

Proof

Liberty of the Subject: How "Prostitutes" are Treated

15 OCT 1937

PREPARED FOR MEMBERS OF PARLIAMENT
BUT OF INTEREST TO NON-MEMBERS ALSO

The Women's Library

Pamphlet

Published (1937) by

THE ASSOCIATION FOR MORAL AND SOCIAL HYGIENE

Livingstone House, Broadway, Westminster

TELEPHONE · WHITEhall 4651

TELEPEN

380 019618 3

Price 1d.

345.
025
34
ASS



Date	21 JUL 2010
Fund	7900
Collection/ Loan Type	Collection in reply to request
Class No.	35.02534 ASS
Accession No.	B80 0196183

LAWS UNDER WHICH WOMEN ARE ARRESTED IN
ENGLAND AND WALES FOR SOLICITATION

(1) Applying only to alleged "common prostitutes":

(a) *Vagrancy Act, 1824, S.3.*—"Every common prostitute wandering in the public streets or public highways or in any place of public resort and behaviour in a riotous or indecent manner."

(b) *Town Police Clauses Act, 1847.*—"Every common prostitute or night-walker loitering and importuning passengers for the purpose of prostitution . . . to the obstruction, annoyance or danger of the residents or passengers."

(c) *Metropolitan Police Act, 1839, S.5, S/s. 11.*—"Every common prostitute or nightwalker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of the inhabitants or passengers."

(2) Laws not dealing with solicitation but often applied to women, not known to be prostitutes, for alleged annoyance of men by solicitation.

(a) *Metropolitan Police Act, 1839, S. 54, S/s. 13.*—"Every person who shall use any threatening abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned."

(b) *Parks Regulation Act, 1872: First Schedule, par. 16.*—"No person shall wilfully interfere with or annoy any other person using or enjoying a park . . . in any lawful manner."

PROCURATION BY THIRD PARTIES.

Criminal Law Amendment Act, 1885, S.2, S/s. 1.

"Any person who procures or attempts to procure any girl or woman under twenty-one years of age, not being a common prostitute, or of known immoral character, to have unlawful carnal connexion, either within or without the Queen's domains, with any other person or persons shall be guilty," etc.

S.3, S/s. 2.

"Any person who . . . by false pretences or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connexion, either within or without the Queen's dominions shall be guilty," etc.

Prepared for Members of Parliament
but of interest to non-Members also.

LIBERTY OF THE SUBJECT: HOW "PROSTITUTES" ARE TREATED

"Never forget that if we allow persons belonging to any class of the citizens to be enslaved—however obscure, despised or degraded that class may be—these will not long continue to be the only slaves. The principle of individual liberty, once infringed, will be gradually lost."—JOSEPHINE BUTLER.

The House of Commons is the guardian of those rightful liberties of the British people which have been won, bit by bit, through many centuries.

Members of Parliament towards the end of 1936 gave much time and thought to ensuring the preservation of these liberties under the clauses of the **Public Order Bill** dealing with uniforms, processions and public meetings. The representatives of the people did not want to see the law twisted and strained so that it could be used against rightful freedom instead of in its support. Their care and their efforts—in all Parties—have been appreciated by the public.

But there is still to-day one wretched and despised group of people against whom the laws are constantly twisted and strained. We refer to those women the law describes as "common prostitutes." **Do you think that because a woman—often a young girl—is immoral she has no right to legal justice?** If you do think that then it is useless to appeal to you, but we do not believe that Members of Parliament are indifferent to gross injustice, even when the person who is the subject of it is not of good moral character.

Do you know that, in England and Wales alone, nearly 3,000 women a year are imprisoned or fined for alleged soliciting to the annoyance of inhabitants or passengers, or for alleged riotous or indecent behaviour, when in fact not a person has come forward to say he was annoyed, nor is there any evidence of riotous or indecent behaviour except a police statement that

the woman is a prostitute and was soliciting? And the figures of arrests of these women in the Metropolitan area are increasing every year. (See p. 9, Appendix IV.)

Do you know that high officials of the Home Office and the Police have admitted that the law has to be strained to cover the facts? (See p. 5, Appendix I.)

Do you know that under these laws the magistrate is informed by the charge sheet, before one word of evidence is given, that the woman is a "common prostitute"? In other words, he is informed that she is a person who may be presumed to be guilty. That is contrary to every principle of British law, where every person is presumed to be innocent of the offence charged until he is proved by evidence to be guilty.

Do you know that women, not known to the police as prostitutes, are arrested for solicitation, though it is often of a quiet and non-insulting kind, and charged with "insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned"? Yet the Departmental Committee on "Street Offences," 1928, reported that "this section is peculiarly inappropriate to cases of importuning where the possibility of a subsequent breach of the peace is extremely remote." (See p. 4, Appendix I.)

Do you know that under the Parks Regulation Act of 1872 girls who have admittedly not spoken to anyone, but merely smiled at one or two men, are found guilty of "wilfully annoying" these men, even when no man has uttered a word of complaint? (See p. 9, Appendix III.)

Do you recall what the Chairman of the London Sessions said in 1922 when Sir Almeric Fitzroy appealed against a conviction for "wilfully annoying" women in Hyde Park? He allowed the appeal and said:—

"Unless some person has made a complaint, a conviction under that section ought to be impossible," and he added:

"I go further and say a man may speak to a woman without being charged with an offence or it being necessarily assumed that the woman is annoyed."

What is the result of these laws, which have been condemned not only by all the principal women's organizations but by the Street Offences Committee appointed by the Home Secretary in 1928?

Women are fined or imprisoned and earn their fines, or pay their rents after imprisonment, by more prostitution. And this is supposed to improve morals!

Will you help us to get these laws altered?

The Law allows Third-Party Traffic in Immoral Women.

Another evil result of putting immoral women outside the law is the third-party exploitation of such women for profit.

In spite of all the sensational stories, there is, in this country, no known traffic in really innocent and unconsenting girls and women, but there is a profitable third-party traffic in women of immoral character. And our law allows it and even allows "false pretences and false representations" to be used to procure such women, not for the procurer's own use but to be used by other people. (See p. 6, Appendix II, par. 1.)

The law excludes "prostitutes" or women "of known immoral character" from protection against some forms of exploitation. Hence the trouble in Soho and certain West End areas, where blocks of flats owned or rented by foreign traffickers earn large incomes in rent for these men who make a business of procuring, for the use of others, (often by false pretences and false representations), girls and women who can be called immoral. (See p. 8 for cases.)

We are well aware that it is useless to try to suppress prostitution by punishing the man and woman directly concerned, but the third-party exploitation is a different matter.

Will you help this Association to get those words "common prostitute or of known immoral character" deleted from the Criminal Law Amendment Act 1885 so that all third-party sexual exploitation of women, whether moral or immoral, shall be punished? Questions in the House and Speeches on the Home Office Estimates would be most valuable.

J. ROWNTREE GILLET, *Chairman of Executive Committee;*

JANE WALKER, *Hon. Treasurer;*

ALISON NEILANS, *Secretary.*

For fuller details of the straining of the law against women said to be soliciting and the inadequacy of the law against third-party exploitation see Appendices I, II and III. The Secretary of the Association for Moral and Social Hygiene will be glad to give further information, if desired.

4
APPENDIX I.

Letter to the Home Secretary.

December 17th, 1936.

SIR,

Re Public Order Act and Danger of Straining the Law.

The Committee of this Association have read with interest your statement in the House of Commons on Monday, December 7th, in reply to a point made in the course of his speech by Mr. Pethick-Lawrence, M.P. He was referring to Clause 5 of the Public Order Bill which increases the penalties against any person who uses "threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace," etc. Mr. Pethick-Lawrence called attention to the fact that this section in its original form under S/s. 13, Section 54, of the Metropolitan Police Act, as applied to women not necessarily known as prostitutes, "has been put into operation in many cases quite improperly by stretching these words far beyond their meaning." In reply you said:—

"I propose to draw special attention to the point that if such proceedings as I have referred to have to be taken [against women in the streets] they shall be taken under the old Section. I propose to call attention to that in any explanatory memorandum which may go to the police when the Bill becomes law."

But my Committee wish to emphasise to you that, while they thank you for your courteous offer on this point, it unfortunately will in no way protect the women not known to be prostitutes but alleged to be soliciting from having this older form of the law twisted and strained against them, as it admittedly has been. May I venture to remind you of the official admissions which were made before the Departmental Committee on "Street Offences" in 1928.

Sir Ernley Blackwell, Assistant Under-Secretary in the Home Department, was giving evidence in his official capacity and he referred to this section as one invoked "in the case of girls who are not known to be prostitutes." The Chairman, Mr. Hugh Macmillan (now Lord Macmillan) said: "But again it is a requisite, is it not, that it shall be with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned?" Mr. H. W. W. Wilberforce (now Sir Herbert Wilberforce) said: "Of course it is the fact, is it not, that that proviso is habitually disregarded in practice?" Sir Ernley Blackwell then said, referring to these words about "breach of the peace":—

"I should have said that a very strained interpretation is sometimes put upon them. The insulting words are not heard by anybody. I should say in a good many cases, if they were heard, they would not really be insulting. When a person is charged, what the girl has been doing is accosting some man, possibly without any insulting words or behaviour, and there was never the smallest likelihood that what she did would provoke a breach of the peace and nobody would imagine that a breach of the peace might be thereby occasioned."

In its final Report the Street Offences Committee stated that this section "is peculiarly inappropriate to cases of importuning, where the possibility of a consequent breach of the peace is extremely remote."

5
Yet, in spite of these official admissions and recommendations, instructions, well and kindly meant, will now be given to the police which will encourage them again to use this "peculiarly inappropriate" section of the law against women who have in fact committed no legal offence under any section of the law and who are convicted without the evidence of any person other than the police.

You further stated that acts of solicitation are usually dealt with under two other sections but these only apply to "common prostitutes" and a woman not known as a prostitute could not lawfully be charged under them. (See Vagrancy Act 1824, S. 3 and 4, and Metropolitan Police Act 1839, S.54, S/s. 11.) My Committee ask me to point out to you that these two sections are admittedly just as strained and twisted in their application as is "the breach of the peace" section, and here again, the admission was made by an Assistant Commissioner of the Metropolitan Police, the Hon. Trevor Bingham, before the 1918 Joint Select Committee of both Houses of Parliament on Criminal Law Amendment and Sexual Offences.

Mr. Bingham made, *inter alia*, the following statements and they refer precisely to those two sections which you said were usually used against acts of solicitation by women:—

"... I mean that the clauses under which solicitation is dealt with at present in London are so worded that the facts proved really do not go as far as the clause, and the clause has to be strained in order to make it cover the facts...."

"... There are two clauses under which prostitutes are dealt with in the Metropolitan Police District. Some courts prefer to use one clause and some courts prefer to use the other, which is itself somewhat inconvenient. One of them is Section 54, subsection 11, of the Metropolitan Police Act, 1839; the other is Section 3 of the Vagrancy Act, 1824...."

"... In the Metropolitan Police Act it is necessary to prove loitering, to prove that the woman is known as a prostitute, and to prove solicitation to the annoyance of the inhabitants. In fact the evidence as regards annoyance is extremely thin, and that is another objection that we have to that clause...."

"... The same criticism to some extent applies to the Vagrancy Act, where the offence is 'wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner.' Where that section is made use of, the only evidence of behaving in a riotous or indecent manner is the same evidence of solicitation."

"... It does not look as if 'riotous or indecent behaviour' was merely intended to be nothing but solicitation. That clause is also open to the criticism that the evidence does not really bring the case within the wording of the sections...."

Thus the evidence given by high and responsible Home Office and Police officials proves that in dealing with one unpopular group in the community every one of the laws used against them is strained, and in addition the evidence is "extremely thin." Yet first by charging a woman or girl not known as a prostitute under the "breach of the peace" section and next by charging her as a "prostitute" on the strength of the first conviction obtained by straining the law, some

2,000 women and girls* a year are fined or imprisoned as "common prostitutes" and not only retain this label of stigma for life but pass at once into a class of legal outlaws subjected to special legislation and exempt from certain protections of the ordinary law.

My Committee appreciate the efforts made by you as Home Secretary and by members of the House of Commons to ensure that the Public Order Act shall not in its use lessen the rightful liberties of the people, but they desire me to say, with all respect, that the true test of our desire to uphold individual liberty and responsibility is whether or not we are prepared to work for the rightful liberty even of those of whose activities we may strongly disapprove. If the Home Secretary and Parliament take pains to ensure that even the immoral girl or woman shall receive strict justice under the law, then there would be no fear that the legitimate rights and liberties of other groups would suffer or that the law would be twisted and strained against any person because he or she was a member of an unpopular group.

My Committee ask me to beg your personal as well as official interest in this problem of justice to a particularly unhappy and despised group of women.

Yours faithfully,

(Signed) ALISON NEILANS,
Secretary.

The Rt. Hon. the Secretary of State
for the Home Department,
Home Office, Whitehall, S.W.1.

* Now nearer 3,000.

APPENDIX II.

Letter to the Under-Secretary of State : Home Office.

Ref. Nos. :

652,357/2
652,340/37
652,340/47

January 8th, 1937.

SIR,

Procuration and the 1885 Criminal Law Amendment Act.

The Executive Committee of this Association has, for the last eight years, been calling attention to the fact that under Section (2) of the C.L.A. Act 1885 it is no offence to procure a "prostitute" or a woman of "known immoral character" to have "unlawful carnal connection" with any other person or persons. Further, that it is no offence (see Section (3) S/s. 2) to use "false pretences or false representations" to procure women of known immoral character for that purpose.

In 1910 the British Government signed, and in 1912 ratified, the 1910 International Convention for the Suppression of the White Slave Traffic. The Government thereby pledged its word

to punish those who, to gratify the passions of another person entice or procure, **even with her consent**, a woman or girl under age, or who entice or procure for another any woman or girl over age, by violence, threats, **fraud** or any compulsion.

Note.—"Under age" and "over age" means under or over 20 completed years.

In 1921 the British Government signed, and subsequently ratified, a further International Convention against Traffic in Women under which the age limit was raised from 20 to 21 completed years of age. Further, the Government pledged itself "to take all measures to discover and prosecute persons who are engaged in the traffic in children of both sexes" and who, in order to gratify the passions of another person, have procured, enticed, or led away, even with her own consent, a woman or girl under 21 completed years of age.

In 1933 the British Government signed yet another International Convention against Traffic in Women which entirely abolished the age-limit in cases where girls or women of any age were procured for immoral purposes "to be carried out in another country."

In 1934 this Association called the attention of all the principal organizations in this country concerned in these matters to the fact that since 1910 the British Government had pledged itself to punish traffickers in girls under 20 and, since 1921, in girls under 21, even when the girls were consenting parties to the immoral purposes, but that those pledges could not be fulfilled so long as the 1885 Criminal Law Amendment Act definitely excluded the procuration of "prostitutes and women of known immoral character" from punishment, even where "false pretences and false representations" are employed to achieve the procuration. As you are aware, the traffic in women and girls is mainly a traffic in women of immoral character procured for immoral use by other persons, and so long as British law excludes from punishment those who procure such women, the British Government is not fulfilling its pledged obligations under the International Conventions of 1910, 1921 and 1933.

As a result of the efforts of this Association and its issue of detailed information, other societies have also taken action to protest to the Home Office against the existing British law. This Association is one of the societies composing the British National Committee, and it is in connection with a letter the Home Office has recently sent in reply to the British National Committee of the International Bureau for the Suppression of Traffic in Women that my Committee requires me to ask you for further information. The Home Office reply quoted the official statement of H.M. Government made at the last Assembly to the League of Nations Committee dealing with this subject. This official statement contains, *inter alia*, the following points:—

"British law in practice and actual application covers this ground thoroughly and provides adequate penalties against persons who engage in traffic in women and children. . . ."

"The law of the United Kingdom is so worded as to be effective for practical purposes. . . ."

If the British law does cover the ground thoroughly, may I on behalf of my Committee ask again now for the information you were unable to give me in February, 1935, namely, "which are the sections in the British law which carry out the obligations entered into by those nations which have ratified the 1910 and 1921 Traffic in Women Conventions?" On this I must now inquire also concerning the obligations agreed to by the British Government by signature under the 1933 Convention?

A further point on which my Committee desires information is concerning the following cases :—

(1) **Harold Brown** : tried Central Criminal Court, October 20th, 1933, before the Recorder. In this case Detective-Sergeant Fury gave the main evidence for the prosecution, which included a charge of conspiring to procure a woman to become a prostitute. It was disclosed that certain Frenchmen owned a number of furnished flats in the Bond Street district and let them to women, originally Frenchwomen, at rentals of £5 to £10 a week. Brown arranged their marriage to British men so that they obtained British nationality and could not be deported. Detective-Sergeant Fury stated that it was greatly to be regretted that they could not put some of these Frenchmen in the dock. He added that to cope effectively with the latter developments of this traffic the law would have to be altered.

The Recorder said : " I hope that a *lacuna* in our law which has been brought to my attention will receive the careful attention of the Home Office, the Director of Public Prosecutions and the Legislature."

(2) **Ferdinand Antonio Modena**, charged before Mr. Harold McKenna at Marlborough Street Police Court in November, 1935, with an offence under the Aliens Act. (See *Times* report, 13/11/35.) Police-Inspector Benton stated in evidence that Modena had no previous conviction in this country but he continued : " To my knowledge this man has been engaged in this country for the last ten years procuring women for prostitution. . . . To my knowledge he is interested in six different women, five of them being French and one English. One of them was convicted only last week. He brought her from France and took her to a room in Archer Street, W. He then introduced her to a flat in Park Lane and she started a life of prostitution."

My Committee desires to know why, if the British law is " effective for practical purposes," Modena is allowed, to the knowledge of the police, to engage for ten years in this country in the procurement of women ?

My Committee suggests that these two cases do not appear to support the statement of H.M. Government that the existing law is " effective for practical purposes " and I am instructed, therefore, again to urge upon you the amendments to the 1885 Criminal Law Amendment Act this Association has proposed to you since 1934, namely, the deletion of the words which specifically allow certain forms of procurement of women, even by false pretences and false representations, so long as the women can be described as of " known immoral character."

Until the age-limit is removed, the nationality laws are amended, and traffickers are punished for procuring women, whether moral or immoral, this third-party exploitation of prostitution, which is contrary to the principle of British law, will inevitably continue.

This Association therefore asks for an assurance that action on these lines will be no longer delayed.

Yours faithfully,

(Signed) ALISON NEILANS,

Secretary.

The Under-Secretary of State,
Home Office, Whitehall, S.W.1.

APPENDIX III.

Case of Elaine M—, a young woman tried on January 15th, 1937, at Marlborough Street Police Court, before Mr. Boyd, on a charge under the Parks Regulation Act, 1872, of wilfully annoying persons lawfully using Hyde Park.

According to a lengthy press report in the *Evening News*, Monday, January 18th, 1937, the police evidence admitted that nothing was known against this young woman and that she did not speak to any person but was alleged to have smiled at one or two men and patted a man's dog. No person complained of any annoyance said to have been caused by her and there was only police evidence of such annoyance which the girl denied. On this charge she was held in custody all night and finally discharged under the Probation of Offenders Act, which means she was held to be guilty. Having regard to the fact that the next time this young woman walks in Hyde Park, or stops at a meeting to listen to a speaker, or smiles at a man, she may run the risk of being arrested as a " prostitute " since, following this charge, she will now be " known to the police," this Association asked the Home Secretary to have inquiries made into this case, and satisfy himself that this young woman was in fact proved to be wilfully annoying any person or persons in a way which legally justified arrest. all night in custody, and discharge under the Probation Act, as guilty? We received nothing but a formal acknowledgment.

We then tried to have a Question put in Parliament. That was refused by the Chair on the ground that it was a criticism of a decision of the Court. The M.P. concerned then wrote to the Home Secretary about it and was informed by letter that the Home Secretary has no authority to question the decision of a magistrate or to advise him in matters of law.

But why should not the Home Secretary draw the attention of the Commissioner of Police to this straining of the law? Also it is quite usual for the Home Secretary to circularize the magistrates from time to time with suggestions affecting the administration of the law.

end
line
as
shown

APPENDIX IV.

" Prostitutes " arrested by the Metropolitan Police.

Year.	Total Arrests.	Number Convicted.	Year.	Total Arrests.	Number Convicted.
1920	2,442	1,886	1928	2,224	2,023
1921	2,497	1,946	†1929	723	569
1922	2,187	1,708	1930	695	618
*1923	590	451	1931	955	861
1924	1,072	823	1932	1,014	949
1925	1,608	1,359	1933	1,241	1,138
1926	2,453	2,042	1934	1,656	1,437
1927	3,065	2,737	‡1935	2,870	2,600

Explanatory Notes.

* The sudden fall in arrests of " prostitutes " in 1923 was due to the effect of the Appeal decision in the Fitzroy case in 1922.

† There were grave police scandals brought to light by Lord Byng as Police Commissioner when he took over in the autumn of 1928. The trial of Police-Sergeant Goddard in January, 1929, revealed " a veritable entanglement of police corruption " in the Piccadilly and Leicester Square areas from 1922 onwards. After Goddard was fined £2,000 and sent to prison in 1929, the arrests of women fell, and kept low for several years, while public order in the streets was good.

‡ Note that in 1935 the arrests of women increased by over 1,200 in one year.

E. R. CRUBE, LTD.,
PRINTERS,
POPLAR WALK, CROYDON.