TRAFFIC IN WOMEN AND CHILDREN

AND

COMMERCIALISED PROSTITUTION.

PRINCIPLES

FOR THE CONSIDERATION OF

Departments of Local Self-Government

and

Municipalities.

ISSUED BY

THE ASSOCIATION FOR MORAL AND SOCIAL HYGIENE IN INDIA.

(Founded in England by Mrs. Butler, 1870).

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Principles in the Campaign against Traffic in Women and Children and Commercialised Prostitution.

This paper is an attempt to clarify the legal principles on which statutory legislation should be built by Departments of Local Self-Government and Municipalities in India, when attempting to challenge commercialised prostitution, brothel-keeping, and the traffic in women and children.

In the past, the problem of commercialised prostitution and brothel-keeping has been either regulated or challenged. Under the *Regulation System* the State or Municipality attempted to make irresponsible conduct physically safe for men by segregating and registering a certain number of women, who were subjected to regular surgical examination, and, if found diseased, were compulsorily treated. This system has proved a failure, from the public health point of view, and out of 47 countries in which it was adopted, 39 have now abandoned it.

The challenge against traffic in women and children, procuration, and brothel-keeping, has been conducted on *Abolitionist principles* since Mrs. Josephine Butler's pioneer work started the campaign in 1870. The Abolitionists declare that there can be only one law, equal for men and women, They try to raise the standard of character and conduct in sexual relations, and seek to overthrow all forms of official regulation and commercialisation of vice. These principles are also the foundation of the work of the League of Nations Social Questions Section.

The Association for Moral and Social Hygiene, in India, which is the Indian Branch of the International Abolitionist Federation, endeavours to study and promote such legislative, administrative, social, educational and hygienic reforms as will tend to encourage the highest public and private morality. Therefore, in that department of legislation which is concerned with sexual matters, the Associatian condemns all measures of exception applied on the pretext of morals ; it affirms that, by instituting a system of segregation or tolerated areas, (which aim at providing for security and irresponsibility in vice), the State breaks down the whole idea of responsibility, which is the basis of all morality. The Association declares that when a woman alone is burdened with the consequence of a mutual act, the State propagates the disastrous idea that there is a different standard of morality for the two sexes.

In *India*, at present, there are three main methods of legal challenge ;—

(a) The Indian Penal Code.

(b) Provincial legislation.

(c) Municipal bye-laws.

(a) *The Indian Penal Code* :—The clauses which can be generally used, in connection with this matter, are :—
292, 293, 294, (re. obscene books, acts and songs) 359, 360, 361, 362, 363, 364 , 365, 366, 366A, 366B, 367, 368, , 370, 371, 372, 373 (re kidnapping, abduction, slavery) ;
375, 376, 377 (re. rape and unnatural offences) ;
498 (enticing away married woman for adultery),

(b) *Provincial legislation* :—Provincial legislation varies, but the majority of Provinces and some States have already adopted laws for the suppression of immoral traffic, for penalising third party profiteers, and procurers ; or those who assist in or manage, a brothel, or who live upon the earnings of illicit relationships. In Appendix A a list of these Acts is given.

(c) *Municipal bye laws* :—The promotion of public order and decency is part of the duties entrusted to Municipal administration. The most generally accepted method, in the past, in the cities of India, was the arrangement by which the Municipal Committee might, by notice in writing, prohibit in any specified part of the municipality :

1. the keeping of the brothel ;
2. the residence of a public prostitute ;

This clause has resulted in the toleration of brothel keeping in certain areas, and this pamphlet is an attempt to state clearly the principles on which municipal or provincial legislation should be, and has been, promoted.

The above quoted Municipal bye-law is REGULATIONIST in character in that a semblance of official sanction is given to brothel keeping itself, so long as it is carried on outside a prohibited area or areas.

The result of this Regulationist policy is that brothels tend naturally to become grouped in what are termed "segregated areas". In this country the tendency towards segregation is the more marked as it is in accordance with the custom of other trades, as well as the one with which we are now concerned.

As a method of dealing with prostitution, however, *segregation is useless* for a very good reason It has always been found impossible to confine prostitutes to the segregated area. In the most strictly regulated countries, the volume of clandestine prostitution has always been greater than that which came under regulation.

Besides being useless, Segregation has very evil results :—

1. It creates the greatest possible facilities for *bribery and corruption.*

2. Worse, it gives the greatest possible *prominence and advertisement to vice ;* gives it *official sanction ;* makes the brothel *convenient and easy of*

access ; by giving added publicity, *temptation is increased.* The area is a constant danger to young men and to visitors to the City. It is well-known that tonga-wallas, taxi-drivers etc. are the agents of the brothel-keepers, from whom they receive commission.

There is no force in the argument that young men will be deterred from visiting the vice area for fear that, if seen there, their business will be at once obvious. Who is there to see them, except those bent on the same business ?

3. The segregated area must inevitably be a *hot-bed of appalling disease*, and therefore constitutes a danger to the health of the whole community, which it is criminal for any public health authority to ignore, much less condone, and even encourage.

4. Last, but not least, the segregated area *exposes to moral contagion* those who are already most imperilled, and whom every consideration of interest and decency should impel society to protect—*the children of the poor.* For the segregated area will inevitably be located where the neighbours have the least influence.

These are some of the evil results of segregation ; *there are no good results whatsoever.*

In dealing with this Social Evil, what are the Aims To Be Kept In View ?

The aims are threefold :—

1. Public order and decency
2. Public health
3. Public morals.

No one of these aims is attained by the policy under consideration, viz., toleration of brothels combined with partial prohibition, resulting in the formation of segregated areas. *Public health* and a decent standard of *public morality* are certainly not secured. If a certain measure of order seems to be attained, and some people are relieved of a nuisance, the relief is dearly bought at the expense of increased disorder and immorality elsewhere. Decent citizens may be given the desired relief in other ways not open to such grave objection.

The essential thing is unconditionally to penalise the brothel-keeper, in other words, to *abolish the brothel as a tolerated institution.* Let there be no misapprehension here. No thoughtful person supposes for a moment that prostitution itself can be abolished by a stroke of the legislative pen. It cannot. *With private vice as such, the law has no concern.* The law is concerned with *crime*, an offence against society, which is defined by law and capable of proof or disproof. The law can take no cognisance of pri-

vate character, merely as much. It is obviously incompetent to do so. With private prostitution as such the law cannot deal. If two persons decide on a certain line of conduct, which, although it may be vicious, yet *involves no legal offence*, they are at perfect liberty so to act, as far as the law is concerned.

The practice of prostitution is not, in itself, a legal offence, and therefore, unless and until it is made so, it cannot be dealt with by law. The remedy for private prostitution is to be sought for in education directed towards the attainment of a high and equal moral standard of sex conduct, and improved public opinion.

Is the law then powerless to check the evil?

By no means. Justly employed, it is a powerful and indispensable instrument. For when we have said that prostitution, as a private vice, is beyond the scope of the law, we have by no means exhausted the subject.

Prostitution has also its public and criminal manifestation as an organised traffic and commerce.

This *Commercialised Prostitution*, with which we are most deeply and justly concerned, is based, like any other trade, on supply and demand.

The demand, without which there would be no traffic, comes from a large number of men, who are the ultimate financers of the traffic.

The supply consists of a smaller number of women and children, who in the process of supplying the demand, are unspeakably degraded, if not completely ruined, body and soul.

The supply is procured, often in infamous ways, by a third party who, for private gain (which is needless to say often very considerable), does all in his or her power to stimulate the demand and procure an ever-increasing supply to meet it.

The real natnre of this infamous traffic is somewhat obscured by the practice of singling out for condemnation one only out of the three parties engaged in it. The woman who forms the supply and suffers unspeakably in so doing, is contemptuously designated a "common prostitute", unjustly and illegally penalised by law, while her equally guilty partner, who creates the demand for her services, is entirely exonerated from blame, and even moves in decent society as an honourable man.

This particular obscurity and unfairness has been noted and rectified by learned judges in England, amongst whom there is gaining currency a term which more justly denotes the part played in the traffic by the men who constitute the demand ; instead of speaking non-committally of the "client" or " customer " of a common " prostitute," it is suggested that the term "common profligate" conveys a more just estimate of the situation. It certainly does and we are indebted to the learned judge who first used the term.

To sum up ;—The law then has to deal with an organised traffic, with demand, **the common profligate;** with supply, **the common prostitute;** with organiser, simulater, profiteer, the brothel-keeper, landlord procurer, soutenour living on the earning of a prostitute, taxi-drivers, tonga-walla, and so on :—**the whole army of traffickers.**

1n this connection the Report made to the League of Nations by the Body of Experts in 1917, may be quoted :—

"Abolitionists do not suppose that prostitution can be ended by legislation. What can be so ended is the disgrace of Government tolerating brothel keeping, the procuration of women, and third party exploitation for profit .....Profit is at the bottom of the business. It is the third-party element which makes the traffic in women so tragic an affair in its worst aspects. If the third-party could be eliminated, the battle would be largely won.....The difficulty of eliminating the third-party element becomes greater in countries where the keeping of brothels is legal.....The existence of licensed houses is undoubtedly an incentive to traffic, both national and international".

The common profligate, who creates the demand, is exonerated from blame, in fact treated with considerable sympathy.

The infamous trafficker and profiteer, who is the real criminal, is tolerated and given official sanction outside the prohibited area.

The common prostitute, the women who supplies the insistent demand of the profligate, who by her degradation enriches the trafficker, is alone penalised because she is an easy prey. She can be got at without difficulty, especially if poor and unprotected, because prostitution is her profession, while the profligate, so to speak, is an amateur. But prostitution is not an illegal profession, and we have no right to penalise the prostitute, as such, unless we are willing to define prostitution as a legal offence. What shadow of right is there for prohibiting the mere "residence" of a woman merely on account of her private character ? We have no right whatever to do so. It is an infiringement of common justice, on which all our law is based. "We will sell to no man, we will not deny to any man, either justice or right" ought to be the familiar words to men trained in law.

The law under discussion denies to a certain class of women both justice and right. The arguments used in defence of the injustice are no arguments at all. Advocates of this unequal law, this unjust measure of exception, are forced to fall back upon false analogies in defence of their position.

1. The analogy of the wine-shop is used. The wine-seller is prohibited from selling his wares in prohibited areas, so why not the prostitute ? To this we reply once more, wine-selling without a license is an illegal profession. Prostitution is *not.*

2. The segregated area is in the nature of a sewer, a sink, a waste-paper basket. This implies that as the sewer is necessary for public health, so is prostitution ; necessary, not for the health of the community—far from it—but for the health of the men who resort to it at the expense of the women's degradation.

The assumption that prostitution is necessary and inevitable is categorically denied by the most responsible scientists and experts of the present day. A statement on this subject was published a few years ago over the signatures of a distinguished group of British Scientists, whose authority cannot be disregarded by any but the ignorant and unenlightened. This statement should be more widely known. It is entitled "A Statement on Continence", and states emphatically that continence outside marriage has no harmful effects whatever, mental or physical, on the health of men.

3. Yet another plea in defence of the penalising of a woman who is committing no legal offence, is that the prohibition of her residence in a certain area falls within the scope of preventive law.

Here again the analogy is false. Preventive law can only be applied when it is proved that there is intent to commit a legal crime. Once more, the profession of prostitution is not an illegal one.

In this connection it is also argued that the fact that numbers of men visit the house for purposes of prostitution constitutes a nuisance. If this is admitted, then obviously the offence is committed by the men who frequent the house, causing thereby scandal and danger to morals. The obvious remedy, is to make prostitution a legal offence, penalise the profligate for frequenting a house for the purposes of prostitution, and post a policeman on the doorstep, as it is alleged in this connection the profligate is difficult to catch.

This futile attempt to check an evil traffic by regulating supply alone, while demand and profiteering are dealt with ineffectively or not all, has now been given up by practically the whole civilised world, after over a century's experience of this kind of regulation.

Out of the 47 nations who had adopted a regulationist Policy, 39 have now discarded it, in favour of the Abolition of brothels, while the remaining 8 have appointed commissions of enquiry.

It has been conclusively proved that the results of an Abolitionist policy are a progressive improvement in public health, public order and decency.

Combined with the Abolition of brothols and rehabilitation of the prostitutes, goes a constructive policy of public hygiene and education towards a higher moral standard,

No Abolitionist can be accused of encouraging prostitution by unduly defending the prostitute. Private vice, whether in man or woman, cannot be

punished by law, but any breach of public order or decency can be so punished, whether committed by man or woman.

Wherever legislation of an Abolitionist character is introduced, it is a matter of experience that the brothel-keeper does not wait to be penalised, but wisely goes elsewhere. If any of the major Provinces of India, retain a policy of toleration of brothels, it is not difficult to see where the traffickers of other Provinces will find their refuge.

It is also important to avoid the mistake of the Bengal Act (The Bengal Suppression of Immoral Traffic Act 3 1933), which in one clause penalises brothel-keeping and in another, allows brothels under certain conditions. Inquiries have revealed that but few cases under this Act have yet come before the courts. It is most important in drafting a bill that it should stand as a unity with a single aim. To introduce two different policies in one single legal instrument is not only ineffective, but ridiculous. No administration can carry out a dual policy, as the Bengal Government has found. Therefore amendments have been proposed to unify this Bengal Act.

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Appendix A.

Acts Relating to the Suppression of Traffic in Women and Children, in Force in the Various Provinces and Indian States.

1. AJMER-MERWARA :—Section 167 and 168 of the Ajmer-Merwara Municipalities Regulation, 1925 (V1 of 1925).

2. BOMBAY :—Bombay Act No. XI of 1923 : The Bombay Prevention of Prostitution Act. 1923 (As modified up to the 31st March 1934).

3. BIHAR :—The Bengal Disorderly Houses Act III of 1906.

4. BARODA STATE :—Section 356 and 357 of the State Penal Code, corresponding to sections 372 and 373 of the India Penal Code.

5. GWALIOR STATE :—Sections 357, 357A, 357B, 363 and 364 of the State Penal Code.

6. MYSORE STATE :—Regulation VIII of 1936 : Regulation for the Suppression of Brothels and Immoral Traffic in Mysore State.

7. PUNJAB :—Punjab Act IV of 1935 : The Punjab Suppression of Immoral Traffic Act, 1935.

8 SIND :—Bombay Act No. XI of 1923 : The Bombay Prevention of Prostitution Act, 1923 ; also section 41 of the Bombay District Police Act, 1890, is applied to certain town and villages in Sind.

9. BENGAL :—Bengal Act VI of 1933 ; The Bengal Suppression of Immoral Traffic Act 1933.

10. U. P. :—The United Provinces Suppression of Immoral Traffic Act, 1933.

11. KASHMIR & JAMMU.

12. NORTH-WEST FRONTIER PROVINCE.

13. TRAVANCORE.

14. CEYLON :—(Act of 1913.)

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