the materials which are accessible to children.

Although the Police do not consider pornography a serious problem, the police do believe that strict and even stricter police action is called for. This is because they believe that pornography can lead to other sexual crimes, and perhaps also to drug consumption as a complement to the erotic activities of those who take a keen interest in the subject.

5.10 Official and Unofficial Extent of the Phenomenon of Pornography

The few statistics relating to pornography suggests the non-existence of a problem. The crime statistics published by the Ministry of Justice and which refer to cases known to the police include a category "offences against modesty". No information is available before 1970. During the period 1970 through 1975 there were no cases. In 1976 there were 14 cases but no arrests. The cases constituted 0.01% of all cases. In 1977 there were 17 cases constituting 0.02% of all cases. In this year there were six arrests constituting 0.01% of all arrests. In 1978 also there were 16 cases, but there were only 10 arrests. In 1979 there were 19 cases with six arrests, in 1980, 13 cases and three arrests and in 1981, 21 cases and no arrests.

The statistical data is incomplete.

5.11 Attitudes Towards Pornography

As with prostitution, there have been no public opinion polls or surveys conducted on pornography. The study done by Aniyar de Castro (1977) in Maracaibo indicates that while 24.0% of the public want the dissemination of pornographic material criminalized, 42.86% of the public want it depenalized, 18.87% of the public want it dealt with extra-judicially and 8.7% have given the subject no attention at all.

A mini survey conducted in Merida, specifically for this study, indicates the belief that there is no problem with pornography in Venezuela. This is due to the fact that the only pornographic material readily available are international magazines from United States, Brazil and more recently from Spain. Such literature is of highly limited distribution in the country.

5.12 Public Movements and Pressure Groups to Control Pornography

Thre are no organized movements in Venezuela which voice opinions about the problem of pornography or exert pressure to change existing legislation. Currently, the National Congress is considering the possibility of reforming the Criminal Code so as to include both prostitution and offences against modesty as criminal acts. However, the special commission which was named to study these reforms has not completed its task and has not proceeded beyond the general aspects of the Criminal Law in Venezuela.

In relation to law enforcement, there has been some attempt made to strengthen and improve controls on the entry of young people into cinemas. If pornography is considered problematic at all it is in connection with its impact on young people although there seems to be some broadening of the concern to violence and sex. The National Children's Institute is constantly campaigning for stricter control of the entry of children and young people to cinemas and for prohibiting their entry into cinemas when the film is exclusively for adults. This control derives from the Law Protecting Minors which states in Article 20:

> It is forbidden (3) to allow people under 18 years old to enter cinemas or similar entertainments when the films or shows are classified as unsuitable for them.

In line with this responsibility, the Institute regularly sends circulars to cinema managers urging them not to let young people into the cinema when films designated for adults only are shown. The Institute can and does impose administrative fines on those cinemas which do not comply with the law. The effects of these controls have been evident during the last 18 months in Merida,

for example, where cinema staff will ask for proof of age of a person if they suspect him to be a minor.

5.13 References

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5.14 Bibliography

Although there are a number of studies done in Venezuela on prostitution, very few of them refer to the problem in the country. The serious study of prostitution in Venezuela has yet to begin. The situation is more or less the same with regards to pornography. Of interest, however, are the following works:

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5.15 Acknowledgments

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VI. PANAMA

6.1 Introductory Remarks

The Republic of Panama forms and S-shaped isthmus which links South America to Central and North America. Bisected by the Panama Canal, the country is bounded on the north by the Caribbean Sea, on the south by the Pacific Ocean, by Columbia on the east and by Costa Rica on the west. It covers 29,762 square miles and had a population of 1,921,700 in 1982.

Panama is a unitary Republic. The country is divided into nine provinces headed by a Governor appointed by the President. There are, however, no provincial legislatures. Under the Constitution of 1946, the country has a democractic form of government but in practice, the country has been under a series of regimes and dictatorships since 1931.

The Central Government is comprised of separate executive, legislative and judicial branches. The executive branch is strong and is headed by the President who is not only the Head of the Government but also Head of the State. Constitutionally, he is elected for a four-year term by the National Assembly. He has the power to conduct foreign relations, to appoint and dismiss provincial governors, to sign and veto bills, and to serve as Commander-in-Chief of the nation's public forces.

The legislature consists of a unicameral National Assembly composed of 505 members elected by direct popular vote for a six-year term. It has an important function in the area of appointments. It names the Procurator General and his deputy and approves the naming of the judges of the Supreme Court.

The court system comprises the Supreme Court and a hierarchy of lower courts -- the Superior Courts, the Circuit Courts and the Municipal Courts. As the most authoritative body in the judicial system, the Supreme Court is responsible for the functioning and supervision of the lower courts. It is comprised of nine judges, called Magistrates, appointed by the President, with a new judge being appointed every two years for a term of 18 years. At the same time a judge is appointed, an alternate is appointed for him. The alternate replaces the principal during absences.

The Constitution provides for a three-chambered Supreme Court -- one chamber each for Civil, Criminal and Administrative cases. A fourth chamber was added later to handle general cases. The Criminal Division has exclusive jurisdiction over offences committed by judicial personnel, cabinet ministers, diplomats and other high functionaries. The Administrative Chamber deals with illegal administrative decisions, decrees and orders, while the General Division is responsible for the correctness of civil status and property registrations, disciplinary actions against lawyers for violation of professional ethics and the drafting of items of interest for the administration of justice. The Supreme Court also decides on the constitutional validity of any law, executive decree, or order questioned by the executive or challenged by a private citizen.

The Superior Courts have an original and appellate function. They hear the most serious cases except those which are specially reserved for the Supreme Court -- cases involving high government officials. They also hear appeals against judgments of the Circuit Courts and the Municipal Courts. Trials in the Superior Courts are by a jury comprised of five or seven members. Challenges for cause are permitted both the prosecution and the defence.

Circuit Courts have both criminal and civil jurisdiction. However, except in locations with small populations where a single court exercises both jurisdictions, the courts are specifically assigned only criminal or civil cases. They hear the more serious cases. Judges of the Circuit Courts are appointed by the Superior Courts for a fixed term of four years.

Municipal Courts exercise jurisdiction only in minor cases. The judges of these courts are appointed for a three-year term. In large cities the appointees must have a law degree but this qualification is not strictly enforced in the remote and rural areas.

In addition to these, there are a number of special courts. These include Administrative courts, Customs courts, Tax courts, Labour courts, Traffic courts and Military tribunals. There are also Electoral courts having national jurisdiction over cases of offences violating the rights of suffrage and free election, as well as a Protective Tribunal for Minors which operates under the Supreme Court and is responsible for the supervision of proceedings involving minors and the protection of their interests.

Provided for in the Constitution is a Public Ministry responsible for the administration of justice. It is an organization which includes all District Attorneys, Solicitors and others engaged in legal representation of the state. It is headed by a Procurator General. Officials of the Ministry have the function of directing state prosecutions, enforcing laws and regulations and serving as legal counsel for government officials. The Procurator appoints an auxiliary attorney who is responsible for the supervision of the country's investigative functions.

6.2 Legislation Relating to Prostitution

Legislation relating to prostitution is varied and is found in:

a. The Panamanian Penal Code;

b. Legal Decrees relating to prostitution and contemplated inclusion in the Penal Code;

c. The Sanitary Code;

d. The Administrative Code; and

e. Decree No. 49 of 4th February 1972.

The Panamanian Penal Code describes a number of offences which could be considered as relating to prostitution. The can be categorized into two large groups:

1. Those offences contributing directly or indirectly to prostitution; and

2. Those offences which are the consequences of activities related to prostitution.

Falling into the first group and considered contributing indirectly to prostitution are:

1. Incest defined in Article 209;

2. Rape and Debauchery defined in Article 216;

3. Carnal knowledge of a minor, under 12 years of age, described in Article 217;

4. Carnal knowledge of a person between the ages of 12 and 16 defined in Article 218;

5. Abduction defined in Article 221;

6. Abduction of a person between the ages of 12 and 15 defined in Article 222;

7. Offences against modesty described in Article 220; and

8. Corruption of minors described in Article 226.

The thrust of these sections is the criminalization of sexual activity involving as a victim a minor, as an offender a person having authority over the victim such as a parent, teacher, guardian or the like and in circumstances involving deceit, intimidation or violence. Heterosexual activity between consenting adults is not outlawed.

Falling into the first group and considered offences which contribute directly to prostitution deal with proxenetism. The relevant sections are:

Article 228:

> Whoever with the desire for gain or the satisfaction of his passions, promotes or facilitates the prostitution of a person of one or the other sex shall be punished with imprisonment of two to four years.

Article 229:

> The punishment for the commission of the acts aforementioned will be three to five years imprisonment in the following cases:
>
> 1. If the victim is a female less than 12 years or a male less than 14 years old.
>
> 2. When the offence is accomplished through the use of deceit, violence, the abuse of authority or any other form of intimidation or coercion.
>
> 2. When the offender is a parent of the victim, a tutor, caretaker or any other person to whom is entrusted the guardianship or custodianship for family reasons or for education and instruction.

Article 231:

> Any person who promotes or facilitates the entrance into or exit from the country for the purposes of engaging in prostitution shall be punished with imprisonment of two to four years.
>
> The punishment will be increased to six years if the circumstances enumerated in article 227 are found to exist.

Worthy of note here is the stress laid on the age of the victim, the relationship of the offender to the victim and the involvement of fraud, intimidation or violence.

Into the second group of offences fall:

1. Abortion defined in Article 141;
2. Abandonment of persons defined in Article 145;
3. Deprivation of liberty defined in article 151; and
4. Infection of venereal diseases defined in article 253, which reads:

> Whoever exposes another person to contact venereal disease through sexual relations or through any other means will be punished with six to 12 months imprisonment and a fine of 100 to 200 dias.
>
> If the act foreseen in the previous paragraph is committed through a mistake, the punishment shall be a fine of 10 to 50 dias.

Decree laws related to prostitution and contemplated includes in the Penal Code is really Law No. 4 of 7th January 1966, which makes provisions for subjecting women over 18 years of age to rehabilitation if they were:

> 1. Public women or those recognized as leading a shameful life practising uninhibited passion and libertinage.

2. Soliciting women and those promoting, facilitating and favouring prostitution or corruption.

and

3. Those who exploit, directly or indirectly prostitution, participating in the benefits derived from this activity or adopting it as a way of life.

The Sanitary Code deals with the control of venereal disease. Article No. 146 of Law 66 of 10th November 1947, Third Book, Second Title and Third Chapter reads:

Venereal diseases should be controlled by the Director General of Public Health conforming to the same epidemiological criteria as other communicable diseases and remaining subject to condemnation, isolation, vigilance, obligation to examination and obligation to treatement even in hospital. These measures should be taken in the case of the sick, of suspects and of contacts when, in the judgment of the health authorities, they would constitute a danger to others.

Article 147:

The prophylaxis and treatment of venereal disease which are to be added to the services carried out by public health especially at health centres and District Health Units are in reference to prevention, ambulatory treatment, epidemiology and health education and to hospitals in reference to isolation and treatment.

In the Administrative Code is contained the regulations for the establishment of licensed houses. Article 1293 reads:

In the inside of parks and on public promenades will not be allowed women leading a shameful life, drunk or dressed in rags. The police will expel them from such places, threatening those who refuse to leave with a fine or equivalent arrest.

Article 1294 reads:

> It is prohibited to rent, in the centre of populated areas, houses, homes or parts of them to public women or those recognized as leading a shameful life.

Article 1295:

> The police will not permit the establishment of houses or meeting places for the practice of unbridled passion or libertinage. The individual who is in charge of a house or meeting place in which meetings are held with anyone for these objectives will suffer a fine of 12 to 50 balboas and those who play a part in these meetings will incur a fine of 10 to 50 balboas.

Article 1296:

> It is the duty of the National Council of Health, to describe the district in which women mentioned in Article 1294 could inhabit and also dictate the sanitary regulations that must be observed. The Governor of the Province must dictate those regulations which will prevent the corruption of minors and the increase of public immorality.

Decree No. 49 of 4th February 1972 deals with measures relating to public decency and the sojourn of women in barrooms, hotels, pensiones, and other places offering similar entertainment in the capital area. In the Preamble it claims:

> ... the Mayor is obligated to be watchful of the morality and good customs of those who reside in the capital district, it is necessary to regulate the work of women in barrooms and other places of entertainment with the purpose of combatting clandestine prostitution in order to procure the decency of the city and the health of the collectivity in general.

It then goes on to decree that all women

> who work in barrooms, night clubs, cabarets, hotels, pensiones or those who frequent such places without the company of a man who will be responsible for them, will have to carry an identification card issued by the Mayor

and to outline the manner in which such a card could be obtained, the fees that must be paid for such a card and the period of validity of such a card. The decree stipulates that the application for the card must be made by both the women concerned and the owner or manager of the place where she intends to work. The documentation that must be affixed to the application indicates that persons with a criminal record would not be given the identification card.

The Supreme Court of Panama has held that the sentence, "or those who frequent such places without the company of a man who shall be responsible for them" in the first Article of the decree, is unconstitutional and has abrogated Article 6 of the decree which reads:

> Prohibited is the entrance and sojourn of any women in barrooms, night clubs, cabarets and the like unless they are appropriately accompanied by a male, older in age and who has responsibility for them, or who carries a card of identification in accordance with the dictates of this decree.

The law in Panama thus does not outlaw prostitution but tries to control it through indirect means but in doing so has permitted the legal practice of prostitution.

6.3 Forms of Prostitution in Panama

Prostitution takes several forms in Panama. There is first of all the legal form. This is protected by the state and permitted to women who have succeeded in obtaining an identification card. These prostitute women are

required to pay income tax and they are subjected to periodic health examinations to ensure that they do not suffer from venereal disease. Legal prostitution is divisible into professional and semi-professional. Professional prostitutes must be represented as a specialized person and they must live in houses or specific centres which are under the supervision or control of an administator or manager. Semi-professional prostitutes disguise their trade under a number of other names such as cashiers, bartenders, dancers, singers and the like. They do not carry on their trade in their place of work and they rely on personal encounters in their other and legitimate work to attract their clientelle.

The second form that prostitution in Panama takes is an illegal or clandestine one. This type of prostitution is indulged in as an occasional activity. It is not the woman's profession, but is engaged in to earn some extra money or more "to pass away the night".

Prostitution is engaged in on a major scale in the City of Panama and in Colon. The first is a large metropolitan centre and the second is a harbour city. Prostitution in these two places have their own peculiar characteristics.

In Panama City, there are certain localities where this activity is permitted. These areas are situated outside the centre of the city. In addition to these are taverns, bars and the like where, in addition to the sale of alcoholic beverages, are presented forms of entertainment creating an atmosphere conducive to prostitution. The majority of these places are found in the centre of the city.

Both these forms of prostitution — the professional and semi-professional forms of legal prostitution -- involve women 42% of whom are of

Panamanian nationality. Fifty eight per cent of the women engaged in this type of prostitution are foreigners and of the foreigners, 47% are Colombians.

There is also in Panama City illegal or clandestine prostitution which is not regulated by the state and which is not subjected to health inspections. This type of prostitution is engaged in exclusively by Panamanian nationals.

Colon has a free zone outside the Canal Zone. Living together here are diverse ethnic and cultural groups such as Antiguans, Asians, French and the like. It is a cosmopolitan place. 5.16% of the prostitution is found in the centre of the city which is the centre of the commercial, economic and financial activity. The prostitution is mediated in bars, taverns, night clubs, cabarets and the like.

6.4 Problems With Prostitution

There are to major problems associated with prostitution. The first of these is that it is spreading and becoming almost endemic. During the Second World War provisions of Articles 1294 and 1296 permitted the creation of Tolerance Districts in Panama City and in Colon and the restriction of prostitution to those areas. However, on 4th August 1951, an Executive decree dealing with morality and public health issued by the Minister of Justice, Governors and Mayors were enjoined to prevent and repress prostitution. As a result of this, the Tolerance Districts were done away with and prostitution spread.

The second problem which is the more pressing and the more frightening is the spread of masculine prostitution. During the last five years there has been an increase in this activity. It is engaged in by transvestites in

special areas of the city -- those areas where there is a concentration of bigger hotels and clubs. The spread of this phenomenon is readily understandable when it is realized that the clientelle are homosexuals who happend to be either alien marines coming into the city for this purpose or well-to-do and professional Panamanians.

6.5 Laws Relating to Pornography

There are no laws that use the term pornography. However, the Administrative Code does contain two articles which deal with the subject. Article 1289 reads:

> Police employees must prevent the exhibition in public, the sale or distribution of pictures, stamps, paintings or any other goods with lewd depictions.

Article 1290 reads:

> The police will not permit in the theatres or any other public place, the presentation of dramatic performances which contain obscene or indecent acts or expressions or any other thing contrary to morality and good custom.

Article 85 of Chapter 4 of the National Constitution states in realtion to national culture:

> The means of social communication are instruments of information, education, recreation and the diffusion of culture and scientific knowledge. When they are used for the publication and diffusion of propaganda or advertisement they must not be contrary to the health, the morality, the education and cultural formation of society or national conscience.
>
> The law will regulate these functions.

More definitive legislative action exists in the form of Cabinet Decree No. 251 of 6th August 1969 which created a National Council of Censor as well as District Councils. This was done, as the Preamble to that decree states:

> because it was necessary to stimulate conservation of public morality and because cinematographic films, television shows, publications, radio transmissions and records of an obscene nature or against the good customs of the citizens are an obstacle and also damaging to the moral formation of our children and our juveniles.

The decree gives the structure and function of the Councils and the qualifications of the members together with their duties and privileges. The main duty of the Council was to review films, etc., and

> to prohibit the exposition of all national territory, of cinematographic films, dramatic presentations on radio, transmissions on records, publications and the like, all materials which
>
> 1. are contrary to the basic principles of Christian morality or offensive to them;
> 2. include immoral, vulgar or obscene scenes that offend the moral and decent sentiments of society;
> 3. offends the national dignity;
> 4. the Minister of Foreign Affairs has been requested by the Diplomatic Representative of a friendly country to prohibit the exposition, as it is damaging and offensive to that country;
> 5. will debilitate the moral fibre of society containing in it criminogenic factors which will damage society and create an atmosphere that will distort the concept of human, moral and family values;
> 6. are instruments of propoganda of quaint theories of totalitarian systems and republican form of government and are contrary to public order;

7. come from totalitarian states and whose exposition is designed to totally or partially, directly or indirectly, foster those regimes. (Article 12).

Article 13 stipulates the classification of the material into three categories:

a. of universal distribution capable of being shown to any member of the public;

b. of restricted exposition which can be shown only to persons of a particular age. Into this category would fall all that material which, in the opinion of the Council, such exposition is considered to produced an improper moral, psychological and sexual reaction;

c. totally prohibited because they violate the rules laid down in the previous article.

The Council must also review live shows for theatres and for T.V. and grant permission to put on those shows on condition that their contents would not be altered. The Council has no authority to require the alteration of the text or of a scene but they can order the removal of offending portions.

6.6 The Extent of the Problem of Pornography

Panama has 89 radio stations and six television stations catering to a viewing population of approximately 250,000 of whom 80% live in the City of Panama and other municipalities and 20% in the rest of the country. As far as the press is concerned, there are six daily newspapers with a circulation that varies between 5,000 and 30,000.

The City of Panama has 29 cinematographic houses which could accommodate approximately 22,223 persons. Colon has four such houses with a seating capacity of approximately 2,000. In Panama, five of the 29 movie

houses project pornographic films daily during the regular hours (3:00 p.m. through 10:00 p.m.) and one of these theatres projects films that are considered particularly hot after midnight. In Colon, two of the four movie houses project pornographic films during the regular hours.

One important observation that has to be made in this connection is that in the cities of the provinces, there exists only one cinematographic hall which is used for a number of events such as concerts, ballets, conferences and the like. These halls are large. They are permitted to project one pornographic film every week. Rumour has it that on these occasions, the hall is filled to capacity.

The pornographic films shown in all the cinematographic halls are subjected to review by the National Council of Censor which approves the projection of this material provided that it is to a limited audience. Those between the ages of 14 and 18 are prohibited from viewing them.

6.7 Movements to Alter the Laws on Pornography or to Secure Better Enforcement of the Existing Laws

There is a general feeling in the country that the level of pornography is surpassing the level of public tolerance. There exists in the country a group of people who have constantly shown sufficient amounts of courage in their denunciation of violence, of obscenity and of sexism and who have tried their level best to have these prohibited. At the same time, there is another small group that has taken an absolutionist position and keeps on referring to Title 3, Chapter 8, Article 37 of the Constitution which protects all forms of expression in Panama:

> All persons are able to express freely their thinking, by speech, or by writing or by any other means, without subjection to any preliminary censorship. However, there exist legal responsibilities when any one uses these means against the reputation or the honour of people or against social security or public order.

The police claim, and the Criminal Statistics indicate, that there has been a change in the tone and the style of the offence of rape. This offence has become increasingly associated with violence and with new elements of humiliation which include strange new tactics. Part of this is attributed to the climate generated by the tolerance of pornography.

Groups of professionals in distinct specialities such as Sociology have expressed the view that it is extremely necessary to take energetic measures to diminish the increasing level of pornography so as to strengthen the morality of juveniles and to stem the decadence and degeneration of their customs.

Associations of professional women and feminist groups have demonstrated and remonstrated against pornographic publications as contributing to the "humiliation and degradation of women and the promotion of an increasing amount of violence against them".

Counsellors in education have constantly solicited the assistance of the authorities of the Republic to control pornography in order to give and to ensure the children the protection that is necessary for their moral formation. They have complained to the Judge of the Protective Tribunal for Minors about the proliferation of pornographic magazines and the ease with which minors have access to them.

The Government has responded and launched a program against pornography. But this program is nothing more than a whitewash. This is

reflected in the work done and the results achieved by the Mayoralty of the Capital District to control or reduce as much as possible the booming pornographic industry within the limits of its jurisdiction. All this activity has only resulted in the National Council of Censors placing full responsibility in connection with public shows in its committee. Even so, there is no classification of any type done regarding cinematographic material which is presented on the T.V. screen, even though television is a force having a massive influence on the family.

6.8 References

6.9 Acknowledgements

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VII. CHILE

7.1 Introductory Remarks

A Republic on the south western coast of South America, Chile is bounded on the north by Peru, on the south and west by the Pacific Ocean and on the east by Bolivia and Argentina. The total area of the country is 292,258 square miles. Its population was 11,275,400 in 1982. It is divided into 25 provinces.

The Constitution of 1925 provides for a unitary republican form of government that is "representively democratic". The government is characterized by the three traditional branches of the Executive, the Legislature and the Judiciary as well as an equally important Comptrollership General which handles revenues and expenditures. The balance of power, however, heavily favours the Executive.

The President is both the Head of State and the Head of Government. The Constitution allows for his election for a six-year term by universal popular suffrage. He exercises administrative power and in addition is empowered to decree laws under certain circumstances. He has exclusive authority to initiate legislation altering the political or administrative divisions of the country, creating new services or salaried positions and increasing salaries of government employees.

A strong Presidential Government ruled Chile until September 1973 when it was overthrown by a military coup and replaced by a ruling four-man junta with one of its members appointed President. The resulting military dictatorship has since abandoned the traditional republican form of government.

The Legislature, the National Congress, was a bicameral body consisting of a Senate of 45 members elected directly for an eight-year term and a Chamber of Deputies of 147 members elected directly for a four-year term. The Congress enjoyed general legislative powers that included the authority to either approve or reject the budget. Bills, however, had to be approved by the President who was vested with broad veto powers.

Chile's highly centralized organization of national government has deprived local government of effective power. Each of the 25 provinces is under the direction of an Intendant appointed by the President. Provinces are subdivided into Departments headed by Governors who are also appointed by the President. Departmental subdivisions are called Districts. Provincial Assemblies provided for in the Constitution have never functioned. However, until 1973, elections were held for Municipal Councils but after the military coup, the elected officials were replaced by appointees of the military government.

The judicial system in Chile is the least powerful of the three branches of government. This was so even under the democratic system. After the military coup, the basic court structure was left intact but with very minimal powers. The judicial system consists of a Supreme Court, an Appellate Court and a system of lower courts. The Supreme Court has both original and appellate jurisdiction. It hears, in the first instance, cases involving high government officials, diplomats and other foreign dignitaries, and those cases in which a provincial government is a party. Its appellate jurisdiction extends to all the lower courts. Under the Constitution, the Supreme Court is empowered to consider the constitutionality of legislative acts and may declare them inapplicable in certain instances but may not invalidate them.

The Courts of Appeal hear appeals on decisions from the lower courts in both criminal and civil cases. They may also exercise original jurisdiction in certain cases as those involving Senators and Deputees. Lower courts consist of the Courts of Major Claims, Small Claims Courts, Judges of Subdelegation and District Courts. The District Courts and Judges of Subdelegation hear minor civil and criminal cases. The criminal cases heard involve mainly petty theft and such offences. The civil cases heard involve rent disputes, small loans and the like, where the value does not exceed 5,000 escudos.

Small Claims Courts hear civil and commercial cases involving sums of 5,000 to 50,000 escudos, while Courts of Major Claims hear civil cases involving sums of over 50,000 escudos. They also hear serious criminal cases. These courts have an appellate jurisdiction over the civil and commercial cases heard in Small Claims Courts and the criminal cases heard in the District Courts.

In addition to the regular court systems there exists a number of functional courts which operate at the lower level. These include courts that deal with customs, elections, indian affairs, labour, lands and water. There is also a Special Tribunal for Minors which hears juvenile delinquency cases.

The organization of the courts in Chile is highly centralized. The Supreme Court has directive, corrective and economic supervision over all courts. However, because of adherence to the system of Roman Law which governs the court system, there exists little room for interpretation by judges at any level of the court system. In addition, frequent government interference in judicial affairs has weakened the entire judicial system of the country to a considerable extent. Making matters even worse is the chronic insufficiency of

judicial officers which frequently delays trials resulting in massive overcrowding of the country's penal institutions.

7.2 The Extant Law on Prostitution

Special legislation permits the government to issue decrees which have the force of law though they have not been passed by Congress. Every-day life in Chile is usually regulated in this way. Decrees are issued by Ministries having relation to its subject matter. From time to time, these decrees are gathered together and published as a legal body to simplify procedure. They exist as codes.

As far as prostitution is concerned, there are two codes that are relevant. The first of these is the Penal Code published as Decree of the Ministry of Justice, No. 88 of 13th January 1976. The second is the Sanitary Code published as Legal Decree, No. 725 of the Ministry of Public Health on January 31st 1968. In addition to this, there is Decree No. 362 of the Ministry of Public Health of May 7th 1984.

None of these laws prohibit prostitution indulged in by adults. The sections in the Penal Code seek to protect minors. The relevant sections are Articles 367 and 368. Article 367 reads:

> Those who habitually or with abuse of authority provoke or facilitate the prostitution or corruption of minors under 21 so as to satisfy the desires of others will be subject to imprisonment and a fine.

Article 368 reads:

> If the person responsible for the aforementioned prostitution or corruption is a public authority, priest, teacher, servant, or in any way connected with the

> victim's education or safe keeping, the culprit will be punished with imprisonment in the maximum degree.

Other sections of the Penal Code specify the punishments that should be inflicted. In the case of violations of Article 367, the prescribed penalty is a sentence of two years imprisonment and in the case of violations of Article 368 the minimum sentence is fixed at two years imprisonment and the maximum at five years imprisonment.

The Sanitary Code deals with the control of venereal disease rather than the act of prostitution. Article 36 of the Code entrusts the responsibility for controlling venereal disease to the National Health Service which is a part of the Ministry of Health Services. By Article 41 they are required to register all persons who practice "sexual commerce", i.e., prostitution, stipulating that they would not be allowed to live in the same premises where public activities such as bars, dining rooms, dancing floors, etc. are conducted. The police are placed in charge of the necessary control and empowered to close all such places notwithstanding the measures that might be adopted by the Public Health Services.

Decree No. 362 of the Ministry of Public Health of May 7th 1984 is designed to control the transmission of disease through sexual intercourse. Article 12 of this Decree reads:

> All persons who according to the Police Officers or the competent staff of the Public Health Services, are thought to be dedicated to sexual commerce (prostitution) or related activities, will be sent to the corresponding health institution to be examined and treated, if so required.

Article 13 reads:

> Houses of prostitution or "tolerance" dedicated to sexual commerce are forbidden. All propoganda and advertisements that promote sexual commerce is likewise forbidden.

Article 14:

> Owners cannot dedicate their property to further sexual commerce, nor rent or lend it for such activity or practices.

Article 15:

> If the Public Health Services considers, within reason, that such an establishment exists, as is stated in Articles 13 and 14, then they will denounce it to the corresponding police centre who will proceed to have it closed within 48 hours.

7.3 The Scope of the Problem

Prostitution is not outlawed in Chile. As was pointed out earlier, the Penal Code has shown an interest only in the protection of minors. If any attempt has been made to control the phenomenon that attempt has been made in the Sanitary Code, which prohibits prostitutes living and operating in the same premises as those where the public are admitted for drinks or entertainment. To circumvent this regulation, houses of prostitution have been so organized that two buildings connected to each other in an unobstrusive manner are used. Both buildings have separate entrances to the street. The prostitutes live in one and carry on their prostitution there while the public activities such as bar, dining room, dancing and the like are conducted in the

other. There are no bedrooms in this other building. In this way the law is observed.

Decree No. 362 of the Ministry of Public Health was issued because of the increase in the incidence of venereal disease and the appearance of massage parlours and the like where disguised prostitution was carried on without the corresponding control by the Public Health Service. These massage parlours or "Relax Houses" as they were sometimes called, were advertised in the daily newspapers giving only a telephone number. It was generally understood that they were places for prostitution. This Decree has been criticized much as being extremely drastic because it gives the Health authorities the power to act without any actual proof.

One form of prostitution which is increasing in the country and which cannot be controlled by this regulation is that operated through the "call girl" system. No regulations have been devised for their control. The street prostitute or street walker can be controlled by the police by picking them up and charging them with vagrancy, provoking public scandal or attempting to degrade public morals.

There is also a problem of child prostitution. The exact dimensions of this problem are not known.

With regards prostitution, there are two aspects which need special mention. The first is the seeming reluctance on the part of the police to act against prostitutes. This is mainly due to the fact that they feel the prostitutes to be an important source of information on more serious problems such as theft, drugs and violence. The second is the societal reaction to the client of the prostitute. If a man goes to a house of prostitution or "tolerance" he is supposed to do so of his own free will making a rational decision and no one

seems too bothered about it. If, however, he is accosted by a prostitute on the streets, then she is held responsible for promoting immorality and the man becomes the victim. It is not realized that it is the man that creates the demand for prostitution.

7.4 The Official and Unofficial Extent of the Problem

The control of illegal prostitution lies with the uniformed police force — the Carabineros — who are in charge of public order and the security of the citizenry and not with the non-uniformed police — the Investigaciones — in charge of investigations. When the Health authorities require any legal action to be taken against prostitutes, they are required to go to the Carabineros. The number of cases taken to court and the numbers found guilty for offences connected with prostitution are shown in Table 7.1. The figures show a steady decline. No figures regarding houses of prostitution are available. Neither is it possible to make a reasonable estimate. However, the impression that the police have is that their numbers are gradually decreasing, especially in Valparaiso and in Talcahuano which are two major ports in the country. This impression has been created by the decrease in the number of bare, strip-shows and other such places of entertainment that are connected with hotels.

The number of prostitutes is also unknown. The registration that is done by the Health Department is strictly confidential and are not made available to the public. Even if these figures were available they would tend to give an inaccurate picture. Not all prostitutes are registered and those who are registered tend to remain on the count even though they may have stopped being prostitutes.

Table 7.1 Number of Sex Offences Cases taken to court and found Guilty. 1978-1982 in Chile

Offence	1978	1979	1980	1981	1982*
Prostitution of Minors					
Taken to Court	83	120	222	155	72
Found Guiulty	4	5	1	6	2
Offences against Modesty					
Taken to Court	116	593	496	608	350
Found Guilty	8	23	8	14	6
Rape					
Taken to Court	1909	2805	3034	2963	1714
Found Guilty	273	148	198	222	273
Dishonest Abuse					
Taken to Court	645	1363	1565	1358	910
Found Guilty	144	177	156	202	204
Male Homosexuality					
Taken to Court	not available				405
Found Guilty					100

* Data for 1982 is not totally processed. This column shows only 75% of the cases taken to court.

Source: Instituti Nacional de Estadistica.

For the purposes of this study, newspaper advertisements referring to massage parlours, relax houses and home service massage were checked. These advertisements disappeared from the newspapers after the decree of May 1984. During the month of March there were advertisements for 59 different services. Calculating three prostitutes per advertised service, this gives a total

of 176 which is really not much for Santiago which has a population of about four million. No information is available on the number of call girls.

There is, however, an acknowledged increase in venereal disease.

7.5 Public Opinion Concerning Prostitution

There have been no public opinion polls conducted in Chile on prostitution. However, it would not be incorrect to say that Chileans tend to commiserate with women who turn to prostitution through poverty and there is a feeling of understanding and a desire to help women who wish to avoid or abandon it. For this reason, public opinion would vary according to the type of the problem.

The forms of prostitution found in Chile until recent times have been those found in any male oriented society where places are organized for the social activities of men. Men meet in these places, they eat and drink here and are entertained here. Sexual services are offered them as a part of the business. In small towns, these meeting places, which were in reality brothels, filled a social role. Chilean novelists describing different aspects of Chilean life have included the brothel in their descriptions and show the role that they played in Chilean society.

The gradual change of Chilean society to a female oriented one has caused a change in the social life of men. There has been a decrease in the number of houses but this does not mean that prostitution has disappeared. It has taken different forms such as street walking and disguised prostitution in massage parlours and the like. Another factor that appears to influence public attitude towards prostitution is the fact that social life is carried on more in

common by men and women of the same social station and with more relaxed sexual habits. Crude prostitution seems on its way out.

7.6 Movements Against Prostitution

There is no public movement against prostitution as such but there is a concern for the increase in venereal disease and for the exploitation of children for prostitution. In March 1984 there was a highly publicized forum on child prostitution in which a well-known priest -- Father Alessandri — spoke against the phenomenon referring to cases he knew of. He did not define the dimensions of the problem. In this forum, Chief Zuloaga of the Investigaciones maintained that police reports did not bear any visible increase in prostitution nor did they indicate the emergence of a problem of child prostitution. While child prostitution did exist it was a relatively rare occurrence. There were apparently other problems of greater magnitude that merited more attention. Child prostitution in Chile, as it exists in the present, is not the result of an organization to exploit children but the result of the squalor and extreme poverty as is found outside the big cities. These conditions force children into active sexuality at a surprisingly young age.

Another problem that is making its appearance and beginning to influence the public is male prostitution. Together with child prostitution, male prostitution is abhorent to Latin American traditions.

7.7 The Existing Laws Regarding Pornography

The only legal regulations that are applicable to pornography in Chile are those contained in the Penal Code. Article 373 of the Penal Code states:

> Those who through any means offend modesty and decency or good habits with grievous scandal or with effects that are not dealt with in other sections of this code will suffer imprisonment.

Article 374 reads:

> Those who sell, distribute or exhibit songs, leaflets or other writings, whether printed or not, drawings, portraits or pictures contrary to good habits will be condemned to imprisonment and fine. The author and those responsible for the reproduction are equally guilty.

The punishments prescribed for violation of Article 373 is a term of imprisonment of one year and a fine equivalent to about US$50 to 100, and for violation of Article 374, a prison sentence of two years and a fine equivalent to about US$50 to 100.

The principles of public morals and good habits which are sought to be protected in these sections are those related to normal behaviour as understood in Christian culture. The idea of good habits are those related to the common good, those that help achieve respect for family life, honesty and orderly living.

Films that are shown in Chile must be first approved by a Special Council of 21 members representing the Ministry of Education, Universities, the Press, the Ministry of Justice and presided over by the Director of the National Library. This Council sits in committees of seven and must review and approve all film material proposed to be shown in Chile publicly. After review they classify the film into four groups according to the age of the people entitled to view it: (a) over 21 years; (b) over 18 years; (c) over 14 years and (d) all ages.

Exceptionally the Council can forbid a film but this relates specifically to films that offend national dignity or those that promote the use of drugs or justify homosexuality among both males and females. Pornography in itself is not a reason for forbidding a film. In extreme cases, cruelty or violence can be a reason for forbidding the film. There is a certain degree of self censorship applied by the film distributors as the Penal Code can interpret their intention for their proposal to project a pornographic film as attempting to offend public morals and modesty.

7.8 General Considerations Relating to the Problem of Pornography

The Hispanic American culture differs from the Anglo Saxon puritanism in many ways. In the Hispanic American culture sex life is easy going and considered normal. There are, of course, a few cases of violence associated with sex and sex problems but these are generally fairly obviously related to urban living. Sexual stimulation in the form of pornographic material is not necessary for sexual relations in the Hispanic American culture. Consequently, we find that pornography is not a well developed and booming industry as in the United States and in Europe.

Written pornography does not circulate to a great extent. Most written material is not written in this country and consequently available only in English. It is available for the English speaking reader and is usually brought into the country by travellers and tourists and is not available in book stores. Magazines such as Playboy, both U.S. and Brazilian editions, are available in book stores but are not on public display. Cruder pornographic visual material is not available.

Attempts have been made at producing pornographic magazines locally, but these have not been successful. One such attempt involved the production of "Hombre" -- a Chilean version of Esquire magazine but publication had soon to be stopped as it was found not to be financially viable. "Bravo" a mild analogy of Playboy has met with greater success. Its reading public is increasing gradually. This magazine, however, when compared with the foreign magazines could hardly be called pornographic.

With regards television, the channels in Chile can only be owned and operated by the state or by universities. Pornographic material is, consequently, never shown on them. Both the state and the universities appear to be anxious to ensure that nothing is shown that will start a controversy or a protest. Live shows are controlled by the municipal authorities and nude programs, total striptease and topless shows are not allowed on the grounds that they offend modesty and that the places where they are shown do not restrict the entry of clients under 21 years.

7.9 Official and Unofficial Extent of the Problem of Pornography

There is no problem of pornography in Chile. There is very little pornographic material shown or circulated in the country. There is no demand for it.

The control exercised by the Film Council and the muncipalities may be responsible for this state of affairs. If it is so, it is important to note that their decisions are mainly matters of personal judgments and, consequently, there could be a reversal of the situation under a different set of people and a different policy. During the Socialist Government of President Allende (1970-1973) in which a disruption of bourgeois family life was

attempted, different methods were used to change the outlook and psychology of the younger generations. One method was the distribution of pornographic material and the encouragement of all sorts of sexual extravaganza. Conditions were such that in the School of Fine Arts the lecture hall had been decorated permanently by painting the walls with large sex organs and porno drawings.

Contributing to the absence of a problem of pornography in Chile is the state of the family in Chile. In Chile, the family is important and great importance is attached to family decisions. Contrary to what is happening in most other countries, the family in Chile is not disintegrating. There is an observable trend, urban life notwithstanding, towards regrouping into extended families. Since large families tend to steer away from obvious sexuality, pornography has made little or no headway in this country.

7.10 Public Opinion Concerning Pornography

There have been no public opinion polls conducted on pornography. The newspapers do not report any kind of interest of the public in the subject. The people, in general, appear to be thoroughly unconcerned about it. There isn't enough of it to stimulate public opinion one way or the other.

Home video systems are appearing in Chile but they are very expensive for the average citizen. Video clubs operate publicly but they do not have pornographic cassettes. If there were to be a wave of pornography as developed in Chile in the early seventies, a violent public protest is likely.

7.11 References

7.12 Acknowledgements

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VIII. ARGENTINA

8.1 Introductory Remarks

Argentina is an independent Republic, occupying most of the tapering southern half of the South American continent. Located east of the Andes, it is bounded by Bolivia, Paraguay and Brazil on the north and north east, by Chile and sub-Arctic waters on the south, by Uruguay on the east and by Chile on the west. It covers an area of 1,072,163 square miles and had a population of 28,438,000 in 1982. The country is divided into 22 provinces, one territory and a federal district comprising the capital city of Buenos Aires.

Constitutionally, Argentina is a federal republic, headed by a President who is assisted by a Council of Ministers. Legislative powers are vested in a National Congress. The three branches of the central government — the Executive, the Legislative and the Judicial — are separate but greatly dominated by the Presidency.

The President is elected for a single six-year term by direct popular vote. An absolute majority is required for election and if none receive this majority a second election is held with the top two or three candidates only running.

The authors of the original Constitution of 1853 were determined to create a strong Presidency and consequently the President of Argentina has extensive powers.

The Legislature consists of a bicameral National Congress. The Upper Chamber — the Senate — is composed of 69 members elected by provincial Legislatures in the cases of Senators representing the provinces and by a special body of electors in the case of those representing the Federal

District. Senators serve for a nine-year term. Every three years one third of the Senate is renewed.

The Lower Chamber -- the House of Deputies -- consists of 243 members elected by direct popular vote -- one member for every 85,000 inhabitants. They are elected for a four-year term. Half of the Chamber is renewed every two years.

Although there exists an elaborate system of provincial and local government, their powers are limited. The chief provincial executive is the Governor who is elected for a single six-year term by direct popular vote in most provinces. In some provinces he is elected by an electoral college. The structure of the provincial legislatures varies from province to province. Only those provinces with a population of over half a million have bicameral legislatures. Two thirds of the provincial legislatures are therefore unicameral. The term of office is usually four years for the Lower House and six years for the Upper. Activities of the provincial legislatures tend to centre on taxation, approval of provincial budgets and promotion of health care and education. After the military takeover in 1976, provincial legislatures were banned and Governors were appointed by the military executive.

Although the Government of Argentina is, in theory, structured in accordance with the Constitution of 1853, in practice, the country has been ruled for most of the period since 1930 by a series of military juntas, provisional governments and dictatorships, all of which suspended or disregarded any provisions of the Constitution which tended to interfere with their programs or were inconsistent with their goals. Since 1976, the country has been ruled by a military dictatorship and Congress has been taken over by

the military executive. In 1984, elections were held and Raul Alfonsin became the country's first freely elected President in 25 years. He has apparently effectively restored democracy.

The judicial power in Argentina is vested in the Supreme Court and a series of lower courts set up by the National Congress. Argentina is one of the few Latin American countries that maintains both a federal and a provincial judicial system. The Supreme Court heads the federal system. As the highest court in the country, it has the power to rule on the constitutionality of congressional enactments -- an authority that has been rarely exercised -- and to interpret national legislation. It has an appellate jurisdiction over the lower Federal Courts and the Provincial Supreme Courts. It has original jurisdiction in cases involving foreign dignitaries as well as in disputes in which a provincial government is a party. Its rulings are binding in all other courts.

In the federal system, below the Supreme Court are the Federal Courts of Appeal and the Federal Courts of First Instance. The jurisdiction of the Federal Courts is dependent on the subject matter of the cases as well as the persons involved. They have jurisdiction over cases involving the Constitution, laws or treaties of the nation, cases in admiralty and maritime justice, foreign diplomats, suits in which the nation is a party and suits between two or more provinces or between one province and the citizens of another. In criminal cases they have jurisdiction over cases in violation of Federal Law.

The jury system, although mentioned in the Constitution, is rarely utilized except in a few provinces such as Cordoba and in the Federal District.

The provinicial judicial system closely parallels the federal in structure. Most violations of the Penal Code are heard by the Provincial Court

of First Instance and appeals are to their Provincial Courts of Appeal and their Provincial Supreme Court and finally to the Federal Supreme Court.

The Penal Code in Argentina is national in scope and tends to impart a strong centralization to the application of criminal justice. The range of penalties and their limitations are clearly prescribed by the Code although the courts are given some degree of latitude. Provincial governments are not permitted to enact their own penal codes. They are permitted to enact local laws and attach penalties to them.

8.2 The Extant Law on Prostitution

With reference to prostitution there are two pertinent pieces of legislation. The first is Law No. 12.331 relating to the prophylaxis of venereal diseases enacted in 1936 which contains two articles concerning prostitution and the other is the Penal Code which contains three articles referring to prostitution. The two articles in Law No. 12.331 are Article 15 and Article 17. Article 15 reads:

> It is forbidden in all the Republic to establish houses or premises where prostitution may be practised or enticed.

Article 17 reads:

> Those who maintain, administer or manage brothels, ostensibly or under cover, will be punished with a fine of 1000 pesos national currency.
>
> In cases of recidivism they will suffer imprisonment from one to three years.
>
> If they are naturalized citizens, the penalty will have as accessory the loss of citizenship rights and the expulsion from the country once the penalty has been -

executed; the expulstion will be also imposed if the offender is a foreigner.

With regard to the Penal Code, the relevant articles are Article 125, 126 and 127. Article 125 reads:

> He who promotes or facilitates the prostitution or corruption of minors, whatever their sex may be, with the intent of making a profit or of satisfying their own desires or the desires of others, even with the consent of the victim, will be punished
>
> > with imprisonment from four to 15 years if the victim was less than 12 years old;
> >
> > with imprisonment from three to 10 years if the victim was older than 12 years but younger than 18 years;
> >
> > with imprisonment from two to six years if the victim was older than 18 years but younger than 21 years.
>
> Whatever may be the age of the victim, the penalty will be from 10 to 15 years imprisonment if the act was performed by means of deceit, violence, threats, abuse of authority or any other form of intimidation or coercion, and also if the offender was a relative, a husband, brother, tutor or person in charge of the education of the victim or was the victim's guardian or if he lived with her in concubinage.

Article 126 reads:

> He who promotes or facilitates the corruption or prostitution of majors, with the intent of making a profit or of satisfying his desires or the desires of others, by means of deceit, violence, threats, abuse of authority or any other form of coercion, will be punished with imprisonment from four to 10 years.

Article 127 reads:

> He who has himself maintained, even partially, by a person who practices prostitution, by exploiting the profits originated from that activity, will be punished with imprisonment from three to five years and a fine from 20,000 to 500,000 pesos.

In 1983 the fine was raised from 500,000 to 20,000,000 pesos -- that is 50 to 200 pesos of the new currency.

8.3 Changes in the Law on Prostitution Including Jurisprudence

Law No. 12.331 was enacted in 1936. Articles 15 and 17 of this law were altered by Decree No. 10.638 of 1944 which permitted prostitution under certain conditions and circumstances. But this was repealed by Law No. 21.338. Decree No. 10.638 had been previously repealed by Law No. 17.567 but it had been reinstated by Law No. 20.509. Law No. 21.338 is in the process of being repealed but it is not known to what extent the law would be repealed.

In reference to Article 17 of Law No. 12.331, it is interesting to note that the Criminal Court of Buenos Aires included the mere practice of prostitution by a woman in her own home, by herself alone and independent of pimps within the provisions of that article (La Ley, Vol. 20, p. 1, 1939) while the Court of Apppeals of Rosario decided, on the contrary, that such a practice did not fall within the said article (La Ley, Vol. 13, p. 773, 1939).

With regards Article 126 of the Penal Code, the provisions are very wide. As is being pointed out by Terian Lomas in a forthcoming publication, the expression "to promote" can include all actions which a person can initiate in the practice of prostitution ranging from giving birth to the idea of maintaining, habitually, sexual intercourse with a plurality of persons to

assuming the condition of a prostitute, maintaining it or intensifying it. Again, facilitating could be interpreted to mean removing obstacles and cooperating in the achievement of the purpose. The action may consist of giving admission to a brothel, in looking for customers, and in supplying the premises, the opportunity or the facilities. The facilitation may be an inducement, an incitement or a threat in which case it becomes the aggravated crime of Article 125. In the general case, fear will replace violence and a lie or advice will substitute deceit.

Articles 125 and 126 have been in force since 1921. During the period 1968 through 1973, a revised text replaced these sections.

The term "facilitation" in these Articles has been canvassed for interpretation in the courts. The Criminal Court of Buenos Aires held that the passive attitude of a husband or father should be construed as facilitation (La Ley, Vol. 17, p. 630, 1949). But the Supreme Court of Tucaman held that mere weakness or slovenliness or the simple omission of moral duties was insufficient, there must be positive actions (La Ley, Vol. 30, p. 253, 1940).

The High Court of Cordoba has held that Article 126 applied to a man who by threats, coercion and even violence, obliged his wife, who, previous to her marriage had practised prostitution and had voluntarily given up that practice, to continue with her trade. The Penal Code punished the promotion of prostitution that did not exist before and also the facilitation of a prostitution already initiated (Revista de Derecho Penal, Ediar 1945, 2nd Section, p. 497). The Criminal Court of Buenos Aires has held that ill treatment of a concubine to become a prostitute must be included among the means of coercion (La Ley, Vol. 6, p. 497, 1936).

8.4 The Problem of Prostitution

Prostitution is considered a problem in Argentina. However, since Law No. 12.331 was enacted outlawing prostitution, there has been an increase in sexual offences such as rape. This is the opinion expressed by the police and generally held by the public. In Rosario, prostitution appears to be less of a problem now than it was in 1936. The opposite appears to be the situation in Buenos Aires and in Mendoza where the incidence of prostitution is great. In Corrientes and in the south of the Republic, mainly in Comodoro Rivadavia (Province of Chubut) and in Rio Gallegos (Province of Santa Cruz) there are authorized brothels operating. Comodoro Rivadavia is an important spot on the map of prostitution.

Though the police consider prostitution as a problem they do not believe that is is the only problem or even the most serious one. They believe that drugs are a far more serious problem than prostitution and capable of doing society much more harm. The main problem with prostitution, the police claim, is the spread of venereal disease and that is a health problem rather than a criminal one.

8.4 Public Attitude Towards Prostitution

Although the attitude of the Catholic church has always been against prostitution and although it exerts an influence on the people, the general attitude of the public appears to be that Law No. 12.331 needs reform. There are, of course, the "Decency Leagues" which believe in total abolition and do work towards achieving it. But they do not appear to be making much headway.

8.6 Extent of Prostitution

The only statistical information available on prostitution in Argentina is that afforded by the Criminal Statistics and edited by the National Ministry of Justice through the National Registrar of Recidivism and Criminal Statistics. According to the data available in these publications, there were a total of 130 convictions for violation of Article 125 in 1981. In four of these cases, minors 14 to 17 years were involved, in three, minors 18 to 20 years and in 14 of them, women. The 130 cases represented 14.18% of all sexual offences. In 1982 there were 100 convictions (six of minors 18 to 20 years and 12 of women). The 100 cases represented 13.65% of all sexual offences.

There were a total of nine convictions under Article 126 in 1981. Two of them were women. In 1982 there were 10 convictions out of which two were women.

The total number of convictions under Article 127 was 12 in 1981, of which seven were women, and 17 in 1982, out of which one was a minor between 18 and 20 years old and four were women.

8.7 The Extant Law on Pornography

Dealing with pornography is Article 128 of the Penal Code which reads:

> He who publishes, fabricates or reproduces obscene books, papers, images or objects, with the purpose of diffusing or exposing them to the public, and he who exhibits, distributes or makes them circulate, will be punished with imprisonment for a period between two months and two years.
>
> The same penalty will be imposed on those who offer obscene theatrical, cinematographic or televisions shows, or broadcast similar radio programs.

> The same penalty will be imposed on he who exhibits, sells or gives to a minor of 16 years or under, books, papers, images, objects that, even though they may not be obscene, may seriously affect his decorousness or stir or pervert his sexual instinct.

Also dealing with pornography is Law No. 23.052 of 1984, which deals with censorship. This law repealed Law No. 18.019, which created the Organization for Film Qualifications — the Censorship Board. According to the new law, the task of reviewing and certifying films devolves on the National Institute of Cinematography. The task that they have to perform is:

> To establish their [films'] fitness to be seen by minors including the possibility, if it were thought convenient, for the minors to see certain films in the company of their parents;
>
> To warn adults about their contents by means of specific qualifications.

What the Institute really does is to identify the age group that could see the films. In the case of films that are only erotic, the films are classified as only fit for majors of 18 years and over. Real pornographic films receive a certificate from the Institute which states "Only for majors of 18 years and over and in cinemas of conditioned exhibition"; the prices of the tickets at these theatres are much higher than in the ordinary cinema.

8.8 Problems with the Law and Law Enforcement

There is considerable opposition to the laws on pornography. It is claimed that the concepts of obscenity and pornography have their boundaries defined by the repulsive and offensive character of the object considered pornographic. While such objects must be forbidden, because of the harm that

they cause, it is essential to ensure that the ban on them does not cause the greater harm of suppressing liberties. For this purpose it is necessary to carefully differentiate between a work of art and an expression of pornography. The opposition keeps on reminding that great literary works such as those of Prevost, Voltaire, Maupassant, Zola, Bauldelaire, Flaubert, Oscar Wilde, James Joyce and D.H. Lawrence, have been the objects of prosecution and persecution. The opposition intensified after the Argentine Republic excluded from the Teatro Colon's repertory, Bomarzo, the opera by Ginastera and Mujica Lainez.

As it is possible to use the last paragraph of Article 128 to ban scientific anatomical illustrations, reproductions of famous works of art, treatises on legal medicine, Forel's "Sexual Pathology", the Decameron, Fernando de Roja's "La Celestina", which is included in the programme of Spanish Literature in the Secondary Colleges in Argentina; objections have been raised against it and it has been considered to be a dangerous invasion into the territory of science, art and literature.

There have been many court decisions regarding the interpretation of pornography. The chief trends in the jurisprudence appears to be:

(1) A book is much less dangerous than images and magazines;

(2) Some of the lighter material has been declared not to be obscene;

(3) A work cannot be judged by an isolated paragraph. The obscentity of that paragraph must be considered in the total context of the book;

(4) The intention and purpose of the author is of utmost importance in the evaluation of a work for pornography. If it is of the moralizing kind, then it annuls what may be objectively obscene;

(5) A real work of art should not be condemned by its apparent obscenity.

The decisions that sustain these principles were found in Criminal Court of Appeals in Buenos Aires, Fallos, Vol. 11, p. 450 (1924), Jurisprudencia Argentina, 1959, Vol. III, p. 431 and Jurisprudencia Argentina, 1957, Vol. III, p. 82. Another judgment of pertinence in this connection is found in Criminal Courts of Appeal of Buenos Aires, Fallos, Vol. II, p. 446 (1923), which excludes from the qualification of obscenity superior literary works as well as works of research, science or education.

8.9 The Extent of the Problem

In 1981 there were five convictions under Article 128. This amounted to 0.54% of the convictions for sexual offences. In 1983 there were three convictions. This is mainly due to the fact that the police intervene only in exceptional cases. Most decisions to prosecute are made by the local authorities. In Rosario such a decision was made in the case of Louis Malle's film, "Les Amants", and again in Buenos Aires in connection with Jorge Amado's theatre piece, "Don Flor y sus dos maridos".

Most pornographic books and magazines which circulate in Argentina are imported either from the United States or from Brazil. They are not legally imported but are smuggled in. The majority of magazines which are edited in Argentina are really more erotic than pornographic.

In Buenos Aires there are small theatres devoted to striptease and supposed porno shows. But they exhibit much less than what they promise.

A problem that appears to be arising in connection with pornography is the one of pornographic video cassettes. There are a number of video clubs

where it would be possible to buy or rent porno films in video cassettes. This seems to be a problem to which some attention should be paid.

8.10 Public Attitude Towards Pornography

The public attitude towards pornography with the exception of groups such as the Decency League is one of total indifference. Once, religious groups reacted violently against the cinema and theatre when they expressed an intention of exhibiting Jesus Christ Super Star. There was a similar reaction against an Italian theatrical company which wanted to put on a play called "Mistero Buffo". The question here, however, was one of violating religious sensitivities rather than one of pornography.

Newspapers and magazines have published articles on pornography. Siete Dias (No. 185, 13th to 19th June 1984) published a series entitled "Investigacion especial. La pornografia en la Argentina". This series claims that what is being objected to as pornography are only timid realities. More is promised than is given. It also states that the local market, in comparison to the United States, is non existent. Everything in the pornography industry -- films, video cassettes, magazines, books -- except the girls in the striptease shows in Buenos Aires has to be imported and as they cannot be imported legally they have to be smuggled in. There are no specific groups involved in the trade. The attitude of the authorities is limited by the idea of censorship. Also, what is available in Argentina is soft core rather than hard core pornography.

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8.13 Acknowledgement

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IX. SRI LANKA

9.1 Introductory Remarks

The Democratic Socialist Republic of Sri Lanka, once known as Ceylon, is an independent island state situated in the Indian Ocean about 60 miles of the south east coast of India. It covers and area of 25,332 square miles and had a population of 14,850,000 in 1981. A British colony once, it received independence in 1948. Then it had a Westminister type bicameral parliamentary system with the members of the lower house elected by popular vote and half the members of the upper house elected by the lower house and the other half appointed by the Governor General on the advice of the Prime Minister. In 1972, the Constitution was changed to make the country a Republic and the legislative body — the National Assembly -- a unicameral chamber whose members were elected by popular vote. The President was Head of State but the Prime Minister was the Head of Government.

In 1977 the Constitution was changed a second time to convert the government into a Gaulist type Republic in which the President was vested with executive powers and was made both Head of State and Head of Government. The President is now elected by popular vote to serve a term of six years. The 196 members of the National Assembly are also elected but through a system of proportionate representation. However, the Constitution gives the President the authority to extend the life of parliament through a referendum so that after its six-year term, parliament need not be dissolved and an election called.

For administrative purposes, the country is divided into nine provinces and 22 districts, presided over by Government Agents as the chief executive officers. There are no provincial or district legislatures. In recent

times, however, moves have been made to create District and Regional Councils for the devolution of some of the legislative and executive powers of government. Cities and towns are managed by Municipal, Urban and Town Councils and in rural areas there are Village Committees performing the same functions. Members of these councils and committees are elected by popular vote.

The system of justice is that inherited from the British. There is a Supreme Court which organizes itself as a Constitutional Court to deliberate on constitutional matters, an Election Court to hear election petitions, a Court of Criminal Appeal to hear appeals from the Court of Assize, a Court of Assize to hear cases involving serious crime as an original court, and an Appeal Court to hear appeals from the lower courts. There is then a District Court which is mainly civil in its jurisdiction but which does hold criminal sessions to hear criminal cases too venal for trial in the Supreme Court and too serious for trial in the Magistrate's Court. The District Court also acts as the Court of Appeal for judgments delivered in Rural Courts.

A third level of courts constitutes the Magistrate's Courts which deal with all criminal matters summarily or non-summarily and its civil counterpart the Court of Requests which deals with civil matters where the monetary value involved is relatively small. At the lowest level is the Rural Court which has both criminal and civil jurisdiction but deals with extremely minor matters. Proceedings in the Rural Court are informal and the main aim of these courts, the Rural Court Ordinance stipulates, is "to endeavour to bring the parties to an amicable settlement and to remove, with their consent, the real cause of grievance between them".

In addition to these courts, there are the Municipal Courts hearing cases involving the violation of Municipal by-laws and Labour Tribunals for the adjudication of labour disputes. There are also Juvenile Courts for dealing with Juvenile Delinquency. Except in the capital city of Colombo, where there is a separate Juvenile Court, the Magistrate's Court assumes the role and function of the Juvenile Court.

The common law base of the system is the Roman Dutch Law. However, there has been considerable British influence especially in connection with criminal matters. In personal matters the different ethnic groups which constitute the population of the country are governed by different laws. The Kandyan Sinhalese are governed by the Kandyan Law. The Sri Lankan Tamils are governed by the Thesavalamai. The Batticoloa Tamils are governed by the Mukkur Law. The Moors and Muslims are governed by the Muslim Law. And the Buddhist Clergy are governed by the Buddhist Ecclesiastical Law.

9.2 The Existing Law on Prostitution

There is no separate law on prostitution in Sri Lanka and prostitution is not a crime. Legislative attempts, however, have been made to control prostitution by controlling behaviour which facilitates or promotes prostitution. The relevant legislation is found in the Brothel's Ordinance, Chapter 31 of the Legislative Enactments of Sri Lanka, the Vagrants Ordinance, Chapter 31 and in the Penal Code, Chapter 19.

The Brothel's Ordinance outlaws the use of a building for purposes of prostitution. Section 2 reads:

Any person who

(a) keeps or manages or acts or assists in the management of a brothel, or

(b) being a tenant, lessee, occupier or owner of any such premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purpose of habitutal prostitution, or

(c) being the lessor or landlord of any premises or the agent of such lessor or landlord lets the same or any part thereof, with the knowledge that such premises or some part thereof are or is to be used as a brothel or is wilfully a party to the continued use of such premises or any part thereof as a brothel,

shall be guilty of an offence and shall, on conviction, be liable

(1) to a penalty not exceeding five hundred rupees or, in the discretion of the Court, to simple or rigorous imprisonment for a term not exceeding six months or to both such fine and imprisonment

(2) on a second or subsequent conviction to a penalty not exceeding a thousand rupees or, in the discretion of the Court, to rigorous imprisonment for a term not exceeding one year or to both such fine and imprisonment

and in the case of any conviction under this section such person may, in addition to any such penalty or imprisonment as may be imposed by Court, be required by the Court to enter into a recognizance, with or without sureties as to the Court seems meet, to be of good behaviour for a period not exceeding 12 months; and in default of entering into such a recognizance with or without sureties (as the case may be) such a person may be sentenced to simple or rigorous imprisonment for a period not exceeding three months in addition to any such term of imprisonment aforesaid.

Section 3 reads:

Any person who shall appear, act or behave as master or mistress or as the person having the care, government or management of any brothel, shall be

> deemed and taken to be the keeper or manager thereof and shall be liable to be prosecuted and punished as such notwithstanding that he or she shall not in fact be the real keeper or manager thereof.

Section 4 reads:

> Upon convictions of the tenant, lessee or occupier of the premises of any offence under this Ordinance, it shall be lawful for the Court . . . to declare that tenancy or occupation . . . terminated from such date and may by the same or further order direct that the possession of the premises shall be delivered to any person entitled to the possession.
>
> In the event of . . . the tenant, lessee or occupier so convicted being subsequently convicted of an offence under this ordinance in respect to the same premises such landlord or lessor shall be deemed to have knowingly abetted the said offence and shall be liable to be prosecuted and punished accordingly unless he proves he had taken all reasonable steps to prevent the recurrence of the offence.

The Vagrants Ordinance deals with soliciting and living off the earnings of a prostitute. Section 7 reads:

> The following persons, that is to say
>
> (a) any person in or about any public place soliciting any person for the purpose of the commission of any act or illicit sexual intercourse or indecency whether with the person soliciting or with any other person, whether specified or not
>
> (b) any person found committing any such act of gross indecency or found behaving with gross indecency in or about any public place
>
> (c) any person found
>
> (i) in a public enclosure contrary to any local by-laws or regulations prescribing the use of such enclosures; or

(ii) in any enclosure belonging to the Crown without the permission of the person in charge thereof; or

(iii) within any private enclosure attached to any dwelling house, except upon the invitation of any inmate of the premises

under such circumstances that it is reasonable to infer that he is there present for immoral purposes unless he is able to explain his presence to the satisfaction of the court by which he is being tried

shall be guilty of an offence and shall be liable on summary conviction to imprisonment of either description for a period not exceeding six months or to a fine not exceeding a hundred rupees or to both.

In the case in which any person who has been convicted or an offence under paragraph (a) of the last preceeding subsection shall subsequently be convicted of another such offence, he shall, if male, in addition to any other punishment to which he may be sentenced by Court, be liable, at the discretion of the Court, to be sentenced to be whipped.

Section 8 reads:

Any person who

(a) knowingly lives wholly or in part on the earnings of a prostitute,

(b) systematically procures persons for the purpose of illicit or unnatural intercourse;

. . .

shall be liable

(i) . . . to imprisonment of either description for a period not exceeding six months or a fine not exceeding 100 rupees or both

(ii) . . . and on subsequent conviction to imprisonment not exceeding two years and, if male, in addition to any such imprisonment if the Court in its discretion directs to be whipped.

> Every male person who is proved to live with or to be habitually in the company of a prostitute and every person whether male or female who is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he or she is aiding, abetting or compelling the prostitution of such person or generally shall unless the Court is satisfied by evidence to the contrary be deemed to be knowingly living on the earnings of prostitution.

Section 11 of the Vagrants Ordinance deals with the seduction of minors by persons in whose care the minors are. It reads:

> Every person having the custody, charge, or care of a girl who causes or encourages the seduction or prostitution or unlawful carnal knowledge of the said girl shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding 100 rupees or imprisonment of either description for any term not exceeding six months or both such fine and imprisonment.
>
> . . . person shall for the purposes of this section be deemed to have caused or encouraged the seduction or prostitution or unlawful carnal knowledge (as the case may be) of a girl who has been seduced or become a prostitute or been unlawfully carnally known, if he has knowingly allowed the girl to associate with or to enter or continue to be in the employment of any prostitute or person of known criminal character.

Also dealing with prostitution is a section of the Penal Code — Chapter 19 of the Legislative Enactments. This section, Section 360A, deals with procuring. It reads:

> Any person who
>
> > procures or attempts to procure any girl or woman under 20 years of age to leave Sri Lanka (whether with or without her consent) with a view of illicit sexual intercourse with any person outside Sri Lanka or removes or attempts to remove any such girl or woman (with or without her consent) for the said purpose;

procures or attempts to procure a girl or woman to leave Sri Lanka (with or without her consent) with the intent that she may become an inmate of or frequent a brothel elsewhere or removes or attempts to remove any such girl or woman (with or without her consent) for the said purpose:

brings or attempts to bring into Sri Lanka a girl or woman under 21 years of age (with or without her consent) with a view to illicit sexual intercourse with any person whether within or without Sri Lanka;

procures or attempts to procure a girl or woman (with or without her consent) to become within or without Sri Lanka, a common prostitute;

procures or attempts to procure a girl or woman (with or without her consent) to leave her usual place of abode in Sri Lanka (such place not being a brothel) with the intent that she may for the purpose of prostitution become an inmate of or frequent a brothel within or without Sri Lanka;

shall be guilty of an offence and shall be liable on conviction to imprisonment of either description for a period not exceeding two years and, if a male, in addition to such imprisonment to be whipped.

Provided that no person shall be convicted of any offence under this section upon the evidence of one witness, unless such evidence be corroborated in some material particular by evidence implicating the accused.

9.3 Problems with Enforcement of the Law

One problem arising persistently in the case of persons charged under the Brothel's Ordinance has been the definition of the term brothel. When the law was first enacted in 1889, section 2 to the the Ordinance stated (as it does now):

Any person who

> keeps or maintains or acts or assists in the management of a brothel
>
> shall be guilty of an offence.

This section is almost verbatim the corresponding section in the English law. The term brothel, however, has not been defined in either the English or the Sri Lankan codes. It was thought to mean a common bawdy house. However, in 1882, in R. v. Holland, Lincolnshire Justice — 1882 (46) J.P. 312 — Grove J., with reference to a brothel, stated:

> . . . But what needs only to be proved is this, namely, that the premises were kept knowingly for the purpose of people having illicit sexual connection there.

In 1895, the definition was slightly altered in Singleton v. Ellison, 1895 (1) Q.B. 607, where one woman who occupied a house, frequented day and night by a number of men for the purpose of fornication, was charged under the ordinance. In this case, Willis J. defined a brothel as:

> . . . the same thing as a bawdy house which . . . applies to a place resorted to by persons of both sexes for the purpose of prostitution. It is certainly not applicable to the case where one woman was received by a number of men.

This tradition was followed in Sri Lanka until 1919 when, in the case of Silva v. Suppu, 21 N.L.R. 119, Schneider A.J. thought that the term brothel should be given a "meaning consistent with local ideas and conditions". In this case, two men were found in adjoining rooms with women who admitted that they had come there for the purpose of prostitution. Schneider A.J. altered the definition of brothel to

> a place managed by a man, usually called a brothel keeper, to which men come for the purpose of prostitution with women or with one woman in the premises.

The definition was challenged repeatedly but it held ground until 1935 when Soertz J. in Toussaint v. Cecilia, 37 N.L.R. 309, introduced two modifications. The first was that the management was not necessarily by a man called the brothel keeper: it could be "by a person called the brothel keeper", and the second was that men would resort there for the purpose of prostitution with only those women who were found there, but

> for the purposes of having sexual intercourse with women who were found in the house or with women who resort to or are introduced into the house.

In 1977, the problem of definition again arose. On this occasion, a woman, ostensibly operating a dress boutique, made arrangements with men, to whom she showed photographs of the women available, to have sexual intercourse with the woman chosen in a place outside the premises. Argued on her behalf when she was charged under the Brothels Ordinance with managing a brothel was that

> it was imperative that the acts of indecency or sexual intercourse should be committed or opportunities for such acts should be available in the premises itself to which persons of both sexes resort to for the purpose of prostitution.

Arguing that

> the true reason of a remedy and therefore the office of all judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and invasions for continuance

> of the mischief and pro privato commodo, according to the true intent of the maker of the Act, pro bono publico,

Pathirana J., with Titawella J. agreeing, held in this case, Dorothy Silva v. Inspector of Police Pettah, S.C. 12/78, M.C. Maligakande 19422, 78 N.L.R. 553:

> The live element need not be present in the premises to render a place a brothel within the meaning of the Ordinance. If the resourceful brothel keeper thinks that he can circumvent the Ordinance without keeping women in the premises by the subtler device of displaying the photographs of them in the premises and soliciting men to make their selections from the photographs and adopting some method by which the woman answering to the descriptions of the photograph is supplied from a place outside the premises to be taken to a place outside the premises for the purpose of prostitution, a person resorting to this subterfuge is also guilty of managing a brothel within the meaning of the Ordinance.

9.4 The Extent of Prostitution

The number of cases of prostitution, brothels and soliciting known to the police during the period 1978 through 1983 are found in Table 9.1. These figures show considerable variation from one year to another, due perhaps to variation in police activity. They also indicate a steady decline. The police, however, do not believe that there is a decline in the phenomenon. They claim that the law is inadequate and that the requirements of the Brothels Ordinance and the Vagrants Ordinance make it very difficult for them to obtain a conviction and, consequently, they are not very enthusiastic about cleaning up the country. They also claim that there are instances where the police are fully aware that a hotel or home is being utilized for prostitution but where the existing law prevents them from taking any meaningful action.

Table 9.1 The number of Prostitutes, Brothels and cases of Soliciting known to the Police. 1978 through 1983 in Sri Lanka

Year	Prostitution	Brothels	Soliciting
1978	1534	20	815
1979	4164	261	439
1980	1049	21	95
1981	1007	12	238
1982	1322	9	298
1983	860	15	109

Source: Police Department.

Although the statistics indicate a decline in prostituion, a survey on prostitution conducted in Sri Lanka over a 20-year period by Profession Nandasena Ratnapala of the Department of Sociology of the University of Sri Jayewardene Pura indicates that there has been a phenomenal increase in the number of prostitutes. When the survey started in 1960, Professor Ratnapala claims that there were approximately 1200 prostitutes in Colombo. They were mainly street walkers from the lower income groups. By 1980, the number of prostitutes had increased to 17,000 in and around Colombo alone. Professor Ratnapala's study is completed but the results have not been published as yet. No idea is available of the methodology he used, to ascertain the reliability of his estimates. But, it is generally believed that the incidence of prostitution has increased.

9.5 The Problem of Prostitution

There is a general belief that prostitution, both male and female, is on the increase in Sri Lanka. Tourism and the development of the tourist industry has been identified as the cause of this. There are indications that prostitution is carried on as a well organized commercial activity in many cities and towns in Sri Lanka catering mainly to tourists.

The nature of prostitution in the country has changed. In the past, the prostitutes who used to be drawn into the police net were women from lower income groups, who had come to the city in search of employment and ended up as street walkers. This type of prostitute and prostitution is fast disappearing. There are now more opportunities for self employment in the villages for women. In the estate areas, with the displacement of Indian labour, more women are able to find work on tea and rubber plantations. Also the development of industries with foreign collaboration has provided more opportunities for work for women. The construction boom has also provided opportunities for employment for women at building sites. A large number of women have left Sri Lanka for employment as house-maids in the Middle East. These women fell into the lower income category. Because of these changes, the number of women coming into the big cities in search of employment and ending up as street walkers has reduced considerably.

The study conducted by Professor Ratnapala suggests that prostitution is now becoming a well organized middle and upper class enterprise with operators in a number of major hotels, comparing favourably with the highly sophisticated organizations anywhere else in the world. He attributes this change to the increase in tourism and the liberal economic policy. A

number of women are apparently taking to prostitution as a part time occupation to earn additional income.

In addition to the increase in female prostitution, there is an increase in male prostitution -- mainly young boys catering to the needs of tourists. A study of this problem has been made by Mr. Tim Bond, who has submitted a memorandum to the Secretary of National Planning for action to be taken in conjunction with the police and the tourist board. According to Mr. Tim Bond, Sri Lanka has now become second only to the Philippines as a centre for boy prostitutes. "Male tourists are coming", he claims, "in increasing numbers each year to purchase in Sri Lanka this brand of sexual intercourse at a cheap rate."

The study of Mr. Bond reveals the characteristic features of this problem to be:

1. Boys as young as eight years have abandoned school in order to sell themselves to tourists;
2. A growing number of these boys come not from the lower income classes but from the middle and upper classes. Their parents know nothing about their activities;
3. Though the main centres for boy prostitution are Negombo, Wellawatte, Dehiwala, Mt. Lavinia, Ratmalana, Moratuwa and Kandy, the whole of the west coast is affected by it and there is evidence of it on the east coast as well, especially in Trincomalee. There are about 2000 full time or part time male prostitutes in the country;
4. 40% of the boys treated for early infectious syphillis at the V.D. Clinic in Colombo admitted that they had contracted the disease

through homosexuality. The figure is apparently higher because the boys are reluctant to admit their homosexual involvement;

5. In tourist resorts there are guest houses and hotels which permit tourists to take boys to their bedrooms for a short time or for the night;
6. Some tourists rent houses and hire boys as domestic help. In this way they avoid any embarrassment they might encounter in a guest house or hotel. In addition, they involve the boys in the making of pornographic films;
7. Many boys are taken by the tourists to their home countries, especially Germany, where they spend about three to six months prostituting and are sent back with some money in their pockets;
8. Many boys involved in prostitution begin to steal from their clients. There is no drug activity associated with the prostitution now but there is a possibility that it might;
9. At present the prostitution is not organized. It is a private enterprise and the children are self employed. However, the possibility of organization does exist. In one guest house in Negombo, which has an international reputation for boy prostitution, the manager supplies boys on demand according to the specifications of the client.

The knowledge of prostitution, prostitutes and brothels is so rife in the country that the police believe that seven out of ten school boys are able to point out prostitutes and brothels in Colombo. Tim Bond claims that the boys who engage in prostitution know exactly what hotels and guest houses permit the activity to go on in their premises. With the knowledge becoming

widespread and no action taken against it, it tends to become considered a normal activity and consequently have an effect on the morals of the country.

There is also the problem of venereal disease but no information is available on that problem.

9.6 Public Attitude Towards Prostitution

There have been no public opinion polls conducted on the subject. The public attitude is best described as one of disinterest. The newspapers have occasional published articles pointing out that the incidence of venereal disease is on the increase attempting to create a public awareness of the problem. But the public has remained lethargic and unconcerned.

The police attitude is that there is a need to change the law and that, until that is done, there is no way in which the phenomenon could be controlled. Professor Ratnapala's study indicates that there are an average of six prostitutes arrested in Colombo by the police each day. This gives an annual number of 2190 which is much higher than the number recorded as known to the police for the entire island, suggesting that many of the prostitutes are dealt with informally and released by the police without any official record of their arrest being made.

9.7 Movements Towards Changing the Laws on Prostitution and Getting Better Enforcement

In the absence of any interest on the part of the public in the phenomenon, it could be assumed that there are no movements whatsoever to have prostitution controlled by either altering the law or by getting the existing law better enforced. The police have repeatedly stressed that the existing laws

are antiquated and that there is a need for a change of the laws if the phenomenon is to be controlled. It is, however, not the police alone that have been interested in seeing that something is done. There have been individuals who, appalled at what they call the increasing incidence of prostitution and the involvement of young boys in the phenomenon, have made suggestions as to how the phenomenon could be controlled even without any legislative change.

Tim Bond, for example, has pointed out that the Brothels Ordinance could be used to control male prostitution by charging managers of guest houses and hotels that allow young boys to be admitted to the rooms of the guests as manager of brothels. With the trouble that the police have had regarding the definition of a brothel, one really wonders whether the law would be sufficient for that purpose. Unless a move is made in this direction, no one will ever know for sure.

With regards to boys who are employed ostensibly as domestic help in the houses rented by tourists, Tim Bond suggests that the Employment of Children and Young Persons Act could be used. Article 59 of this Act states:

> Subject to the provisions of this section and of any regulation made thereunder, no child shall be employed:
>
> (a) so long as he is under 12 years of age; or
>
> (b) before the close of school hours on any day on which he is required to attend school; or
>
> (c) before six o'clock in the morning or after eight o'clock in the evenign on any day; or
>
> (d) for more than two hours on any day on which he is required to attend school; or
>
> (e) for more than two hours on any Sunday; or
>
> (f) . . . ; or

> (g) in any occupation likely to be injurious to his life, limb, health or education.

Article 63 reads:

> No person shall employ a child in such a manner as to prevent the child from attending school in accordance with the provisions of any written law.

He also points out that homosexuality is a crime and defined in the Penal Code. Article 365 reads:

> Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Article 365A reads:

> Any male person who, in public or private, commits or is a party to the commission of, or procures or attempts to procure the commission by any male person of any act of gross indecency with another male person shall be guilty of an offence. . . .

A male person is defined as a man or male child of any age.

Tim Bond points out that the law is extremely difficult to enforce as it stands and suggests the enactment of a new law which would read:

> It is illegal for any visitor to Sri Lanka, on a tourist visa, to entertain or receive visits from or employ a child or young person under the age of 17 years, resident in Sri Lanka, inside the premises of a hotel, guest house (registered or unregistered), or house rented by him, unless he can establish satisfactorily a family relationship with the child or unless the child is accompanied by at least one of his parents.

> It is also illegal for any owner and/or manager of a hotel, guest house or rented house to permit the above.

Little or not action, however, has been taken.

9.8 The Existing Law on Pornography

The law relating to pornography in Sri Lanka is found in the Obscene Publications Ordinance -- Chapter 30 of the Legislative Enactments -- and in the Public Performances Ordinance -- Chapter 176. The Obscene Publications Ordinance states:

> It shall be an offence against this ordinance punishable on conviction by a Magistrate with a fine not exceeding 1000 rupees or imprisonment of either description for any period not exceeding three months or both such fine and imprisonment to do any of the following acts, namely:
>
> (a) for purposes of or by way of trade or for distribution or for public exhibition, to make or produce or have in possession, obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, or any other obscene objects;
>
> (b) for the purpose above mentioned to import, convey, or to export or cause to be imported, conveyed, or exported any of the said obscene matters or things or in any manner whatsoever, to put them into circulation;
>
> (c) to carry on or to take part in any business whether private or public concerned with any of the said obscene matter or things or to deal in the said matters or things in any manner whatsoever or to distribute them or to exhibit them publicly or to make business of lending them;
>
> (d) to advertise or make known by any means whatsoever in view of assisting in the said punishable circulation or traffic that a person is engaged in any of the above punishable acts or to

> advertise or to make known how or from whom the said obscene matter or things can be procured either directly or indirectly.
>
> A person who abets the commission of an offence against this Ordinance shall be deemed to be guilty of the same offence.

The Public Performances Ordinance states:

> Public performances are
>
> a. every public dramatic representation;
>
> b. every exhibition of pictures or optical effects by means of a cinematography, magic lantern or other similar apparatus;
>
> c. every exhibition of dancing, conjuring, juggling acrobatic performance, boxing contest, circus concert or other stage entertainment but does not include any performance on private premises to which the public are not admitted whether on payment or otherwise.

The Ordinance ordains that the Minister responsible will make rules for the issue of licences for public performances. Section 6 of the Ordinance states:

> No public performance shall be exhibited or presented unless it has been certified by a certifying authority as suitable for public exhibition.
>
> The Minister may by order published in the Gazette appoint any person or persons by name or office to . . . the certifying authority.
>
> The certifying authority shall have the discretion
>
> a. to grant or refuse a certificate to the effect that any proposed public performance is suitable for public exhibition
>
> b. by order to revoke any such certificate previously granted under paragraph a.

Section 8 prescribes the punishment for contravention of the provisions of this Ordinance -- a fine not exceeding 1000 rupees or imprisonment of either description for any period not exceeding six months.

9.9 The Problem of Pornography

There is hardly any pornographic material written in the English language available in the country, but pornographic publications written in the vernacular are readily available in the open market and are sold openly throughout the country. In addition to this literature, there are nude and lewd photographs also available openly for sale. The pornography laws are not used to control the phenomenon. Instead, the claim is made that, ridiculous though it may sound, the pornography laws have been used mainly against journalists during times of emergency in the country to prevent and delay their despatches abroad as well as to delay the release of foreign publication containing adverse publicity about the governent that came into the country. These publications are held back on the grounds that they have to be examined to see whether they contain any obscene material.

In recent times since the introduction of television, obscene video cassettes which can be shown at home have become popular and readily available.

9.10 Extent of the Problem

According to police statistics, there were 803 persons charged with the publication or sale of obscene material in 1978. The number fell to four in 1979, increased to 55 in 1980, fell to seven in 1981, remaining at that level in 1982 and increasing to 17 in 1983. These wide fluctuations definitely reflect

police activity. Mr. Tyrell Goonetilake, Deputy Inspector General of Police, has expressed the view that the police statistics do not indicate the size of the problem. He is also of the opinion that the sale of pornographic books and nude or lewd photographs do not constitute a menace to society. The real menace lies in the video cassette films.

9.11 Public Movements to Change the Law of to Obtain Better Enforcement

There have been no movements on the part of the public to change the pornographic laws or to obtain better enforcement of the existing laws. However, a lone crusade seems to have been conducted by Mr. Gunadasa Liyanage, a prominent Sinhala journalist, who has persistently written articles on the subject drawing it to the attention of the public. The Sarvodaya Movement and well as the Young Mens Buddhist Association have, from time to time, pointed out the need for government intervention to check the production and the sale of pornographic material particularly to children. These efforts, however, have been sporadic and not sufficiently sustained to make an impact. The police have also pointed out, repeatedly, the need to change the laws. All combined appear to have had a salubrious effect because the government announced on June 14th 1984 that it had decided to change the law on pornography with one of the changes being the imposition of more stringent punishments on persons making a business out of pornography. The details of the amendments have not been spelled out.

9.12 References

9.13 Acknowledgements

This chapter has been based on information supplied by Mr. J.P. Delgoda, Commissioner of Prisons, and by Mr. B.H.S. Jayewardene of the Associated Newspapers of Ceylon. The data for the Introductory Remarks was collected by Miss Tamara Perera.

X. JAPAN

10.1. Introductory Remarks

Japan is an island nation located in the western part of tne north Pacific Ocean off the coast of Asia. It is comprised of four main islands, second secondary islands and island groups and more than 1000 lesser adjacent islands all extending in an arc north-east to south-west, and covering a total area of 143,706 square miles. It had a population of 119,000,000 in 1983.

Japan is a constitutional monarchy with a parliamentary form of government in accordance with the Constitution of 1947. Executive power is vested in a Cabinet headed by a Prime Minister and collectively responsible to the National Diet, the bicameral legislature which is the highest organ of state and power. The Diet is comprised of the House of Representatives, the lower house consisting of 491 members elected by popular vote for a four-year term and a House of Councillors, the upper house, consisting of 252 members also elected by popular vote but for a period of six years. Decisions of the House of Councillors can be vetoed by the House of Representatives, which retains control over legislation dealing with treaties and fiscal matters.

The Prime Minister is chosen from the majority party in the Diet and is nominally appointed by the Emperor, who is just a symbol of state and performs only ceremonial functions. Japan has a multi-party system but has been under the dominance of the Liberal Democratic Party continuously since 1955.

The country is divided into 47 prefectures which contain municipalities. Each municipality has a legislature composed of popularly

elected representatives. The municipalities have fairly broad powers: they control public education and may levy taxes.

Justice is administered by a unified national system of courts. The 1947 Constitution provides for all judicial power to be vested in the Supreme Court and a number of lower courts, all of which are parts of a single system under the sole and complete administration of the Supreme Court. The Diet, which is the sole law-making organ of the state, can change the organization of the courts by passing the necessary legislation, but the administration of the court system remains constitutionally vested in the Supreme Court.

The Supreme Court is organized into a Grand Bench consisting of all 15 judges and three Petty Benches of five judges each. Cases are intitially referred to the Petty Bench which must decide which bench should hear the case. Constitutional cases for which there are no precedents, cases deemed by the Petty Bench to be of outstanding importance, cases involving tie votes in the Petty Bench, or the overruling of a Grand Bench precedent on a non-constitutional matter, must be heard by the Grand Bench. When the full Court considers administrative matters of the judiciary, it sits as the Judicial Assembly. All cases heard by the Supreme Court are appeals. The Court has no original jurisdiction.

Of the lower courts, the highest level of courts are the High Courts. These are essentially appellate courts for civil and criminal cases, but may hear cases in the first instance in matters involving crimes of insurgency, preparation for or plotting insurrection and election disputes. They may be granted jurisdiction over other types of cases by special provisions in duly enacted laws. They are collegiate courts.

District Courts comprise the next lowest level in the court structure and carry original jurisdiction over most types of civil and criminal offences. They are courts of appeal for actions taken by Summary Courts -- the lowest level in the court structure. On the same level as the District Courts are the Family Courts which came into existence under the Allied Occupation, 1945-1952. These courts have jurisdiction over such matters as juvenile crime (the age of majority is 20 years), problems of minors, divorce and disputes over family property.

On the lowest level are the Summary Courts. They perform the functions of small courts and justices of the peace in the United States. They have original jurisdiction over minor cases involving less than 300,000 yen in claims or fines. With certain exceptions, these courts cannot impose imprisonment or graver sentences. If the court believes that an offence should be punished by a sentence heavier than it is empowered to impose, it must transfer the case to a District Court.

There is no jury system in Japan. Judges are under permanent appointment and can only be removed by public impeachment by the Diet. No disciplinary action can be taken against any judge by an executive agency. Age of compulsory retirement is 70 for Supreme Court judges and 65 for others.

This judiciary system, organized according to Anglo-American legal principles, came into being under the post-war occupation authorities. Prior to that, the country had a German model.

10.2 The Existing Law on Prostitution

Article 3 of the Anti-Prostitution Law states explicitly:

> Any person who makes a person commit prostitution by threatening or using violence shall be punished by imprisonment at forced labour for not more than three years or by both imprisonment at forced labour for not more than three years and a fine not exceeding 100,000 yen.
>
> The attempt of crimes referred to in the preceding two paragraphs shall be punished.

Article 8 reads:

> Any person who, having committed any of the offences under paragraph 1 and 2 of the preceeding Article receives the whole or part of the hire for prostitution, or demands it, or makes a contract to receive it shall be punished by imprisonment at forced labour for not more than give years and a fine not exceeding 200,000 yen.
>
> A person who, by taking advantage of a relational influence, demands the person who has committed prostitution to offer him the whole or part of the hire for prostitution, shall be punished by imprisonment at forced labour for not more than three years or a fine not exceeding 100,000 yen.

Article 9:

> Any person who accords money, goods or any other financial benefit to a person by means of advance or other means with intent to make such a person commit prostitution (with any other person than himself) shall be punished by imprisonment at forced labour for not more than three years or a fine not exceeding 100,000 yen.

Article 10:

> Any person who concludes a contract for making a person commit prostitution (with any person other than himself) shall be punished by imprisonment at forced labour for not more than three years or a fine not exceeding 100,000 yen.
>
> The attempt of the crime referred to in the preceding paragraph shall be punished.

Article 11:

> Any person who knowingly furnished a person with a place for prostitution shall be punished by imprisonment at forced labour for not more than three years or a fine not exceeding 100,000 yen.
>
> A person who engages in the business of furnishing a person with a place for prostitution shall be punished by imprisonment at forced labour for not more than seven years or a fine not exceeding 300,000 yen.
>
> No person shall commit prostitution or be the client of a prostitute.

Prostitution as used in the law is defined to mean

> sexual intercourse with an indiscriminate party for hire or for the promise of hire (Article 2).

In addition to outlawing prostitution, the law also makes a number of provisions to control prostitution indirectly. Article 5 reads:

> Any person who performs an act coming under the following items with intent to commit prostitution shall be punished by imprisonment at forced labour for not more than six months or a fine not exceeding 10,000 yen:
>
> > (1) Publicly soliciting a person to become a client;

(2) Blocking the way of or hanging around a person in the street or any other public place with intent to solicit the person to become a client;

(3) Publicly waiting for a prospective client or inducing a person to become a client by means of advertisement or the like.

Article 6 reads:

Any person who procures a prostitute for some other person shall be punished by imprisonment at forced labour for not more than two years or a fine not exceeding 50,000 yen.

The punishment prescribed in the preceding paragraph shall also be applied to a person who performs an act falling under any of the following items with intent to procure a prostitute for some other person:

(1) Soliciting a person to become the client of a prostitute;

(2) Blocking the way of or hanging around a person in the street or any other public place with intent to solicit the person to become the client of a prostitute;

(3) Inducing a person to become a client of a prostitute by means of advertisement or the like.

Article 7 reads:

Any person who makes a person commit prostitution by deceiving or embarrassing or by taking advantage of a relational influence upon the person shall be punished by imprisonment at forced labour for not more than three years or a fine not exceeding 100,000 yen.

Article 12:

Any person who makes it his business to let one live at the place possessed or controlled by himself or at the place designated by himself and to make one commit prostitution shall be punished by imprisonment at

> forced labour for not more than 10 years or a fine not exceeing 300,000 yen.

Article 13:

> Any person who knowingly furnished a person with funds, land or building necessary for the business mentioned in Article 11, paragraph 2, shall be punished by imprisonment for not more than five years and a fine not exceeding 200,00 yen.
>
> Any person who knowingly furnished a person with funds, land or building necessary for the business mentioned in the preceding Article shall be punished by imprisonment at forced labour for not more than seven years and a fine not exceeding 300,000 yen.

To prevent prostitution being used as an adjunct for business negotiations, there is Article 14 which reads:

> When the representative of a corporation, or the agent, employee or other worker of a corporation or an individual commits any of the offences under Article 9 to 13 in respect to the business of the corporation or the individual, not only shall the offender but also the corporation or the individual shall be punished by the fine prescribed in the pertinent Article.

The remainder of the Act contains provisions for the substitution of the punishments prescribed with parole or guidance measures when a woman is convicted.

10.3 The Problem of Prostitution

In spite of the fact that both prostitution and the patronage has been outlawed in Japan, prostitution exists in the country and its extent as well as the possibility that it might be becoming an organized business has led to the study of the subject "aimed to clarify the actual circumstances of recent

crimes of prostitution in order to examine the future movement and the proper control of these kinds of crime". The data for this study was collected by means of a questionnaire seeking information about those charged with prostitution or prostitution related crimes during the period July 1st, 1974 through July 30th, 1975. The report of the study contains a wealth of information.

The number of persons charged under the different articles of the Anti-Prostitution Law during this period are shown in Table 10.1. The figures indicate that the commonest violations are of Article 11.1 -- furnishing a person with a place of prostitution, Article 5.1 -- inducing prostitution, Article 5.3 -- watiing for a prospective client or inducing a person to become one, and Article 6.2 -- procuring. Oddly enough, there appears to be no one charged under Article 3 -- actually engaging in prostitution or being a client of a prostitute.

Prostitution operates in Japan under a number of legitimate guises. The data collected in this study revealed that the commonest guise under which it exists is what could be called Turkish bath prostitution which accounts for 18.8% of the cases. In this form of prostitution, managers of Turkish baths had prostitutes available in their institutions. The second commonest form, accounting for 13.8% of the cases, was Geisha Girl prostitution where the prostitute masqueraded as a professional entertainer. Then, there were the Hotel-Maid prostitution (9.3%) and the Massage Girl prostitution (8.4%) -- both in massage parlours and in a home service. Prostitution mediated through restaurants, bars and cabarets accounted for 7.2% of the cases.

Relevant to the question of organization are the two questions of who negotiates the transaction and who gets the fees. As far as the first

Table 10.1 Persons charged under the Anti Prostitution Law in Japan July 1st 1974 through June 30th 1975

Article	5.1	768
	5.2	3
	5.3	605
	6.1	520
	6.2/1	306
	6.2/2	2
	6.2/3	0
	7.1	7
	7.2	5
	8.1	4
	8.2	0
	9	4
	10	303
	11.1	281
	11.2	994
	12	181
	13.1	1
	13.2	7
	Total	3991

Source: K. Watanabee: The Survey of Crimes of Prostitution. 1976.

question is concerned, the data reveals that 32.3% of the cases resulted from the customer requesting the service from the girl. The suggestion for the act came from the prostitute herself in 17.9% of the cases, from the management

of the institution in 10.3% of the cases, and from others such as taxi drivers and employees especially entrusted with the task in 18.3%.

As far as the second question is concerned, the data suggested that about half of the number of prostitutes shared the fees on a percentage basis. This figure, however, might be inaccurate because the large proportion of prostitutes, where it was claimed "only the prostitute gets the money", do have to share their fees. In the case of Turkish baths, for example, the management does not take part in the transaction at all. This is all done between the customer and the prostitute who works at the Turkish bath. But the prostitute does have to hand over a part of her takings to the management.

Article 12 is considered the provision to deal with organized prostitution. The total number of prosecutions under this article for the period 1966 through 1975 is shown in Table 10.2. The figures indicate a gradual decline in this type of prostitution. To what extent these figures are correct, one does not really know. There is an indication that the police are not too enthusiastic in dealing with cases of prostitution. The survey data showed that policemen were involved as partners in 84.2% of the cases of soliciting and in 42.1% of the cases in procuring.

10.4 The Existing Law on Pornography

Pornography is dealt with under the Penal Code. Article 175 of the Penal Code states:

> A person who distributes or sells an obscene writing, picture or other object or who publicly displays the same, shall be punished with imprisonment at forced labour for not more than two years or a fine of not more than 5000 yen or a minor fine. The same applies

Table 10.2 Extent of Organized Prostitution in Japan from 1966-1975.

1966	890
1967	844
1968	852
1969	542
1970	335
1971	249
1972	197
1973	170
1974	195
1975	177

Figures are charges for violation of Article 12 of the Anti Prostitution Law.

Source: K. Watanabe: The Survey of Crimes of Prostitution. 1976.

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to a person who possesses the same for the purpose of sale.

10.5 Explantory Note

The information that we obtained was extremely limited. Our contact had retired from his position and was not able to supply us with the information that we wanted. However, we were able to contact others who were able to supply us with only some information because of the time limits we placed on them.

10.6 References

Keiich Watanabe: The Survey of the Crime of Prostitution. (Tokyo: Criminal Affairs Bureau, Ministry of Justice, 1976) (Japanese Script).

10.7 Acknowledgements

The material on which this chapter is based was supplied by Mr. Keiji Kurita of the Research and Training Institute of the Ministry of Justice of Japay in Tokyo. Mrs. Tanako Hirama assisted in the translation of the Japanese material sent us. The data for the introductory remarks were collected by Miss Tamara Perera.

XI. SINGAPORE

11.1 Introductory Remarks

The Republic of Singapore is an independent island state in south east Asia. Located off the southern tip of the Malay Peninsula it covers a total area of 226 square miles and had a population of 2,472,000, 75% of whom were of Chinese origin, in 1962.

Singapore is a parliamentary democracy based on the Westminster model. The government consists of a President, a titular Head of State with nominal powers, a unicameral legislature -- the Parliament -- and a Cabinet headed by the Prime Minister who serves as the Head of Government. The Parliament consists of 69 members popularly elected by universal adult suffrage for a five-year term. The leader of the majority party is appointed Prime Minister. Since 1959, when self-government was achieved, Sinapore has been virtually operating under a one-party system. The People's Action Party, a moderate democractic socialist group has held the majority in Parliament and the group's leader has held the post of Prime Minister since that time. Political opposition is divided and weak and every effort is made to keep it like that.

The judiciary in Singapore bears a strong imprint of British influence. In administering justice, the courts generally follow the common law traditions of England, introduced to Singapore in 1826 and modified to fit the local conditions. British models also inspired the major judicial reorganizations of the court structure and procedure.

The court system is headed by the Supreme Court which is divided into three chambers -- the High Court, the Court of Appeal and the Court of Criminal Appeal. The High Court chamber exercises three basic functions --

unlimited original jurisdiction in civil and criminal matters, appellate jurisdiction over decisions of the lower courts in civil and criminal cases, and supervisory and revisionary jurisdiction over lower courts. Decisions of the High Court, original or appellate, may be appealed to the Court of Criminal Appeal or in civil matters to the Court of Appeal. Appeals from these decisions may be made to the Judicial Committee of the Privy Council sitting in London.

The lower courts are the District Courts and the Magistrate's Courts which have limited civil and criminal jurisdiction. District Courts may try criminal offences punishable by imprisonment of up to 10 years and civil litigation involving amounts up to S$5000. Magistrate's Courts have jurisdiction over lesser offences for which the maximum term of imprisonment does not exceed seven years and civil litigation involving less than S$1000.

In all legal proceedings, the Attorney General's Chamber acts as the prosecuting authority; its independence is constitutionally guaranteed. In addition, the Attorney General is the chief advisor to the government on legal matters referred to his office by the President or the Cabinet. He is also responsible for drafting parliamentary bills and subsidiary legislation sanctioned by Parliament. The Attorney General is assisted by the Solicitor General.

Aside from the regular courts, there exist two separate and special courts. All matters affecting Muslims -- their marriages, their divorces, alimony and the like -- are decided by the Shariah Court which applies the Administration of Muslim Law Act of 1966. Administratively this court is under the Ministry of Social Affairs. The second special court is the Industrial Arbitration Court which plays a decisive role in the maintenance of industrial peace and stability. Established under the Industrial Relations Act of 1960, it is administratively controlled by the Ministry of Labour. It has the status of a

High Court and is empowered to settle disputes between employers and unionized employees by conciliation and arbitration. The decision of the Court is final. Under the Employment Act of 1968, labour disputes between management and non-unionized labour are referred to the Labour Court also under the administration of the Ministry of Labour.

A notable departure from the British legal tradition occurred in 1959 when trial by jury was abolished except for capital offences. In 1969, even this exception was done away with.

The legal system, based on English common law, has evolved in Singapore into a system that stresses tough enforcement and heavy penalties. The government maintains relentless pressure on criminals, periodically strengthening its penal and criminal procedure codes. The Criminal Law Ordinance of 1958 permits the detention without trial for periods of 12 months of suspected gangsters. The period of detention can be extended at the discretion of the Minister of Home Affairs. The Internal Security Act of 1960 gives similar powers of detention in security cases. The Penal Code was amended in 1973 to make whipping mandatory for theft and robbery and the death penalty added for trafficking in firearms and for kidnapping. The Misuse of Drugs Act of 1973 set penalties of up to 30 years imprisonment, a fine of S$5000 and 15 lashes for trafficking in drugs. More recently, death has been made the punishment for this offence.

11.2 The Extant Law on Prostitution

The law governing prostitution is embodied in the Women's Charter -- Chapter 47 of the Legislative Enactments of Singapore. Section 128 reads:

Any person who

(a) sells, lets for hire or otherwise disposes of or buys or hires or otherwise obtains possession of any woman or girl with intent that such woman or girl shall be employed or used for the purpose of prostitution either within or without Singapore, or knowing or having reason to believe that such woman or girl will be so employed or used;

procures any woman or girl to have either within or without Singapore carnal connection except by way of marriage with any male person for the purpose of prostitution either within or without Singapore;

by threats or intimidation procures any woman or girl to have carnal connection except by way of marriage. . . .

. . .

brings into Singapore, receives or harbours any woman or girl knowing or having reason to believe that such woman or girl has been procured for the purpose of having carnal connection except by way of marriage;

. . .

knowing or having reason to believe that any woman or girl has been procured by threats or intimidation for the purpose of having carnal connection . . . receives or harbours such woman or girl with intent to aid such purpose;

knowing or having reason to believe that any woman or girl has been brought into Singapore in breach of section 130 or has been sold or purchased in breach of paragraph (a), receives or harbours such woman or girl with intent that she may be used for the purpose of prostitution, detains any woman or girl against her will in a brothel;

detains any woman or girl against her will with intent that she may be employed or used for the purpose of prostitution or for any unlawful or immoral purpose, has carnal connection with any girl under the age of 16 years except by way of marriage; or

attempts to do any act in contravention of this section

shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years and shall also be liable to a fine not exceeding 10,000 dollars.

Any person who is convicted of a second or subsequent offence under paragraphs (a), (b), (c), (e), (f), or (g) of subsection (1) shall in addition to any term of imprisonment awarded in respect of such offence be liable to caning.

For the purposes of this section, it shall be presumed until the contrary is proved that

a person who takes or causes to be taken into a brothel any woman or girl has disposed of such woman or girl with the intent or knowledge mentioned in paragraph (a) of subsection (1);

a person who received any woman or girl into a brothel has obtained possession of such woman or girl with the intent or knowledge mentioned in paragraph (a) of subsection (1);

a person has detained a woman or girl in any brothel or in any place against her will if, with intent to compel or induce her to remain therein, such person

withhold from such woman or girl any wearing apparel or any other property belonging to her or any wearing apparel commonly or last used by her;

where wearing apparel or any other property has been lent or hired out or supplied to such woman or girl, threatens such woman or girl with legal proceedigns if she takes away such wearing apparel or property;

threatens such woman or girl with legal proceedings for the recovery of any debt or alleged debt or uses any other threat whatsoever.

> Reasonable cause to believe that a girl was of or above the age of 16 years shall not be a defence to a charge of an offence under paragraph (f) of subsection (1).
>
> Provided that in the case of a man of 24 years of age or under, the presence of reasonable cause to believe that the girl was over the age of 16 years shall be a valid defence on the first occasion on which he is charged with such an offence.

Section 129 deals with trafficking in girls and women and proclaims that:

> Any person who buys, sells, procures, traffics in or brings into or takes out of Singapore for the purpose of such traffic, and whether or not for the purpose of present or subsequent prostitution, any woman or girl, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years and shall also be liable to a fine not exceeding 10,000 dollars.

Subsection (2) stipulates:

> No person shall be charged with an offence under this section if he satisfies the Director that the woman or girl . . . was so brought or taken out of Singapore for the purpose of her marriage or adoption. . . .

Section 120 deals with the importation of girls or women into or out of Singapore under false pretence and with the intention of using such woman or girl for the purposes of prostitution; section 130A with owners, occupiers or managers of any premises permitting sexual intercourse with a girl under the age of 16 years; section 130B permitting mentally defective girls to use the premises for sexual intercourse, section 130C with the use of premises for prostitution of or indecent assault on a girl under 16 years. All these are made offences punishable with varying terms of imprisonment and varying fines.

Living on the avails of a prostitute is prohibited by section 131. Section 132 makes

> Any person who keeps, manages or assists in the management of a place of assignation
> or
> a place of public resort which is used as a place of assignation
> guilty of an offence. . . .

Section 133 outlaws the management of a brothel making the manager or any person who assists in the management, any tenant, lessee, occupier, owner or agent of such owner, all equally guilty of the offence unless it can be proved that "he had no knowledge that the place . . . is used as a brothel".

Also interesting to note is the provision:

> In any proceedings under this Part, any evidence given by any police officer not below the rank of sergeant that any place has been used as a brothel or a place of assignation, shall, until the contrary is proved, be deemed to be sufficient evidence of the fact.

Section 139 states "all offences under this Part shall be cognizable by a District Court", which makes them felonies in American parlance. As a safeguard, however, is added the provision

> Provided that no prosecution shall be instituted in respect of any such offence without the previous sanction of the Director or the Public Prosecutor.

(The Director referred to is the Director of the Social Welfare Department under whose authority the Act operates.)

11.3 The Problem of Prostitution

Every effort has been made in Singapore to see the place morally clean and to this end even the sojourn of American soldiers on rest and recreation leave during the Korean War was not allowed. However, since then the tourist industry has been developing and prostitution has made itself noticeable. Information received from the police states: "However, to prevent widespread and open soliciting, some measures of control is being enforced. Therefore, their activities are confined to certain designated areas only." This statement suggests that prostituion is permitted either legislatively or administratively by the manner in which the police enforce or are required to enforce the law.

Information from the police also indicates that the provisions of the Women's Charter are actively enforced particularly as far as the parts pertaining to the protection of women and young persons to prevent them from being forced into prostitution. This statement also suggests that if the prostitution is with the consent of two adults, it is not prohibited. The public sensitivity does not appear to be disturbed if the prostitution is limited to designated areas and there is no blatant soliciting in public places.

The existing laws are claimed to be adequate for the purposes of controlling the phenomenon. However, the provision that prosecution can only be instituted with the sanction of the Attorney General or Solicitor General, appears to cause some problems as it takes a few days to obtain the sanction. The police must provide accommodation for the suspect, especially if she happens to be a foreigner. But this is looked upon as a handicap rather than a serious impediment.

11.4 The Extent of the Problem

It has not been possible to obtain any information on the number of prostitutes, the number of cases taken to court for violation of the prostitution laws or on the incidence of venereal disease.

Information obtained from individuals who have been to Singapore seems to suggest that around the year 1970, Singapore vociferously denied the existence of any prostitution. By 1975 their denial was not that vociferous, but they did display a reluctance to acknowledge its existence. By about 1980, Singapore was acknowledging the existence but were claiming that it was a phenomenon so negligible that it did not assume the proportions of a problem to which any attention should be paid. The incidence appears now to be acknowledged as much greater but the actual extent of it is still unknown. The police also do not appear to consider it too great a problem as yet.

11.5 The Law on Pornography

The law on pornography is contained in the Films Act of 1981. This Act makes provision for the appointment of a Board of Film Censors whose chief function would be to review the films and approve them for exhibition. Section 6 of the Act states:

> No persons
>
> shall carry on any business, whether or not the business is carried on for profit, of importing, making, distributing or exhibiting films unless he is in possession of a valid licence; or
>
> being the owner or occupier of any place shall allow the place to be used by, or let the place or otherwise make the place available to any person who is not the holder of a valid licence for the purpose of carrying on the

business of importing, making, distributing or exhibiting films.

Section 12 states:

> The owner of any film made in Singapore shall within seven days after the making of the film deposit the film in a warehouse approved for this purpose by the Board.
>
> Any person who fails to deposit the film in accordance with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 5000 dollars.

Section 13 states:

> No film shall, on importation by sea, be removed from the vessel wherein the same was imported or from any Port of Singapore Authority godown or if imported by land or air from any post office, railway station or other place of arrival without a permit from the Board.

Section 14 of the Act deals with the censorship. It reads:

> Every film in the possession of any person shall be submitted to the Board without any alteration or excision for the purpose of censorship at the owner's risk and expense and at such time and place as the Board may appoint.
>
> During the course of censorship, the Board may in its discretion exclude any person from the place where the film is being exhibited.
>
> The owner may at any time, with the approval in writing of the Board, which shall not be unreasonably withheld, remove any film (other than a videotape or video disc) from any approved warehouse for the purpose of making excisions to it or of reconstructing it or of obtaining the approval of the Board for its exhibition or of exhibiting exclusively to buyers or exhibitors or their agents.
>
> Any film removed from an approved warehouse under subsection (3) shall be returned to that warehouse within

> 48 hours of the time of its removal therefrom and any excised parts, if excision has been made, shall within 48 hours be delivered to the Board.

Section 15 reads:

> After the submission of the film for the purpose of censorship, the Board may
>
> > approve the film for exhibition without alteration or excision;
> >
> > prohibit the exhibition of the film; or
> >
> > approve the film for exhibition with such alterations or excisions as it may require.

The Board has to deliver its reasons for prohibition of exhibition or requirement of excision.

The exhibition or distribution of an uncensored film is an offence. In this connection, Section 21 reads:

> Any person who
>
> > has in his possession; or
> >
> > or exhibits or distributes,
>
> any film without a valid certificate approving the exhibition of the film shall be guilty of an offence and shall be liable on conviction
>
> > in respect of an offence under paragraph (a) to a fine of not less than 100 dollars for each such film that he had in his possession (but not to exceed in the aggregate 20,000 dollars);
> >
> > in respect of an offence under paragraph (b) to a fine of not less than 100 dollars for each such film that he had exhibited or distributed (but not to exceed in the aggregate 20,000) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

In addition to making it an offence to exhibit or distribute any uncensored film, the Act also makes it an offence to exhibit or distribute any lewd film. Section 29 reads:

> Any person who
>
> has in his possession; or
>
> exhibits or distributes
>
> any obscene or lewd films shall be guilty of an offence and shall be liable on conviction. . . .
>
> Exempted from the provisions of this Act are
>
> any film sponsored by the Government;
>
> any film, not being obscene or lewd or any feature, commercial, documentary or overseas television serial film, which is made by an individual and is not intended for distribution or public exhibition; and
>
> any film reproduced from local television programmes and is not intended for distribution or public exhibition.

This section also makes it possible for the Minister to grant other exemptions and to withdraw those exemptions at will.

11.6 The Problem of Pornography

The police feel that the Film Act provides them with adequate power to take firm action against persons promoting and peddling pornography. However, they appear to be having a problem on their hands as a result of the recent advent of video cassette players which has helped the promotion of the circulation and distribution of uncensored films depicting anything from downright brutality to blatant pornography.

11.7 The Extent of Pornography

No data is available.

11.8 References

11.9 Explanatory Note

The information that was obtained was extremely limited. Our contact had retired from his position and was not able to supply us with the information that we wanted. However, we were able to contact others, through his good offices, and request them to supply us with the information. Time constraints prevented them from doing as good a job as they would have liked to do.

11.10 Acknowledgements

This chapter is based on information supplied by Hj Mohd Hussin Bin Salleh of the Criminal Investigation Department of Singapore. The data for the introductory remarks was collected by Miss Tamara Perera.

XII. ARAB COUNTRIES

12.1 Introductory Remarks

The Arab Organization for Social Defence has conducted a study and produced a document entitled The Phenomenon of Prostitution in the Arab Countries: A Field and Legal Research. Produced in 1982, this report deals with the problems of prostitution and pornography in 15 Arab countries. These countries are: Morocco, Algeria, Tunisia, Libya, Sudan, Somalia, Jordan, Lebanon, Syria, Iraq, Kuwait, Qatar, Bahrain, United Arab Emirates and Oman. Nine of these countries are in western Asia. These are Jordan, Iraq, Bahrain, Lebanon, Kuwait, the United Arab Emirates, Syria, Qatar and Oman.

Though their historical origins go back many centuries, these countries have assumed an importance only after the Second World War when the importance of their oil deposits was recognized and when a surging Arab nationalism was forcing them to restructure themselves giving them at one and the same time a modern look and an Arab flavour. Prior to this period, Western influence in the area was not only great but the government, even though conducted by natives Kings, Shieks and Sultans, was under the strict supervision of the European colonizers, mainly Britain and France.

In the form that they exist today, most of these countries are dictatorships, where the Head of State, by whatever style and title he may be known, is Head of Government with absolute powers. He is in this position for his lifetime. Change in government, consequently, has to be by revolution or coup d'état, which does not infrequently occur.

The judicial system and the law officially in operation is what these countries have inherited from the French or the English with, of course, the Arab element slowly injecting itself.

Their economy, the Western interest in their oil, and their desire to surge into the twenty-first century has brought a multitude of foreigners -- some Arabs and some non-Arabs -- into these countries; so much so that at least their major cities are truly cosmopolitan.

The manner in which they deal with the phenomenon of prostitution and pornography is not only interesting but also instructive because they endeavour to reconcile the Islamic tradition of strict prohibition of any form of sexual deviance and the present day need for sexual stimulation and sexual gratification, especially of a large transient male population. The distinction between prostitution and pornography is not made clear as pornography is, in some places and at some times identified as cultural prostitution, suggesting that the two constitute parts of a common phenomenon.

Islamic law prohibits adultery. The rationale for this is that it has several evil consequences, the chief among them being the disintegration of the family with men wondering whether they are the natural fathers of their offspring. The transmission of disease to innocent people is also cited as one reason for the strictness. It is considered a sufficiently heinous crime that flogging and stoning to death are the prescribed punishments for it. The punishment inflicted, however, varies with the marital status of the offender. It is more severe for a married person, who is stoned to death, than for an unmarried person, who is flogged. For divorced women, the punishment for adultery is even less severe -- they are only subjected to house confinement.

Prostitution, it is claimed, is foreign to Arab culture. Yet, it is present in many Arab countries. Its presence is attributed to Western influence.

12.2 The Law Regarding Prostitution

Officially, the law against prostitution is the same as one would encounter in any occidental country, except perhaps that in some countries such as Syria these provisions are contained in a special code -- the Code for Combatting Prostitution. As in most occidenal countries, prostitution per se is not identified as a crime. Neither are there any laws making the patronage of a prostitute an offence. However, it must be remembered that both the prostitute and her client can be dealt with under the laws of adultery and, consequently, no need for special laws exists.

Nevertheless, in the Arab countries, attempts have been made to control prostitution by outlawing its promotion and its facilitation, by outlawing procuring and soliciting and by outlawing the renting of rooms and houses for the purpose of prostitution. Also outlawed is living off the earnings of a prostitute. All the Arab countries do not outlaw all these forms of behaviour. The behaviours outlawed in the different countries is shown in Table 12.1.

The punishments imposed for the offences also vary both from offence to offence and from country to country. Attempts are now made in most countries to rehabilitate the offenders. The dispositions that can be made in cases of prostitution in the different countries is shown in Table 12.2. Imprisonment is a disposition used in all the countries. Interesting, however, is the disposition — placement in a legalized brothel -- available in Libya and Kuwait.

Table 12.1 Prostitution Related Behaviour that is Outlawed in Arab Countries

Country	Soliciting.	Helping others to force Prostitution	Forcing prostitution	Keeping for Prostitution	Intoxicating for Prostitution	Living off the Avails of Prostitutes	Using and Delivering	Procuring from outside
Morocco								
Algeria								
Tunisia	×							
Libya			×			×		
Sudan								×
Somalia		×	×					
Jordan				×	×	×	×	×
Lebanon				×	×	×	×	
Syria								
Iraq		×	×				×	
Kuwait								
Qatar								
Bahrain				×		×	×	×
United Arab Emirates								
Oman								

Source: Arab Organization for Social Defence: The Phenomenon of Prostitution in the Arab Countries: A Field and Legal Research.

Table 12.2 Dispositions Available for Cases of Prostitution in Arab Countries

Country	Placement in a Trade.	Placement in Legalised Brothel	Referal to Social Welfare Agency	Rehabilitation Centre	Referal to Family Court	Suspended Sentence	Imprisonment
Morocco							×
Algeria	×						×
Tunisia							×
Libya		×					×
Sudan							×
Somalia							×
Jordan			×				×
Lebanon							×
Syria				×			×
Iraq	×			×			×
Kuwait		×					×
Qatar							×
Bahrain	×				×	×	×
United Arab Emirates							×
Oman							×

Source: Arab Organization for Social Oefence: The Phenomenon of Prostitution in the Arab Countries: A Field and Legal Research.

12.3 The Nature of the Problem

Prostitution exists in many forms in the Arab countries. One form that it exists in is legalized prostitution which permits the Moumis (the old word for prostitute but now used to define a professional prostitute) to carry on her trade. She is registered or known as a prostitute and she is allowed to operate in a controlled brothel. She is subjected to regular health examinations. Most of these prostitutes come from other countries in a number of guises. Their admission into the country, their stay in the country and the locale in which they are permitted to operate are strictly controlled.

Second, there is the semi-professional or disguised prostitution where the prostitutes work as dancers, bartenders, waitresses and the like in places of entertainment and are able to contact their clients there. These prostitutes are also usually foreigners who make their way into the country as artists, so much so the term artist has become a synonym of the term prostitute. The entrance of these persons into the country, their stay and the locale where they work are also strictly controlled.

Third, there are the street walkers. This type of prostitution is frowned upon by the public and is not common.

It should be realized that all these forms of prostitution are not found in all the Arab countries. Some forms are found in some countries and other forms in other countries. In some countries, there is apparently little or no prostitution.

12.4 The Extent of the Problem

Accurate statistics on prostitution and prostitution related crimes are not available. Table 12.3 shows the rate of prostitution and prostitution

Table 12.3 Rates per 1000 Population of Prostitution and Prostitution Related Crimes in Arab Countries

Country	Number	Rate
Morocco	529	0.0290
Algeria	134	0.0007
Tunisia	n.a	n.a
Libya	137	0.0514
Sudan	980	0.0535
Somalia	152	0.0466
Jordan	0	0.0
Lebanon	56	0.0186
Syria	196	0.0223
Iraq	227	0.0168
Kuwait	76	0.0593
Qatar	0	0.0
Bahrain	57	0.1830
United Arab Emirates	0	0.0
Oman	0	0.0

Source: Arab Organization for Social Defence: The Phenomenon of Prostitution in Arab Countries: A Field and Legal Research.

related crimes per 1000 population in the different Arab countries. The trends of these crimes are shown in Table 12.4. The trends refer to the official statistics, and could, as in other countries, reflect not the actual incidence of the phenomenon but the intensity of police activity.

12.5 References

Arab Organization for Social Defence: The Phenomenon of Prostitution in the Arab Countries: A Field and Legal Research. 1982

12.6 Acknowledgements

This chapter fis based on the information found in the Arab Organization for Social Defence: The Phenomenon of Prostitution in Arab Countries: A Field and Legal Research, which was so kindly sent me by Dr. Mohamed Cheddadi of the Arab Organization for Social Defence against Crime in Rabat Morocco. Dr. Alex Abdennur assisted me in deciphering the contents of the document which was in Arabic.

Table 12.4 Trends 1975 - 1979 of Prostitution and Prostitution Related Crimes in Arab Countries

Country	Facilitating Prostitution	Procuring	Total
Morocco	Decreasing	Increasing	Decreasing
Algeria	Decreasing	Decreasing	Decreasing
Tunisia	n.a.	n.a.	n.a.
Libya	Increasing	Decreasing	No Change
Sudan	Increasing	Increasing	Increasing
Somalia	Decreasing	Increasing	Increasing
Jordan	None	None	None
Lebanon	n.a.	n.a.	No Change
Syria	Increasing	Decreasing	No Change
Iraq	None	Increasing	Increasing
Kuwait	Decreasing	Increasing	No Change
Qatar	None	None	None
Bahrain	Increasing	Increasing	Increasing
United Arab Emirates	None	None	None
Oman	None	None	None

Source: Arab Organization for Social Defence: The Phenomenon of Prostitution in Arab Countries: A Field and Legal Research.

XIII. CONCLUSIONS

13.1 Introductory Remarks

This study analyzes the experience of a number of countries with prostitution and pornography. First considered here have been Poland, Yugoslavia and Hungary, three countries in East Europe, all within the Communist sphere. Then considered have been the experiences of Venezuela, Panama, Chile and Argentina, four Latin American countries. Finally considered has been the experience of three Asian countries, Sri Lanka, Japan and Singapore, as well as a number of Arab countries situated in western Asia and northern Africa, all considered together as the Arab Countries rather than individually. These Arab countries are Morocco, Algeria, Tunisia, Libya, Sudan, Somalia, Jordan, Lebanon, Syria, Kuwait, Bahrain, the United Arab Emirates and Oman.

The data for this study was collected by means of a questionnaire sent out to criminologists in a number of countries, many more than the ones considered here. First, their willingness to assist us was ascertained and thereafter only was the questionnaire sent to them. Only with the questionnaire did we inform our respondents of the time limitation that was placed on us and that we were placing on them. In consequence, many who agreed to assist us found it impossible to comply.

The questionnaire was designed to elicit information that would enable us to have an idea of

1. the extant law on prostitution and pornography,
2. the problems of enforcement encountered,
3. the extent of the phenomenon

4. the public attitudes towards them, and
5. the existence of any movements towards criminalization or decriminalization.

Most of the information asked for could have been obtained from books or other public documents. Some bits of information required interviewing government officials. Because of the deadlines that had to be met, we had asked our respondents to return the completed questionnaire to us within four weeks. Some, who had decided to assist us, found it difficult to obtain all the information that we had sought. They also found it difficult to obtain as complete information as we would have liked. Rather than be deprived of the information from them, we requested them to send in whatever material they had collected. We also found that some of our contacts had retired from their positions and were in new positions that did not permit them the time to spend collecting the information that we needed. We were put in contact with others who most likely consented to help us but the information that we obtained from them had to be very limited because the additional correspondence involved reduced the time available for the job. In their keenness to meet the deadlines, we were sent documents in languages other than English. This caused us problems of translation.

13.2 Public Attitude to Prostitution

Prostitution, the indiscriminate engagement in sexual activity with a number of casual partners for the sake of financial gain, has been described as the oldest profession in the world. Yet, in no country has the profession been permitted to be practiced unimpeded. Popular and even governmental interest

has been due to a number of reasons. These have been listed by Decker (1979) as:

1. protection of conventional morality;
2. a humanistic concern for the prostitute;
3. a humanistic concern for the exploited customer;
4. prevention of incidental crime;
5. control of the criminal culture which surrounds and flourishes on prostitution;
6. protection of juveniles who may be attracted to prostitution;
7. abatement of public nuisance;
8. a humanistic concern for the prostitute's family;
9. limited evasion of income tax laws; and
10. prevention of venereal disease.

However, it has been claimed, conventional morality has been considered the main reason for campaigns against prostitution with considerations such as associated crime, venereal disease, white slavery and the like utilized as a camouflage by moralists to entice the more liberal minded people into the reform camp (Decker, 1979). In consequence, it appears that if conventional morality is insufficient to rouse public indignation, there would be no public outcry. However, this does not appear to be the situation.

In none of the countries that have been considerd in this study could it be said that conventional morality played a part in the concern over prostitution though occasionally in dealing with prostitution references were made to Christian principles and the Socialist way of life. Public opinion polls on the subject had only been taken in Poland, and in this country there was found to be a definite anti-prostitution sentiment. The reasons for this

sentiment were threefold. First, there was the fear of the disintegration of the family. Second, there was the alleged difficulty encountered in the education of young girls and their preparation for a life as a productive adult. Third, there was the possibility of the spread of venereal disease. These, of course, are the verbalized responses to hypothetical questions and whether they constitute the real reason for the anti-prostitution sentiment is a matter of conjecture especially as the anti-prostitution sentiment has not been sufficient to stimulate any movement against it. In Venezuela, public attitude towards prostitution was canvassed in a larger public opinion survey. In this country, the public did not show much concern.

In most countries, the public appears to be totally unconcerned about prostitution. The public could even be accused of encouraging prostitution because of their reluctance to provide information to the police to proceed against prostitutes. Oddly enough, this has been claimed to be the position in Poland. It has also been claimed to be the position in Chile where the police have bemoaned the absence of public cooperation. It certainly has been the case in Venezuela where the police are unable to launch legal proceedings against prostitution related cases except pimping without a complaint from the victim. In all countries, however, the attention of the police has been drawn to prostitution and prostitution related cases by complaints made by members of the public. In Hungary, where the relevant information is available, these complaints have been made sometimes by the clients of the prostitutes because they have been the victims of crime -- robbed or had their bodily integrity threatened -- and sometimes by the people living in the neighbourhood because of the nuisance that the prostitute's activities caused them.

In some countries such as Yugoslavia, there were special police squads that were responsible for the enforcement of prostitution laws. This was the situation in Yugoslavia until 1966. Since then the enforcement of the prostitution laws has become the business of the regular police and as they have shown no particular enthusiasm to go after prostitutes, they have come across prostitutes only in connection with their investigations of other crimes -- either ones committed by the prostitute and her accomplices or those committed by other criminals operating in the prostitution milieu. In some countries, such as Poland where there do not exist special police squads to handle prostitution, the police do keep a surveillance on prostitutes, mainly because of the criminal activity with which they may be associated. Here the crimes concerned were crimes against property and being a public nuisance. In Hungary, the prostitutes come into contact with police mainly because of work shyness -- the criminal unwillingness to work.

What this study seems to indicate is that a public clamour for the alteration of the prostitution laws or the demand for their better enforcement would come, if it comes at all, when prostitution becomes such a phenomenon that it begins to affect the lives of the ordinary citizens. As long as prostitution remains a private business between the prostitute and her client, out of sight of those who are not her clients, it does not appear likely to rouse much public enthusiasm. The police in many countries appear to be aware of this and to be fashioning their activity using the criterion of public tolerance as a measure of control. In Singapore, for example, the police readily admit that their main activity, apart from protecting women being drawn into prostitution against their will is to contain the activity to certain areas thus preventing widespread and open soliciting as well as public protest.

13.3 Problems Associated with the Enforcement of Prostitution Laws

Official statistics available on prostitution and prostitution related crimes seem to suggest first that these laws are not enforced and that the absence of enforcement is becoming more and more serious. This statement is made because of the discrepancy between the officially recorded number of prostitution cases and the unofficial estimates of its magnitude made in scientific studies that have been conducted. In Sri Lanka, for example, the number of prostitution and prostitution related cases taken to court has shown a marked decrease suggesting a decline in the phenomenon while a study conducted by the University of Sri Jayewardene Pura indicates a phenomenal increase in the number of prostitutes in Colombo alone. Though such comparisons are not possible in other countries studied here, police statistics have been repeatedly claimed to represent only a minor portion of the problem.

The police indifference towards the enforcement of these laws has been attributed to the difficulty that they encounter in obtaining convictions. In many countries, legal technicalities are supposed to have stood in their way. There is, however, evidence to indicate that the courts were eliminating these technicalities. In Sri Lanka, for example, when inventions and innovations were found to be adopted to circumvent the provisions of the Brothel's Ordinance which saw a brothel defined as a place to which men and women resorted for sexual intercourse, by having the activity in a place different from where the financial transaction took place, with a woman supplied from yet another different place, the courts held that the absence of sexual activity or the facilities for sexual activity at the place where the financial transaction took place did not exempt the person who made the financial transaction from being considered the manager of a brothel. In the Province of Buenos Aires, in

Argentina, the law has been made more stringent by including in the definition of a brothel, the house of a woman, practising prostitution by herself without the assistance of a pimp and in her own home. Again, facilitation of prostitution has been considered in Buenos Aires to include the passive attitude of a husband or father towards the prostitution of a woman.

This, however, has not been the situation in all countries. In Argentina, notwithstanding the position in Buenos Aires, a brothel is not considered to include the house of a woman practising prostitution on her own in her own home in Rosario and in Tucaman, the simple omission of a moral duty is not considered sufficient to constitute facilitation. In Chile, where the law prohibits the provision of facilities for prostitution such as bedrooms in places of public entertainment which are in reality brothels, the facilities are provided in a building ostensibly separate from but unobstrusively connected to the place of entertainment. Court decisions have not helped to overcome this subterfuge.

In Singapore, the law stipulates that prosecution in any prostitution or prostitution related case must have the prior approval of the Attorney General or the Solicitor General. The provision has created some problems because it takes two or three days for the approval to be obtained and the police are obliged to find accommodation for the prostitutes, especially if they happen to be foreigners, during that period. This provision, however, is seen by the police as a handicap rather than an impediment.

A second reason for the lack of sufficient police interest is the seeming leniency of the courts. This appears to be especially the case in Poland where even the public appears to want more severe punishment inflicted on prostitutes. In that country, however, the government seems to feel that

rehabilitation rather than punishment should be the approach adopted, and they have set about organizing work programs for convicted prostitutes to achieve this end. In Panama, too, the same orientation exists. In 1966, a decree was issued making provisions to subject prostitutes to rehabilitation. Arab countries also have provisions in their law to deal with prostitutes with dispositions other than imprisonment. Placement in a place where they could get training for an occupation is a possible disposition in Algeria, Iraq and Bahrain. In Jordan, they could be referred to a welfare agency. In Syria and Iraq, they can be referred to a rehabilitation centre while in Bahrain they could also be referred to a Family Court. In Libya and in Kuwait, the alternative to imprisonment is placement in a legal brothel.

A third reason is the priority position that prostitution occupies among the problems with which the police must deal. In many countries, the police seem to think that there are a number of other problems that are much more serious than prostitution and which call for their attention. To this is added the fact that the police sometimes use the prostitutes as informants to solve more serious crimes, permitting the prostitutes to carry on their trade unhampered. In Japan, it is interesting to note that a study of prostitution showed policemen to be "partners" of prostitutes in a large proportion of the cases. Whether the "partnership" was for the purpose of obtaining information or for financial gain is not known, though the suggestion is that the latter rather than the former was the motivation. Perhaps both reasons played an equally significant part.

A possible reason for both the smallness of the number of prostitution and prostitution related offences as well as their decreasing number may be the actual decrease in prostitution as it is conventionally known

and its appearance in an altered form. This is possible, as in some countries where the police maintain a vigilance on prostitution such as Poland, the official incidence has actually increased. In Yugoslavia, the decrease is considered to be real especially as it is associated with a decrease in the incidence of venereal disease. In many of the other countries the incidence of venereal disease has increased. The change in the type and nature of prostitution has been attributed to the liberalization of sex on the one hand and the development of the tourist industry on the other.

There is distinct evidence that the nature of prostitution in most of the countries studied has and is altering. In times past prostitution was indulged in by women from the lower income groups, who walked the streets of big cities in search of their clientelle and who perhaps took to prostitution in sheer desperation. The prostitutes were found to be mainly women who moved into the big cities in search of employment and, unable to find such employment, discovered that they could earn a living with their bodies. In recent time, this type of prostitution is claimed to be disappearing. The disappearance has been attributed in the Latin American countries as well as in the East European countries to the liberalization of sex relations which has reduced the demand for prostitution in the native population. In Asian countries like Sri Lanka, the disappearance of this type of prostitute has been attributed to the changing fortunes of the lower economic classes. Improved opportunities for employment of lower class women both in and outside the country have reduced their need to resort to prostitution as a means of livelihood, thus reducing the supply.

Present day prostitution has three noteworthy characteristics. The first of these is that it has become a business, organized and operated as a

business bent on providing what is considered a service in demand and extracting the maximum profit out of it. Being a business, prostitution is becoming dissociated with other crimes and social problems such as alcoholism, child abuse and disease which really made prostitution the undesirable behaviour. In this connection, it is interesting to note that in a study of prostitution in South Africa, prostitutes were found to believe that the "sex act was only a small part of being a whore". There was the male ego to be satisfied by being presentable, by being able to engage in conversation and by themselves being satisfied in the sex act. Of course, there were different types of prostitutes encountered in this South African study and it was the hotel or club prostitute rather than the street walker who thought they were providing a real service to men (Schurink and Levinthal, 1983).

The second characteristic is that the present prostitutes come not from the lower economic classes but from the middle and upper ones. These people take to prostitution not as a means of livelihood but as a means of making extra money. They are usually not full time prostitutes. They are part time ones. They hold some other form of normal and natural employment. They are educated, intelligent, respectable, decently clad, able to converse and demand good payment for the service they render.

The third characteristic is that prostitution is becoming more widespread geographically. Earlier when street walking was a common type of prostitution, it tended to be concentrated in the big cities. This had naturally to be the case because the prostitutes were usually women who had come to the big cities in search of employment and ended up as prostitutes as a last resort. Now, of course, when prostitution is becoming organized as a profitable service, it must be available in those parts of the country where there exists a demand.

In Yugoslavia, these areas are the tourist resorts on the Adriatic Sea and the ski resorts on the Alps. In other countries too, prostitution is concentrated in the tourist resorts.

Associated with this development is the international movement of prostitutes. When prostitution gets organized as a business, it is natural that scouting for talent becomes a part of the business operation. Whether this be so or not, the information that we have obtained tends to suggest that the prostitutes in these organized organizations tend to be foreigners. Unfortunately, a number of these foreign girls have been attracted to prostitution unwittingly, taken to a foreign country on the promise of a conventional job and then given the choice of a slow death by starvation or prostitution. In the Arab countries, the international movement appears to occur because of government policy which seeks to restrict the stay of artists, the occupation commonly given by prostitutes, to a very limited period in the country.

The development of this type of prostitution has been attributed to the development of the tourist industry. However, it is not only tourists that demand sexual relations. Business men coming over to transact business deals appear to make the same demands. Consequently, sex has become part of the entertainment offered to foreign businessmen. They must be provided with something more than a common prostitute. In Japan, this fact has been recognized and attempts to stem it have been made with the passage of a law specifically dealing with this type of prostitution and making not only the individual who supplied the prostitute but also the corporation criminally liable for the violation of the law.

It must not, of course, be imagined that the one form of prostitution has completely replaced the other. This is not the situation. In addition to the organized prostitution, there are also the street walkers, as well as the more sophisticated hotel or club prostitutes and the call girl. They all form a part of the modern day picture of prostitution. Forming a part of this picture is the development of male prostitution, not as gigolos catering to the needs of sex starved women but as young boys catering to the needs of homosexual tourists who seem to be coming in their hordes to countries such as Panama and Sri Lanka.

13.4 The Control of Prostitution

A government has a number of ways in which to control a phenomenon. The first and the commonest method is to outlaw the behaviour, threatening violation with punishment. Here it is believed that the more severe the threatened punishment, the stronger is the government's resolve to control the phenomenon, because supposedly the likelihood that that behaviour would be avoided is directly related to the severity of the threatened punishment. It is also believed that the greater is the abhorence of the behaviour, the more severe would be the threatened punishment because the greater would be the desire to see that behaviour eradicated. As far as prostitution is concerned, this simple and direct method of criminalization and penalizing the offending behaviour has rarely been employed.

Even when the obnoxious behaviour has been outlawed, attempts have been made to obtain a better control of the phenomenon by outlawing other forms of behaviour which are thought to be links in the causative chain which ends in the obnoxious behaviour (Jayewardene, 1977: Jayewardene and

Deschamps-Eric, 1984). Thus, in the case of crimes against property, the possession of housebreaking implements, being found in a building, the possession of stolen goods and the like have been outlawed. Likewise in the case of homicide, acts likely to cause death and the possession of weapons which, when used, are likely to cause death have been legislated against. In the case of prostitution, this appears to be the most commonly used technique.

A third method used by governments is to legalize the behaviour and bring it under control through some administrative device such as licensing. By manipulating the licence fees and the taxes imposed, a government supposedly is able to control the magnitude of the phenomenon. More important, however, has been the facility that this method of control affords the government to avoid the ill effects of the undesirable behaviour without outlawing the behaviour itself. This technique too has been used by governments to control prostitution.

Among the countries considered in this study, prostitution has been outlawed in Yugoslavia, in Hungary and in Japan. In Yugoslavia, prostitution is not a felony; it is only a misdemeanour. It is so in Hungary too. In both these countries, in addition to this direct control, indirect methods of control have been adopted. Procuring, inducing, facilitating or forcing others to prostitution, soliciting, managing brothels, renting a house or part of it for prostitution, living off the avails of a prostitute all have been outlawed. Yet, prostitution does occur in both these countries though it appears to be decreasing in Yugoslavia.

In Hungary, prior to the Second World War, prostitution was permitted and legalized. All prostitutes had to be registered. For some unknown reason, the number of prostitutes registered was reducing, until in

1950 the number of prostitutes and brothels registered was small. Prostitution was then prohibited and all brothels were ordered to be closed. Rather than prostitution disappearing altogether, it started raising its head in clandestine form. The Hungarian government clamped down a special law imposing relatively severe punishments. This law has since been changed with a reduction in the severity of the punishments imposed. Prostitution has not disappeared in Hungary. It appears instead to be increasing and with it there has been a marked increase in the incidence of venereal disease. There are apparently three types of prostitutes in Hungary today. There are first the full time prostitutes catering exclusively for the tourists. Then there are the street walkers. Third are the part time prostitutes -- upper and middle class women -- seeking to supplement their income. The latter two types cater to the local population.

In both Yugoslavia and Hungary, patronizing a prostitute has not been criminalized. This is a point that has been raised in legal circles with the idea being promoted that the client of a prostitute should also be held accountable as an accomplice. In Japan, not only is prostitution made a crime, the male customer of the prostitute is also committing a punishable offence. In addition, the anti-prostitution laws of this country seek to control prostitution not only directly but indirectly as well outlawing procuring, inducing and all the other host of similar offences. Yet prostitution appears to be almost endemic, operating under a number of legitimate guises. Contact for sexual intercourse could be made in restaurants with the entertaining geisha girls or waitresses, in pubs and drinking houses with barmaids, in hotels with the housemaids, in massage parlours, in Turkish baths and in almost every legitimate place of business.

Argentina could also be considered a country that has outlawed prostitution. It prohibits brothels but in certain parts of the country such as Buenos Aires, the definition of a brothel is such that prostitution is virtually prohibited. In other parts of the country, such as Rosario, the definition is more lax and in still other parts, such as Corrientes and Comodo Rivadavia, brothels are legally permitted. Argentina is also a country that has dilly-dallied with the control of prostitution. At one time prostitution is prohibited. A year or two later that law is rescinded. Another year or two later the rescinding law is rescinded and the state of affairs restored to its original position. This has gone on ad infinitum. The police also appear uninterested in the problem and in any one year there are not more than four or five persons charged for any prostitution connected offence. An interesting observation here is that prostitution is considered less of a problem in places like Rosario where the law is relatively lax and more of a problem in places like Buenos Aires and Mendosa where the laws are strict.

The indirect form of control is the commonest one that has been utilized. In addition to Argentina, this technique has been used by Poland, Sri Lanka, Chile and Singapore. In Poland, there are sections of the Penal Code which outlaw soliciting and exposing another to venereal disease but the main law dealing with prostitution is the section of the Penal Code dealing with proxenetism outlawing procuring and soliciting and living off the earnings of a prostitute. Compared with the law in other countries, the law in Poland is relatively lax but the laxity of the law appears to be more than compensated for by the extra vigilance of the police, keeping known prostitutes under constant surveillance for violation of other laws and the commission of other crimes.

In Sri Lanks, prostitution is dealt with through the Vagrants Ordinance and the Brothels Ordinance. The Brothels Ordinance permits the police to take action against any form of organized prostitution especially in view of a recent judgment which refused to define a brothel exclusively in terms of the sexual act. The Vagrants Ordinance permits the police to take action against street walkers, against soliciting, against procuring and the like. The Vagrants Ordinance gives the police considerable powers placing the onus on the accused to prove that whatever was being done was not done for immoral purposes. The police claim that the incidence of prostitution has reduced but this does not appear to be the factual situation. There seems to be an increase not only in heterosexual prostitution but in homosexual prostitution as well. Prostitution is evidently mainly in the tourist resorts and in particular areas of these resorts and, though the police appear to allow the activity unhampered, there is no policy of enforcement decriminalization as long as it is restricted to certain areas.

Enforcement decriminalization as long as the prostitution is restricted to certain areas is the policy that is followed in Singapore. Here prostitution is not a crime but attempts have been made to control the phenomenon indirectly. The relevant law is found in the Women's Charter and it does outlaw living off the avails of a prostitute and the management of brothels in addition to procuring, inducing, facilitating and trafficking. The enforcement of the law, however, appears to be directed towards the protection of women rather than towards the prevention of prostitution. It should perhaps be pointed out that the main purpose of these laws dealing with prostitution and prostitution related offences not only in Singapore but in all countries, appears to be the protection of women and children. In all the countries, the threatened

punishment for violation of the different section is greatly enhanced when the victim is a minor, when the adult is a person in authority over the victim and when the act is accomplished through violence, threats or deceit.

Prostitution is not a crime in Chile, but attempts are made in that country to control the phenomenon indirectly. At one time houses of prostitution existed and they are claimed to have served a function, not as a simple sexual outlet but as a place for the social gathering of men. Prostitution was just one of the services available at these places. With the liberalization of sex, these places seem to have gone out of fashion. The Chilean government, desirous of ensuring that places of entertainment are not converted into brothels, has legislated that these places of entertainment should not contain any facilities for prostitution. The legal requirement has been circumvented by having the facilities for prostitution in the adjoining building unobstrusively connected to the place of entertainment.

Despite the efforts of the Chilean government, other houses of prostitution have sprung up in the form of massage parlours and relax houses. These places advertise legitimate services but almost every one seems to know that their real business is prostitution. Also developing is a call girl system. A disturbing feature in this setting is the increasing incidence of child prostitution. Prostitution in Chile appears to be reaching the boundary of tolerance. A lone crusade is being conducted against it by a Roman Catholic priest. He has met with considerable opposition even from the police but the action that he has generated appears to have made people sit up and think.

In the Arab countries any and every form of sexual deviance is looked upon as a serious offence. Adultery is outlawed and made punishable by stoning to death. Prostitution can easily be dealt with under this law and it is

in some Arab countries. However, most of the countries have laws which attempt to control the phenomenon indirectly. These laws are the legacy of the British and the French. In spite of the stringent Muslim law and the laws attempting to control the phenomenon indirectly, prostitution does thrive. One of the problems that faces these countries in this connection is the reconciliation of the strict sex laws with the demands of modern society especially one where a large transient foreign male population seeks sexual stimulation and sexual gratification. Rather than change the Muslim laws or attempt to enforce them strictly, the reconciliation has been attempted by an enforcement decriminalization which has permitted the development of a number of houses of entertainment where prostitution is one of the services provided. These services are generally provided by alien girls coming into the country for that purpose under the guise of being an artist. These girls, however, are not given unlimited rein for their activities. Their entrance into the country, the length of their stay and the place where they work are strictly controlled. In some Arab countries, prostitution has been legalized and houses of prostitution are permitted to operate. Even in these countries illegal prostitution exists and one of the dispositions available in cases of illegal prostitution is placement in a legal brothel.

Prostitution has been legalized in Venezuela and in Panama. In both these countries it is an offence to promote, facilitate or force prostitution or to live off the earnings of a prostitute. In Panama, in addition, it is an offence to expose someone to venereal disease. The main idea of these laws is to protect women and children and to prevent the exploitation of prostitution, and, as has been the situation in other countries, the punishment threatened is enhanced if

the victim is a minor, the offender a person in authority over the victim and the offence committed through violence or deceit.

What the legalization in Venezuela and in Panama has done is to permit the establishment of brothels. These are permitted to operate in special isolated areas outside the city limits, termed public tolerance areas. The prostitutes are required to submit themselves regularly to medical examinations which would ensure that they are free from venereal disease. The prostitutes are also required to pay income tax. The main idea of the legalization appears to be the control of venereal disease. But whether this technique would result in the control of the disease is debatable. The restriction of prostitution to certain areas is designed to keep the phenomenon out of the sight of the general public.

In both Panama and Venezuela one problem is illegal prostitution. In Venezuela, the problem takes the form mainly of street walking while in Panama, it takes the form of disguised prostitution associated with drinking houses and houses of entertainment. The Panamanian government has attempted to control the situation by legislatively demanding that women who work in or frequent such places carry with them an identification card which is in reality a licence to engage in prostitution. These prostitutes are looked upon as semi-professional in contradistinction to the professionals who work in the licensed brothels. Both of them -- the professional as well as the semi-professional cater to tourists. Clandestine prostitution in the form of a call girl system as well as street walkers also exist in Panama. These cater to the natives.

None of the three forms for the control of prostitution appear to be effective . Not only are they not effective, each form appears to generate a

series of other problems. The problem with the control of prostitution appears to be that there is a demand for it. This is most evident now in those countries where the tourist industry is being developed as well as in those countries where the economic development calls for a sizeable foreign population. Though liberalization of sex has reduced the demand for prostitution from the local population, the demand for it by tourists and other foreigners tends to make it a very profitable business. This is exactly what appears to be happening — the organization of prostitution as a business. The indiscriminate and financial implications of prostitution, together with the associated pleasurable connotation, has endowed the sexual intercourse of prostitution with an immorality in terms of a bygone moral philosophy. As sexual intercourse itself is not illegal, the best course of action appears to be the simple decriminalization of prositution with, of course, protection afforded children.

13.5 The Problem of Pornography

As far as pornography is concerned, there appears to be two aspects to it. The first is the immorality of gaining sensual satisfaction from viewing or reading obscene material and the second is the effect that such material has on the development of the young. As far as each of these aspects are concerned, the main problem appears to be the ready availability of pornographic material. In almost all the countries considered in this study, pornographic material does not appear to be readily available. In almost all the countries this appears to be due to the fact that the pornographic material has to be brought from outside. There is apparently no production of pornographic material locally. This has been described as being the situation in the Eastern European countries. In Hungary, however, there has been an increase in the

number of pornographic films available. This has not been due to an increase in local production, but to the development of the tourist industry.

In the Latin American countries also pornographic material appears hard to come by. Whatever material is available has been imported and available only in English so that it is available only to a very small section of the population. Here, however, the demand rather than the supply appears to be the problem. Attempts had been made in Chile to produce pornographic magazines locally but this ended as a dismal failure. Even the production of magazines like Playboy were not financial successes. The only country where the local production of pornographic material takes place on a large scale is Sri Lanka. In this country, pornographic material in English is hard to come by, maybe due to import restrictions in earlier times. But such material is readily available in the vernaculars. In spite of the ready availability of such material and the thriving trade in it, the police in Sri Lanka does not consider it a problem in that country. From their point of view, what is a problem is the availability of pornographic video cassettes which could be viewed by children in the privacy of their homes. Such appears to be the situation in Venezuela too. In Chile, where pornography is supposedly not a problem, it was not merely the absence of pornographic material that was responsible for the situation, government control is also thought to have contributed to it. Here the censoring of films, the municipal control of shows and the operation of television by the government or a university are the control procedures.

13.6 The Control of Pornography

Attempts to control pornography have taken two forms. The first are the laws designed to prohibit the production, the public exhibition, the

dissemination and the sale of pornographic material. All countries considered here have these laws on their statute books. However, the number of cases prosecuted under these laws is extremely few. Part of this is due to the fact that the definition of pornography is extremely vague. In Argentina, where there exists considerable opposition to the existing pornographic laws, it has been pointed out that the boundary between pornography and art is almost indistinguishable. Jurisprudence in that country seems to suggest that the obscenity of a work should be judged not on the basis of a single paragraph but in the context of the whole book having in mind the intention and purpose of the author. The opposition to the pornographic laws appears to have grown from attempts made by groups such as the Decency League as well as religious bodies to have films such as "Les Amants", "Jesus Christ Super Star", and theatrical productions such as "Mistero Buffo" and "Dona Flor y sus dos Maridos" banned. The pornographic laws in Sri Lanka, it is claimed, have been used by the government to control despatches by and to journalists. In Panama, the National Council of Censor is specifically enjoined to prevent the exposition of "progaganda of quaint theories of totalitarian systems" which aim at the destruction of the democratic way of like in that country.

The second form of activity attempting to control pornography is the machinery for the censorship of films. All countries considered in this study have such a mechanism. All films before they are exhibited must be reviewed and certified by a Board of Censors. What criteria are to be used by the Board of Censors in the certification of the films for the exposition are generally not spelled out. This is done only in Chile where the Board is required to ban all films which offend national dignity, promote the use of drugs and justify homosexuality. Obscenity is not a reason for refusing certification.

However, it must be used to classify films as to the type of audience to which they may be shown. This appears to be the situation in other countries as well. In Panama, we are told, pornographic films are shown openly in the movie houses during the regular hours. Films that are supposedly "hot" are shown after midnight. In the more rural areas of this country where there is usually one large hall to serve a multitude of purposes, pornographic films are permitted to be shown once a week. Rumour has it that on these occasions, the hall is packed to capacity.

In most countries pornography is a matter of little or no interest to the general public. In Poland, there is a move to decriminalize it. The arguments put forward there are:

1. the number of cases of pornography are extremely few;
2. the supposed harm that it causes is unsubstantiated;
3. the supply of pornographic material is limited; and
4. those having contact with pornographic material do so on a purely voluntary basis.

Consequently, the criminalization of pornography is only a violation of human rights.

Pertinent here is the question whether the arguments put forward in Poland apply to all countries. As far as the first argument is concerned, the number of persons charged under the pornography laws are extremely few in all countries. As far as the second argument is concerned, there is really no substantiation of the harm that pornography really does. It has, however, been claimed that in Panama, where pornography is treated lightly, that the tone and style of rape has changed and that this change has been influenced by

pornographic presentations. It is also claimed in Panama that the pornography is having an influence on juveniles and attempts are made to clamp down on it.

The supply of pornographic material is certainly limited in most countries. But this does not necessarily mean that it will remain so. If and when the demand for pornographic material is sufficiently great, the local production of pornographic material can readily produce the supply. Those who have contact with pornography certainly do so on a voluntary basis and this situation is unlikely to change.

Apart from Panama, an attempt is made to clamp down on pornography in Sri Lanka also. Here, there has been a lone crusade conducted by a journalist and, in more recent times, he has been joined by other organizations as well. The government has announced its intention to change the laws. Another country where the problem appears to be reaching the boundary of tolerance is Argentina. Here, the Sieta Dias published a series of articles on pornography. The point they tried to make, however, was that pornography was really no problem in that country, pointing out that in those places where they have pornographic shows, more is promised than is really given.

With pornography as with prostitution, attempts to control the phenomenon appear to create more problems than they solve. The number of cases dealt with are extremely few. The only thing that the law seems to do is to provide the government with a weapon that it could use to control and contain those sentiments which may be against the government. However, most people would perhaps agree that there is a need to ban what is obnoxious and reprehensible from public circulation. But they would also agree at the same time that there is a need to ensure that the greater harm of the interference

with human freedom must be prevented. As far as any action to control pornography is concerned, the basic question appears to be the harm that it does to the development of the youth. Consequently, before any decision is made, the actual effect that pornography has on the young must be ascertained.

12.7 References

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