

3-1998

Teen Prostitution in Japan: Regulation of Telephone Clubs

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Andrew D. Morrison, Teen Prostitution in Japan: Regulation of Telephone Clubs, 31 *Vanderbilt Law Review* 457 (2021)

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NOTES

Teen Prostitution in Japan: Regulation of Telephone Clubs

ABSTRACT

The history of prostitution in Japan may be traced to the eighth century. Originally, prostitutes carried on their trade individually and independently. Around the thirteenth century, however, the nature of prostitution changed, as prostitutes formed small enterprises located in red-light districts. By the seventeenth century, red-light districts existed throughout Japan.

In 1900, the Japanese government, realizing the widespread proliferation of the prostitution industry, passed the Regulation for Control of Prostitutes. The law regulated prostitution nationwide by requiring prostitutes to register with local government authorities and to undergo regular health inspections. This system continued until the end of World War Two, when, under pressure from the U.S. Occupation Forces, Japan abolished legalized prostitution and enacted the current Antiprostitution Law.

Today, notwithstanding the Antiprostitution Law, prostitution is a booming industry in Japan. This Note focuses specifically on the recent growth in Japanese teen prostitution among teenage girls. Although the exact cause of the problem is not easily determined, legislatures throughout Japan have held terekura, or telephone clubs, responsible.

This Note analyzes whether the existing laws, including recently passed legislation, will provide an adequate framework to resolve the current Japanese teenage prostitution problem. Part II discusses the history of prostitution and its control in Japan. Part III discusses the societal factors that have led to the recent outbreak of teen prostitution. Part IV analyzes the existing laws and their inability to provide a viable legal framework for the current problem. Finally, Part V suggests legal solutions based on both existing laws and proposed statutes.

TABLE OF CONTENTS

I.	INTRODUCTION	459
II.	HISTORY AND REGULATION OF PROSTITUTION	459
	A. <i>Japan Before National Regulation of Prostitution</i>	460
	B. <i>National Regulation of Prostitution</i>	463
	C. <i>The Path to Abolition of Licensed Prostitution and the Antiprostitution Law</i>	465
III.	SOCIETAL FACTORS LEADING TO THE RECENT OUTBREAK OF TEEN PROSTITUTION	472
	A. <i>Attitudes Toward Sex in Japan</i>	472
	B. <i>Prostitution: An Accepted Reality in Japan</i> ...	474
	1. Types of Prostitutes.....	475
	2. Telephone Clubs	478
	C. <i>Japanese Teenage Prostitutes</i>	479
IV.	THE INABILITY OF EXISTING LAWS TO REGULATE TEEN PROSTITUTION	482
	A. <i>National Laws</i>	482
	1. The Antiprostitution Law.....	482
	a. Overview of the Statutory Scheme	483
	b. General Provisions	483
	c. Penal Dispositions	483
	d. Guidance Disposition	484
	e. Protection and Rehabilitation	485
	2. The Enterprises Affecting Public Morals Law	485
	a. Overview of the Statutory Scheme	485
	b. Permits and Reports	486
	c. Regulations of <i>Fuzoku Eigyo</i>	486
	d. Regulation of <i>Fuzoku Kanren Eigyo</i>	487
	e. Supervisory Provisions.....	488
	B. <i>Prefectural Laws</i>	488
	1. Telephone Club Law	489
	a. Overview of the Structure of the Telephone Club Law ...	489
	b. Definition of Telephone Club and Registration	489
	c. Regulation on Telephone Club Operations.....	490
	d. Enforcement Power	491

2.	Prohibition on Sexual Acts with a Juvenile.....	492
C.	<i>Problems with the Existing Legal Framework.</i>	492
V.	LEGAL SOLUTIONS.....	494
VI.	CONCLUSION.....	496

I. INTRODUCTION

Originally, in telephone clubs, a man could pay a fee and then wait in a room for a call from a woman, frequently a young girl. Once the woman called, the two would have a conversation that often resulted in an arrangement to meet at another time for an *enjo kosai* (compensated date). Telephone clubs have diversified, however, making it even easier for men to arrange such contacts. The clubs now sell "two-shot dial" telephone cards that allow men to call from anywhere and be connected with women. Another recent development is the *dengon dial*, a message system that allows men to call a designated number and, for a certain fee, listen to messages left by women and then leave a message. Again, the ultimate goal is to meet later for a compensated date.

Realizing their business hinges on a constant supply of women, telephone clubs allow women to participate in calls at no cost. In addition, the clubs solicit women by advertising in magazines, in newspapers, on subway trains, and by direct mail. They also distribute tissues with the club's telephone number at train stations and hang announcement signs on utility polls. Thus far, these tactics have been successful in recruiting women and teenage girls to call the clubs to meet men.

In response to the significant impact telephone clubs have had on the number of teenage girls engaging in prostitution, juvenile welfare groups, parent-teacher associations, and legislatures throughout Japan have worked together to pass laws regulating the telephone clubs.

II. HISTORY AND REGULATION OF PROSTITUTION

Virtuous men have said both in poetry and classic works that houses of debauch for women of pleasure and for streetwalkers are the worm-eaten spots of cities and towns. But these are necessary evils and, if they be forcibly abolished, men of unrighteous principles will become like ravelled thread.¹

1. J.E. DEBECKER, *THE NIGHTLESS CITY OR THE HISTORY OF THE YOSHIWARA YUKWAKU* (5th ed. 1971) (The Legacy of Ieyasu).

A. Japan Before National Regulation of Prostitution

In 1612, Shoji Jinyemon, a wealthy pimp, petitioned Japan's feudalistic government for the right to build a red-light district in Edo, the capital.² Five years later, the government granted its consent but mandated that the area be regulated.³ The regulations required the licensed quarter, Yoshiwara,⁴ to be walled, surrounded by a moat, and open only during the day. In addition, the brothels had to be of a predetermined size and devoid of decoration.⁵ Prostitutes could not work outside the area and could only work at one brothel within the area.⁶ The regulations further provided that all patrons had to register and could not stay in the area longer than twenty-four hours.⁷

2. NICHOLAS BORNOFF, *PINK SAMURAI LOVE, MARRIAGE & SEX IN CONTEMPORARY JAPAN* 159 (1991); STEPHEN & ETHEL LONGSTREET, *YOSHIWARA: CITY OF THE SENSES* 10-11 (1970). In his application to shogun leader Ieyasu Tokugawa, Jinyemon pointed out that a licensed prostitution quarter would allow for effective surveillance because any suspicious men entering the quarter would be reported to the authorities. CECILIA SEGAWA SEIGLE, *YOSHIWARA: THE GLITTERING WORLD OF THE JAPANESE COURTESAN* 22 (1993); DEBECKER, *supra* note 1, at 3-5.

3. See Seigle, *supra* note 2, at 23. The five rules of the quarter were as follows:

1. No establishment shall be permitted to operate outside the licensed quarter. Regardless of the origin of requests, [the] courtesan shall not be sent for prostitution beyond the walls of the quarter (, . . . nor could prostitutes go from one house to another.).

2. No bordello client shall be permitted to stay longer than a day and a night.

3. Courtesans shall not wear luxurious clothing embroidered or appliquéd in gold and silver. They shall wear simple blue cotton clothes wherever they are.

4. The buildings in the pleasure quarter shall not be sumptuous and they shall conform to the Edo architectural style. (Their inhabitants must perform whatever municipal duties that are expected of them.)

5. Anyone of unknown origin or strange behavior found wandering within the quarter shall give his address regardless of his class—whether he is a samurai or of the merchant class. If still under suspicion, he shall be reported immediately to the district police.

Id.; BETTINA L. KNAPP, *IMAGES OF JAPANESE WOMEN: A WESTERNER'S VIEW* 127-28 (1992) (these regulations are a combination of the rules as depicted in both of these sources); see also BORNOFF, *supra* note 2, at 161; DEBECKER, *supra* note 1, at 5-6.

4. This section of the city, characterized by its many weeds and rushes, was viewed as a dismal place and therefore given the name *Yoshiwara* (moor of rushes). Another reading of the name in Japanese was later used to characterize the Yoshiwara as "Joyful Moor." SEIGLE, *supra* note 2, at 24 (provides a map of the Yoshiwara on p. 25); Longstreet, *supra* note 2, at 9; see also KNAPP, *supra* note 3, at 127.

5. See SEIGLE, *supra* note 2, at 24-25; KNAPP, *supra* note 3, at 127-28.

6. KNAPP, *supra* note 3, at 127.

7. BORNOFF, *supra* note 2, at 161.

This system continued until 1657, when much of Edo burned to the ground.⁸ After the fire, the government provided financial compensation, enabling the Yoshiwara to be rebuilt.⁹ This time, despite placing the Yoshiwara farther from the downtown area, the government was more lenient in its regulations.¹⁰ Most notably, the brothels were larger and the gates could stay open all night.¹¹

As a result of these changes, prostitution flourished and innovative brothel-like establishments emerged.¹² These new establishments often were disguised as *machiya* (meeting houses), or *chaya* (tea houses), but were in essence nothing more than brothels.¹³

As the industry grew, so did the need for women.¹⁴ To fill their needs, brothel owners sent agents to the country to buy young women from their families, using indentured service contracts.¹⁵ The reality, however, was that the girls were being sold into slavish bondage to brothel owners.¹⁶ This practice continued until the end of the feudal era.¹⁷

In 1868, Japan, at the prompting of Western forces,¹⁸ adopted a modern government based on Western ideals of human

8. *Id.*; see also SEIGLE, *supra* note 2, at 48-50.

9. BORNOFF, *supra* note 2, at 161; see also SEIGLE, *supra* note 2, at 48-50.

10. BORNOFF, *supra* note 2, at 161; see also SEIGLE, *supra* note 2, at 48-50; KNAPP, *supra* note 3, at 128.

11. BORNOFF, *supra* note 2, at 162.

12. *Id.*; see also KNAPP, *supra* note 3, at 128. Children performing dances outside the brothels were also used to attract patrons to the brothels. KNAPP, *supra* note 3, at 128. Eventually, the children were replaced by singers who, in turn, were replaced by geishas. *Id.*

The prostitutes were also appraised like actresses by professional critics. IAN BURUMA, A JAPANESE MIRROR: HEROES AND VILLAINS OF JAPANESE CULTURE 75 (1984). In addition, guidebooks (*joro hyobanki*) contained detailed reviews of the various accomplishments of the participants. *Id.*

13. BORNOFF, *supra* note 2, at 161.

14. KNAPP, *supra* note 3, at 128.

15. *Id.* The brothel owners used rural government agents to locate women and paid the agents a 10% commission. *Id.*

16. MINISTRY OF JUSTICE, MATERIALS CONCERNING PROSTITUTION AND ITS CONTROL IN JAPAN 1 (1957) [hereinafter MINISTRY OF JUSTICE PROSTITUTION MATERIALS]. The girls' clothes were removed from their rooms each night to prevent them from running away. KNAPP, *supra* note 3, at 128. If a girl became sick, she was relegated to a small dark room away from any of the clients. *Id.* If the girl was dying, she was returned to her parents. If a girl died on the premises, it was not uncommon for a brothel owner to cast the body into a common pit. *Id.*

During the eighteenth century, there were reports of double suicides by the prostitute and her customer. *Id.* In these situations, some brothel owners, as a deterrent, would expose the dead bodies in the streets, as if they were animals. *Id.*

17. MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 1.

18. In 1853, American Commodore Matthew Perry forced open Japanese ports. Western nations moved quickly and imposed various one-sided treaties on the Japanese government. See J. Mark Ramseyer, *Indentured Prostitution in Imperial Japan: Credible Commitments in the Sex Industry*, 7 J.L. ECON. & ORG. 89,

rights.¹⁹ Four years later, in 1872, the new government demonstrated its dedication to these principles of freedom and human rights by freeing 231 Chinese coolies²⁰ from a Peruvian ship.²¹

The *Maria Luz*, a Peruvian ship on its way back to Peru from China, stopped in Yokohama, Japan, for repairs.²² While docked, one of the coolies jumped overboard and swam to an English ship docked nearby.²³ The ship's captain, not knowing what to do, sent the coolie to the local English consulate, who contacted the Japanese Foreign Ministry.²⁴ The Japanese government detained the *Maria Luz* and, after an investigation, sent all the coolies back to China.²⁵ The Peruvian government protested Japan's actions and demanded compensation for its loss.²⁶ Eventually, the imperial Russian court intervened as an arbitrator.²⁷ In support of its claim for compensation, Peru protested that Japan permitted traffic in persons, such as prostitutes, and therefore should not be able to prohibit other countries from the same act.²⁸ Notwithstanding the Peruvian contention, the Russian court upheld Japan's actions.²⁹

Japan was embarrassed by Peru's accusations, however, and immediately liberated all indentured prostitutes.³⁰ The women could leave the brothels and the courts would entertain no suits

97-98 (1991). The treaties included extraterritorial provisions requiring that Westerners have court proceedings in front of their own judges under their own laws. See EDWIN O. REISCHAUER, *THE JAPANESE TODAY: CHANGE AND CONTINUITY* 79 (1988). The treaties also contained provisions limiting Japanese tariffs, which left the economy open to exploitation from the West. See *id.*

19. MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 1.

20. Coolies are unskilled laborers, formerly from India or China. WEBSTER'S NEW WORLD DICTIONARY (Victoria Neufeldt et al. eds. 1990).

21. See Ramseyer, *supra* note 18, at 97; see also MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 1.

22. See Ramseyer, *supra* note 18, at 97.

23. See *id.*

24. See *id.*

25. MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 1.

26. *Id.*

27. See Ramseyer, *supra* note 18, at 97.

28. MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 3.

29. *Id.*

30. See Ramseyer, *supra* note 18, at 97; see also MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 2-3 (containing the text of Dajokan Cabinet Order No. 295 of October 2, 1872). Section three of the order provides, "The prostitutes . . . shall be emancipated and no suit for loans relative to them will be accepted." MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 2-3. The government, to implement the decree, passed Ministry of Justice regulation No. 22, dated October 9, 1872. Ramseyer, *supra* note 18, at 97 (quoting Ministry of Justice Reg. No. 22 of October 9, 1872). Section two of the regulation provides, "Indenture contracts rob people of their rights and reduce them to horses and cattle. As one cannot demand that horses and cattle repay their debts, neither can one demand that prostitutes and geisha repay their indenture amounts." *Id.* The regulation became infamous for its metaphor. See *id.*

regarding the prostitutes' debts.³¹ The order, however, did not ban prostitution; it merely voided the indentured service contracts.³²

Shortly thereafter, cities throughout Japan recognized the loophole in the law and by the end of 1872 adopted room-rental licensing schemes, making it clear that prostitution was still legal.³³ Under this system, the prostitute was a licensed "independent contractor" and the brothel was a "room rental service."³⁴ This trend continued, and by 1875 the national government had reinstated indentured contracts.³⁵ The law stated that the sale of human beings was illegal but also articulated that arrangements in which a debtor repaid a debt through a fixed-price labor contract were legal.³⁶

B. National Regulation of Prostitution

Between the years 1899 and 1901, prostitutes throughout the country, at the urging of various religious groups, quit the industry.³⁷ Seizing on this opportunity, the religious groups and

31. See *id.* In total, approximately 50,000 prostitutes left the industry. See Minoru Yokoyama, *Emergence of Anti-Prostitution Law In Japan—Analysis from Sociology of Criminal Law*, 17 INT'L J. COMP. & APPLIED CRIM. JUST. 211, 212 (1993).

32. See Ramseyer, *supra* note 18, at 97; Yokoyama, *supra* note 31, at 212.

33. See Ramseyer, *supra* note 18, at 97; Yokoyama, *supra* note 31, at 212.

34. Ramseyer, *supra* note 18, at 97; see Yokoyama, *supra* note 31, at 212; see also Elmer H. Johnson, *Japan Reacts Against Street Prostitution: The Anti-Prostitution Law and Women's Guidance Homes*, 17 INT'L J. COMP. & APPLIED CRIM. JUST. 29, 30 (1993) (discussing the room-rental system).

35. See Ramseyer, *supra* note 18, at 97.

36. See *id.* at 98 (citing Dajokan fukoku (Cabinet Proclamation No. 128, Aug. 14, 1875)). The ambiguity in the new law persisted for many years until the Supreme Court interpreted its meaning. See *id.* In a series of decisions citing the 1872 decree outlawing indenture contracts, the Court stated that indentured contracts were illegal but that any loan agreements related to the contract were separate and valid. See *id.* (citing *Musashino v. Kushi*, 2-3 Daihan minroku 50, 52 (S.Ct. Mar. 1, 1896) and *Itai v. Yamada*, 6-2 Daihan minroku 81 (S.Ct. Feb. 23, 1900)). In *Musashino v. Kushi*, Iki Kushi agreed to work as a prostitute for several years, but later wanted to quit. See *id.* The Court, citing the 1872 regulation banning indentured contracts and not the 1875 decree permitting them, allowed her to quit. See *id.* In *Itai v. Yamada*, Futa Itai agreed to work as a prostitute for thirty months, but wanted to quit early. See *id.* The Court held that the service contract and the loan agreement were separate agreements and allowed her to quit. See *id.*

37. The Japanese Salvation Army opened a home to protect prostitutes who escaped from brothels. See Yokoyama, *supra* note 31, at 212-13. The Salvation Army also marched into the red-light districts and tried to encourage prostitutes to give up their profession. See *id.* Figures compiled by the Tokyo Metropolitan Government indicate that the number of prostitutes in brothels decreased from 52,274 in 1899 to 40,195 in 1901. See *id.* at 213. In 1900, a young American, despite being injured in the process, assisted a woman who was fleeing from a house of prostitution in Nagoya, Japan. See Taki Fujita, *Prostitution Prevention Law*, 24 CONTEMP. JAPAN 484, 484 (1956). The case was later submitted to the

other social reformists attempted to persuade the government to abolish the red-light districts altogether.³⁸ Their efforts were unsuccessful, but the government responded by passing the Regulation for Control of Prostitutes.³⁹ The law attempted to limit prostitution to only those women officially registered with the government.⁴⁰ To register, prostitutes had to be eighteen years of age, undergo regular health inspections, and live and work within the confines of the red-light districts.⁴¹

In 1908, realizing the Regulation for Control of Prostitutes was not eliminating unregistered prostitution, the government passed the Ministry of Home Affairs Ordinance No. 16.⁴² The law stated that any person practicing unregulated prostitution or procuring or soliciting for unregulated prostitution would be punished by penal servitude.⁴³ In addition, police board

District Court in Nagoya, where the judge held that advanced payment for the woman's service was invalid. *See id.* at 485. With this ruling as precedent, more and more women quit the prostitution industry. *See id.*

38. *See id.*; *see also* M. Takeyasu, *Prostitution in Japan*, 5 INT'L REV. CRIM. POL. 50, 50 (1954) (describing the history of control of prostitutes). Groups such as the Kyofu Society of Japanese Christian Women, the Kakusei Society, and the Japanese Salvation Army actively opposed prostitution. *See* Johnson, *supra* note 34, at 30-31. These groups not only lobbied to outlaw prostitution but also marched into red-light districts calling for prostitutes to give up their trade. *See id.* While they were unsuccessful in changing national policy, they were instrumental in closing brothels in 22 prefectures. *See id.*; *see also* Yokoyama, *supra* note 31, at 212-13 (discussion of attempts to combat prostitution).

39. MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 3-7.

40. *See* Johnson, *supra* note 34, at 31.

Article 2: No women shall engage in prostitution unless she is registered on the list of prostitutes. The list of prostitutes shall be kept in the police office having jurisdiction over the place wherein the prostitute is. Any person registered on the list of prostitutes shall be placed under the supervision officer for control.

MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 4-7 (with the text of the Regulation for Control of Prostitutes).

41. Article 1: No women under eighteen years of age shall be a prostitute. Article 7: No prostitute shall live outside the area designated under the ordinance of the prefecture. Article 8: Prostitution shall not be practiced in any other place than the room for hire designated by the government office. Article 9: The prostitute shall undergo health examinations in accordance with the provisions of the ordinance of the prefecture.

MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 4-7 (containing the text of the Regulation for Control of Prostitutes).

42. *Id.* at 7; Johnson, *supra* note 34, at 31.

43. MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 7 (article 1 item (2) of the ordinance provided that any person who had practiced unregulated prostitution or performed the act of procurement or solicitation should be punished with a penal detention not exceeding 30 days); Johnson, *supra* note 34, at 31; *see also* Stephan M. Salzberg, *The Japanese Response to Aids*, 9 B.U. INT'L L.J. 243, 259 n.62 (citing S. YAMAMOTO, NIHON KOSHŌSHI [A HISTORY OF

regulations, purporting to eliminate unlicensed prostitution, practically encouraged business in the licensed areas.⁴⁴ This action was not welcomed by the ever-increasing number of groups of social reformists who seized every opportunity to outlaw prostitution.⁴⁵ Ultimately, however, history deflated the spirit and the power of these groups as World War Two began and the country began preparing for and engaging in war from 1931 until 1945.⁴⁶

C. *The Path to Abolition of Licensed Prostitution and the Antiprostitution Law*

At the conclusion of World War Two, many Japanese women became prostitutes to support themselves and their families.⁴⁷ Tokyo alone contained 670 licensed houses of prostitution and 70,000 prostitutes who catered to the U.S. military.⁴⁸ Unlike former generations, these women were comparatively well-educated and more organized.⁴⁹ For instance, free-lance streetwalkers of the central Tokyo area formed the White Bird Society and streetwalkers in other parts of Tokyo called themselves the White Chrysanthemums.⁵⁰ As prostitution

JAPANESE PUBLIC PROSTITUTION] 444 (1983) (this book was written in Japanese and therefore the Author cites it in the same manner as Salzberg).

44. See Fujita, *supra* note 37, at 485.

45. The *Kyofukai* (Women's Christian Temperance Union) and the Salvation Army led the efforts to outlaw prostitution. See Fujita, *supra* note 37, at 485-86. After a fire in the Yoshiwara in 1921, these groups increased their efforts and were joined by others within Japan and from abroad. The League for the Abolition of Prostitution in Britain dispatched one of its members to Japan to assist with its efforts. See *id.* In Japan, Saburo Shimada, Iso-o Abe, and Kajiko Yajima led other reformists in forming the *Kakuseika*, an organization designed to eliminate all licensed quarters of prostitution. See *id.*; Yokoyama, *supra* note 31, at 213-14; Johnson, *supra* note 34, at 31.

46. See Fujita, *supra* note 37, at 486-87.

47. MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 8; BORNOFF, *supra* note 2, at 217. The primary reason was that prostitution was a necessary form of employment after the war. Many women lost their husbands during the war, and, because of Japan's dismal economic state, were unable to find other means to support themselves. Despite this fact, other sources indicate there were additional reasons for the sudden increase in the number of streetwalkers. See Takeyasu, *supra* note 38, at 55-56. There is evidence that some women preferred prostitution to make a living. *Id.* at 55. Also contributing to the increased number of streetwalkers was the destruction of many licensed quarters during the war. *Id.*

48. See Johnson, *supra* note 34, at 31.

49. Takeyasu, *supra* note 38, at 55. Ninety percent of prostitutes before World War Two had no schooling or had only finished elementary school. After the war, 33% to 50% had completed elementary school and 20% to 25% had started or completed high school. *Id.* at 55.

50. See Johnson, *supra* note 34, at 31.

boomed, the Japanese government debated how to alleviate the problem.⁵¹

Then, in January 1946, the Supreme Commander for the Allied Powers (SCAP)⁵² wrote a memorandum mandating that the Japanese government eliminate all laws and ordinances permitting licensed prostitution.⁵³ The memorandum instructed the Japanese government to nullify all contracts that bound, either directly or indirectly, women to act as prostitutes.⁵⁴ The memorandum further stated that maintenance of licensed prostitution contravenes the ideals of democracy and the development of individual freedom throughout the nation.⁵⁵

In receipt of the memorandum, the Japanese government finally acted, and one year later it promulgated Imperial Ordinance No. 9 concerning the punishment of persons who make women act as prostitutes.⁵⁶ A bill for the punishment of

51. MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 8. The Japanese government's inaction was at least partially responsible for the continuation of the problem. *Id.*

52. General Douglas MacArthur acted not just for the United States but for the coalition of victorious nations, under the title of SCAP. *See* Reischauer, *supra* note 18, at 104. The occupation was governed almost entirely by U.S. forces and General MacArthur. *See id.* General MacArthur was a self-willed, dynamic, and charismatic leader who took only general guidance from Washington and none from the other allied nations. *See id.*

53. MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 9. Japanese officials were confused by the phrase "licensed prostitution." They were of the opinion that prostitutes were not licensed but, rather, areas of prostitution were licensed and the prostitutes themselves only voluntarily registered. *See id.* at 9-10.

SCAP established very strict guidelines during the first phase of the occupation; no fraternizing with Japanese was permitted. Bornoff, *supra* note 2, at 217. Eventually, the restrictions loosened and dancing was allowed if the couples remained six inches apart. *Id.* As the occupation continued, American soldiers began to ignore the rules and interacted directly with Japanese prostitutes. *Id.* Prostitutes who catered to American soldiers were given the name "pan-pan girls." *See id.*; Fujita, *supra* note 37, at 488.

54. MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 9 (paragraph two of the memorandum); *see also* Takeyasu, *supra* note 38, at 51. There was also some confusion regarding this demand. The Japanese government believed such contracts had been invalid since 1896, when Article 90 of the Civil Code was passed. MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 10.

55. *Id.* (paragraph one of the memorandum).

56. Takeyasu, *supra* note 38, at 51.

Article 1: Any person who induces a woman to commit prostitution in an embarrassing way against her will, even if not by using violence or by intimidation, shall be sentenced to imprisonment with labour for not exceeding three years, or to a fine not exceeding 10,000 yen. Article 2: Any person who makes a contract and agreement of letting a woman commit prostitution shall be sentenced to imprisonment with labour for not exceeding one year, or to a fine not exceeding 5,000 yen. Article 3: Any person who attempts to commit crimes of the preceding two articles shall be punished.

prostitution was presented to the Second Diet⁵⁷ in 1948.⁵⁸ The bill went further than the ordinance and outlawed prostitution.⁵⁹ This provision created tremendous tension as opponents of the bill argued that prostitutes were victims and therefore should not be punished.⁶⁰ The opponents bolstered their argument by citing judicial committee reports indicating that the bill, if passed into law, would be unenforceable and thus ineffective.⁶¹ In the end, the opponents prevailed and the bill did not become law.⁶²

Despite this apparent failure, both the national and local governments continued to move toward regulation of the prostitution industry.⁶³ The national government passed the Child Welfare Law,⁶⁴ the Labor Standard Law,⁶⁵ the Employment Security Law,⁶⁶ the Venereal Disease Prevention Law,⁶⁷ and the

Id.; see also MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 10.

57. The Japanese congress is called the "Diet" and consists of two houses, the House of Representatives (the lower and more powerful house) and the House of Councillors (the upper and weaker house). See REISCHAUER, *supra* note 18, at 261-62.

58. Takeyasu, *supra* note 38, at 51; MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 11.

59. Takeyasu, *supra* note 38, at 51. Article 1: Any person who commits an act of prostitution and the other party involved shall each be punished with penal servitude of not more than six months or a fine of not more than 5,000 yen, or detention or a minor fine. *Id.*

60. MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 11.

61. Takeyasu, *supra* note 38, at 51.

62. See MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 11.

63. At the national level, several councils were established to discuss the problem of prostitution. In 1948, the Deliberative Council on Problems of Females and Juveniles was formed. In 1953 and 1955, respectively, the Council on Coping with Problems of Prostitution and the Deliberative Council on Coping with Prostitution were formed. See Yokoyama, *supra* note 31, at 214.

64. Jidō fukushihō [Child Welfare Law], No. 164 (1947) (making it illegal for a person to force a child under 18 years of age to practice prostitution); Takeyasu, *supra* note 38, at 52 (discussing the law); MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 48 (containing the text of the law in its original form).

65. Rōdō Kijunhō [Labor Standard Law], No. 49 (1947) (stipulating that, unless permitted by law, no person shall obtain profit from the arrangement of the employment of others); Takeyasu, *supra* note 38, at 52 (discussing the law); MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 44-45 (listing the text of this article in its original form).

66. Shokoegyō anteihō [Employment Security Law], No. 141 (1947) (providing criminal punishment for anyone who conducts or engages in the labor exchange labor recruitment or labor supply project for the intention of inducing workers to do works injurious to the public health or morals"); Takeyasu, *supra* note 38, at 52 (containing the text of the law); see also MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 47-48.

67. Seibyō yobō [Venereal Disease Prevention Law], No. 167 (1948). "Any sufferer from venereal disease liable to infect others, who has engaged in prostitution, shall be punished with penal servitude not exceeding two years or a fine not exceeding 10,000 yen." *Id.* art. 26; Takeyasu, *supra* note 38, at 51 (containing the text of the law); see also MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 49-50.

Enterprises Affecting Public Morals Law,⁶⁸ all of which indirectly restricted the prostitution industry.⁶⁹ Many local governments passed their own ordinances regulating prostitution and some, most notably Tokyo, enacted ordinances outlawing prostitution.⁷⁰

Notwithstanding this trend, prostitution in Japan did not disappear.⁷¹ As they had done during the previous century, brothel owners resorted to various schemes to maintain their businesses.⁷² Some reverted to room-rental arrangements, while others transformed their brothels into restaurants and saloons operating in the same manner as a brothel.⁷³ The government designated special areas for these restaurants and saloons and nominally placed them under police control;⁷⁴ in reality, however, these areas were not regulated. The red-light districts that existed before Imperial Ordinance No. 9 were open again.⁷⁵

In addition to the national government's obvious efforts to limit prostitution to designated areas, several other reasons contributed to the continued growth of the prostitution industry throughout the nation. First, many Japanese believed the

68. Fuzoku eigyo to no kisei oyobi gyomu no tekiseika to ni kansuru horitsu [Law Concerning the Regulation and Rectification of Operation of Enterprises Affecting Public Morals], No. 122 (1948) [hereinafter Enterprises Affecting Public Morals Law]. See Salzberg, *supra* note 43, at 260 n.69 ("Generally, the law has been rendered in English as concerning 'enterprises affecting public morals.' The term fuzoku comes with a connotation of sexual behavior."); see also FOREIGN LAWS AND ORDINANCES RESEARCH GROUP, MINISTRY OF JUSTICE, CRIMINAL AFFAIRS BUREAU, HORITSU YOUNG TAIYAKU SHU 18 (1995) (translating the law as: Law Regulating Adult Entertainment Businesses, etc.) [hereinafter Foreign Laws and Ordinances Research Group]. For an explanation of the Enterprises Affecting Public Morals Law, see *infra* Part IV.

69. See generally Takeyasu, *supra* note 38, at 51-52 (explaining the various laws that indirectly affected the prostitution industry).

70. As of December 1952, 44 autonomous entities had ordinances controlling prostitution. Twenty of the provisions punish the practice of prostitution itself. Thirty-nine stipulated the punishment of solicitation. *Id.* at 52 n.14; MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 11, 40 (containing these statistics and the text of Tokyo Municipal Ordinance No. 58, May 31, 1949 which prohibits prostitution).

71. Takeyasu, *supra* note 38, at 52.

72. *Id.* Typically, contracts existed between the prostitutes and the brothel keepers such that profits from the prostitution were divided between them, with the brothel keepers receiving 60% and the prostitutes receiving 40%. *Id.*

73. See Fujita, *supra* note 37, at 487. The new establishments were called "special restaurants," where the women worked as "waitresses." See *id.*; see also MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 11.

74. See Fujita, *supra* note 37, at 488. According to statistics compiled by the Women's and Minors' Bureau of the Ministry of Labour, there were 17,226 brothels and 58,963 prostitutes in these areas in June 1952. Takeyasu, *supra* note 38, at 53 Table I and n.b.; Sachiko Kanematsu, *The Women of Kabukicho*, JAPAN Q., Jan.-Mar. 1988, at 85.

75. Takeyasu, *supra* note 38, at 53. For the prostitutes, life after the abolition of the licensing system did improve somewhat. *Id.* The prostitutes were no longer required to live and work in certain areas, though the brothel and restaurant owners continued their attempts to limit the women's freedom. *Id.*

licensed prostitution system, outlawed at the request of the occupation forces, never should have been abolished.⁷⁶ Most significantly, many police officials had little interest in enforcing the regulations.⁷⁷ Thus, when enforcement agencies did act, they tended to concentrate on the sudden increase in streetwalkers rather than on the brothels.⁷⁸ The second reason for the continued growth was the significant influence brothel owners had on their local areas.⁷⁹ In many instances, the brothel owners were members of local legislative bodies or supported members of these legislative bodies.⁸⁰ As such, they had considerable influence in either preventing regulatory laws from being enacted or neutralizing the laws by ensuring they were not enforced.⁸¹ The third reason was the incomplete national legislation. Imperial Ordinance No. 9 punished only those who made women prostitute themselves but did not punish the act of prostitution.⁸² Therefore, enforcing this regulation required the women's testimony. Because the prostitutes were often controlled by the brothel owners or had entered the industry of their own free will, enforcement was difficult.⁸³

Despite the ineffectiveness of Imperial Ordinance No. 9 and the unwillingness of national and local governments to regulate the prostitution industry, one change enacted during the occupation eventually led to the passage of Japan's current Antiprostitution Law. Under the new constitution, drafted by the occupation forces⁸⁴ and signed into law by the Japanese government, women were given the right to vote and the right to

76. *Id.* Of 2300 voters surveyed in the Kanto region, 43.6% said brothel quarters were necessary and 26% said they were necessary to a certain degree. In another survey conducted in March 1953, 27% said the former licensed prostitution system was necessary and another 25% said it was necessary to a certain degree. *Id.* at n.18.

77. *Id.* at 53.

78. *Id.* at 54.

79. *Id.* The formally licensed quarters had a great bearing on the economy and the development of the towns where they were located. The brothel owners recognized their economic power and used this to ensure their businesses were not eliminated. *Id.*

80. *Id.*

81. *Id.* The brothel owners' ability to control was most pronounced when the controlling police were an autonomous entity. They were able to exert influence, however, even when the police were a branch of the national police force. *Id.*

82. *Id.*

83. *Id.* Despite enforcement difficulties, it was possible to apply and carry out the ordinance. Nonetheless, officials throughout the country, even in areas where local regulations had been enacted, did not enforce the ordinance in the formerly licensed areas. *Id.*

84. Unsatisfied with the constitutional reform efforts of the Japanese government, General MacArthur had his staff draft a new constitution in February 1946. See REISCHAUER, *supra* note 18, at 106.

be elected to public office.⁸⁵ Women immediately used these rights, and in the 1946 election, thirty-nine women were elected to the House of Representatives of the Diet.⁸⁶ After the occupation ended, these female legislators became the catalysts for the Antiprostitution law.⁸⁷

In March 1953, the female Diet members submitted an antiprostitution law similar to the one proposed in 1948;⁸⁸ however, the House of Representatives was suddenly dissolved and the bill did not pass.⁸⁹ Frustrated by their colleagues' actions, the female Diet members formed a group for the specific purpose of passing an antiprostitution law.⁹⁰ The bills they submitted were ultimately defeated in the 19th, 21st, and 22nd sessions of the Diet.⁹¹

As these results indicate, significant opposition forces were working to ensure that an antiprostitution law was not enacted.⁹² Most notable were the racketeers, who resorted to almost any means to ensure the failure of each bill.⁹³ Their activities included bribing conservative male Diet members and disrupting the election campaigns of female Diet members.⁹⁴ Professional prostitutes also worked against the passage of an antiprostitution

85. KENPŌ, art. 15, reprinted in LAWRENCE W. BEER & HIROSHI ITOH, THE CONSTITUTIONAL CASE LAW OF JAPAN, 1970 through 1990, at 655-56 (1996) [hereinafter BEER & ITOH].

The people have the inalienable right to choose their public officials and to dismiss them.

2. All public officials are servants of the whole community and not of any group thereof.

3. Universal adult suffrage is guaranteed with regard to the election of public officials.

4. In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

Id.

86. See Johnson, *supra* note 34, at 35. Thirty-nine of 79 female candidates were elected to the House of Representatives of the Diet. See *id.*

87. See Yokoyama, *supra* note 31, at 215; Johnson, *supra* note 34, at 34-35; Sachiko, *supra* note 74, at 84.

88. See Yokoyama, *supra* note 31, at 215 (Tamayo Miyagi was the driving force behind these efforts); Takeyasu, *supra* note 38, at 57.

89. See Yokoyama, *supra* note 31, at 215.

90. See *id.* The women acted independently of their respective parties. See *id.*

91. See *id.* They were forced to present these bills to the Diet on their own because the official committees deliberated extensively without taking any formal action. See *id.* The endless deliberation of the official councils may also have contributed to the failure of the bills presented by the women legislators. See *id.*

92. See *id.*

93. See *id.* The brothel owners even masked their arguments by claiming the bills presented to the Diet contained no provisions to protect and rehabilitate prostitutes. See Fujita, *supra* note 37, at 492.

94. See Yokoyama, *supra* note 31, at 215.

law by lobbying in the Diet.⁹⁵ Outside the Diet, women throughout the country organized and joined the women legislators in their fight to establish an antiprostitution law.⁹⁶ Amid this controversy, in December 1953, the Diet established the Council on Coping with Problems of Prostitution.⁹⁷ The committee consisted of eight nongovernment members, including four women.⁹⁸ Approximately two years later, in June 1955, another antiprostitution bill was submitted to the Diet.⁹⁹ Once again, the Diet rejected the bill, but it formed a new, more powerful committee within the cabinet entitled the "Prostitution Countermeasure Council."¹⁰⁰ The Diet mandated that the group discuss the prostitution problem in an expedient manner and also agreed, on the committee's advice,¹⁰¹ that a new bill would be introduced in the next session of the Diet.¹⁰² On April 9, 1956, the committee reported its findings, and on May 2, 1956, the bill was submitted to the Diet.¹⁰³ Finally, on May 24, 1956, the Diet enacted Law No. 118, the Prostitution Prevention Law.¹⁰⁴

95. Professional prostitutes held a national convention to establish a labor union in March 1956. *See id.* At the convention, the prostitutes insisted they had a vested right to earn their livelihood through prostitution. *See id.*

96. *See id.* Outside of the Diet more than 40 women's groups, including the Fujin Kyofu Kai [Woman's Christian Temperance Union], the Y.W.C.A., and the League of Women Voters in Japan, joined together to establish the Committee for Promotion of the Enactment of the Prostitution Prevention Law, resulting in greater public awareness. *See Fujita, supra* note 37, at 491.

97. *See Fujita, supra* note 37, at 490-91; MINISTRY OF JUSTICE, THE ADMINISTRATION OF THE ANTI-PROSTITUTION LAW IN JAPAN 3 (1960) [hereinafter ADMINISTRATION OF THE ANTI-PROSTITUTION LAW].

98. *See Fujita, supra* note 37, at 491.

99. *See id.* One major incident, the so-called Matsumoto case, occurred around this time and also increased public awareness. *Id.* Matsumoto, a contractor in Kagoshima Prefecture, coerced approximately 15 girls into prostitution under the pretext of a part-time job. *Id.* He then offered the girls as a type of bribe to some "influential people" in the area. *Id.* Because of the inadequate nature of the law, however, neither Matsumoto, the "influential people," nor the girls were held criminally liable. *Id.*

100. ADMINISTRATION OF THE ANTI-PROSTITUTION LAW, *supra* note 97, at 3; MINISTRY OF JUSTICE PROSTITUTION MATERIALS, *supra* note 16, at 12-13.

101. ADMINISTRATION OF THE ANTI-PROSTITUTION LAW, *supra* note 97, at 3.

102. *Id.*

103. The draft submitted by the committee was criticized by the Committee for Promoting Enactment of Antiprostitution Law and the female Diet members of the Socialist Party for providing prostitutes with few protective measures and for not punishing both prostitutes and their customers. *See Yokoyama, supra* note 31, at 215, 217 n.7.

104. Immediately before the bill passed, there were 789 red-light districts with 16,208 operators and 59,298 prostitutes. *See Fujita, supra* note 37, at 493.

III. SOCIETAL FACTORS LEADING TO THE RECENT OUTBREAK OF TEEN PROSTITUTION

At least three distinct societal factors have contributed to the recent outbreak of teen prostitution. At the base is the traditional acceptance of sexual relations as a natural phenomenon, rather than a sinful act. On top of this is a societal acceptance of prostitution in a limited capacity. Finally, these principles have interacted with a modern consumer-driven society in which possession of consumer goods indicates social status.

A. Attitudes Toward Sex in Japan

In Japan, sex and sexual relations are not viewed as moral issues as they often are in Western countries, and in the United States in particular.¹⁰⁵ Rather, sex is viewed as a natural phenomenon, like eating, to be enjoyed in its proper place.¹⁰⁶ The fact that Japanese homes are usually small, however, can make finding the proper place to express sexual desires difficult for married couples, unmarried couples, and others.¹⁰⁷ To fill this void, the Japanese developed love hotels, which, at their basic level, serve the same purpose as hourly motels do in the United States.¹⁰⁸ Many of these hotels, however, are much more than places to conduct sexual activities.¹⁰⁹ The more elaborate love

105. "We have many taboos on erotic pleasure which the Japanese do not have." RUTH BENEDICT, *THE CHRYSANTHEMUM AND THE SWORD* 183 (1946); see also ROBERT C. CHRISTOPHER, *THE JAPANESE MIND: THE GOLIATH EXPLAINED* 62 (1983); see Johnson, *supra* note 34, at 32 (citing Benedict).

106. See REISCHAUER, *supra* note 18, at 175; Benedict, *supra* note 105, at 183. There is little condemnation of sexual acts, only anxiety over their social consequences. See REISCHAUER, *supra* note 18, at 176. Historically, Japanese revered fertility in agriculture and in humans. See *id.* Phallic symbols were common objects of worship in rural Japan until recent times. *Id.* In parts of rural Japan, premarital sexual relations were condoned and marriages often were not registered until the bride proved her ability to bear children. *Id.*

107. REISCHAUER, *supra* note 18, at 179; BORNOFF, *supra* note 2, at 21.

108. BORNOFF, *supra* note 2, at 17-20. A popular singer, Midori Satsuki, opened a love hotel in Tokyo during the mid-1970s called Hoteru Japan. *Id.* at 17. She described the benefits of her hotel in the following manner: "I wanted to make it a dreamland for the night . . . where the dreams of young lovers will come true. And even if they are not lovers . . . they should think of themselves as such in my hotel." *Id.* at 17. In 1984, there were approximately 35,000 love hotels nationwide, with nearly 4000 in Tokyo. *Id.* at 18.

109. *Id.* at 20. Some of the hotels are modeled after famous architectural structures, including Versailles, the Statue of Liberty, and the Disneyland castle. *Id.* at 20.

hotels provide a fantasy world where sexual desires can be expressed.¹¹⁰

Despite this general acceptance of sex, a sexual double standard for men and women exists.¹¹¹ In general, men are free and women are restricted.¹¹² Before marriage, Japanese men freely engage in premarital sex, whereas women may do so but must be discreet.¹¹³ This phenomenon is described as *honno* (true situation) and *tatema* (front).¹¹⁴ The *honno* is that young women do have premarital sex and the *tatema* is that neither they nor their families admit this fact.¹¹⁵

Once a couple is married the sexual double standard becomes more entrenched.¹¹⁶ Women are expected to remain faithful to their husbands regardless of their husbands' behavior.¹¹⁷ In contrast, men are given far more sexual freedom.¹¹⁸ Familial responsibilities and socialization patterns reflect these distinct roles.¹¹⁹ Women are expected to manage the home, raise the children, and monitor the family's finances.¹²⁰ Accordingly, most of their social interaction is centered around

110. Love hotel rooms are decorated distinctively, to suggest different themes. Examples of decor include tatami matting and plastic cherry trees for a classic Japanese touch, Hawaiian Tropicana, medieval Western torture chambers, or heated swimming pools with chutes to send the lovers sliding into each other's arms. *Id.* at 19. Other amenities include revolving and vibrating beds, waterbeds, and beds that massage or rock like cradles. *Id.* Rooms may also contain ionized air, sing-along karaoke tape decks, jacuzzis, and sunken baths. *Id.*

111. See REISCHAUER, *supra* note 18, at 175; CHRISTOPHER, *supra* note 105, at 62. In earlier times, Japanese men overwhelmingly had their first sexual encounter with a prostitute. BORNOFF, *supra* note 2, at 282. This is changing as more and more men share their first sexual experience with their girlfriends. *Id.*

112. See REISCHAUER, *supra* note 18, at 175; CHRISTOPHER, *supra* note 105, at 62.

113. REISCHAUER, *supra* note 18, at 179; BORNOFF, *supra* note 2, at 49. There are two words in Japanese for virgin: *shojo* (for female) and *dotei* (for male). YUKIKO TANAKA, CONTEMPORARY PORTRAITS OF JAPANESE WOMEN 92 (1995). *Shojo* is considered positive, while *dotei* implies an undesirable situation. *Id.*

114. See BORNOFF, *supra* note 2, at 49.

115. See *id.* Many Japanese use a system called *omiai* to meet potential partners to marry. It is not an arranged marriage but a system in which people have the opportunity to meet different people. The arrangements may be done by their own families or by another person acting as a broker. If the parties do not like each other, they are free to stop the meeting. See REISCHAUER, *supra* note 18, at 177-78.

116. See REISCHAUER, *supra* note 18, at 179; CHRISTOPHER, *supra* note 105, at 62.

117. See REISCHAUER, *supra* note 18, at 179; CHRISTOPHER, *supra* note 105, at 62.

118. See REISCHAUER, *supra* note 18, at 179; CHRISTOPHER, *supra* note 105, at 62; ANNE ALLISON, PERMITTED & PROHIBITED DESIRES: MOTHERS, COMICS, AND CENSORSHIP IN JAPAN 47 (1996); BORNOFF, *supra* note 2, at 461.

119. See REISCHAUER, *supra* note 18, at 179; CHRISTOPHER, *supra* note 105, at 66.

120. See REISCHAUER, *supra* note 18, at 179; CHRISTOPHER, *supra* note 105, at 66; ALLISON, *supra* note 118, at 47.

the family.¹²¹ Men's primary responsibility is to earn an income to support the family.¹²² This stereotypically requires them to spend long hours either at work or socializing with coworkers, and therefore their social life is often conducted away from the family.¹²³ Today, these stereotypes are changing, but their significance in society remains.¹²⁴

B. Prostitution: An Accepted Reality in Japan

Notwithstanding the Antiprostitution Law, prostitution in Japan is a well-established industry, accepted as a fact of life by most Japanese, including the police.¹²⁵ While exact numbers are not available, estimates indicate that as many as 300,000 women work in the prostitution industry nationwide.¹²⁶ Excluding recent technological developments allowing for cheaper and quicker forms of prostitution, the industry exists primarily in the same locations as it did before passage of the Antiprostitution Law.¹²⁷

The physical location of the industry is not coincidental; prostitution has occupied a unique place within Japanese society throughout history.¹²⁸ The Antiprostitution Law attempted to

121. See REISCHAUER, *supra* note 18, at 179; ALLISON, *supra* note 118, at 47-48.

122. See REISCHAUER, *supra* note 18, at 179; ALLISON, *supra* note 118, at 47-48.

123. See REISCHAUER, *supra* note 18, at 179; ALLISON, *supra* note 118, at 47-48.

124. See REISCHAUER, *supra* note 18, at 179.

125. Salzberg, *supra* note 43, at 258. In a national survey conducted in 1976 by the prime minister's office, 55% of respondents said prostitution should not be tolerated, 31% said prostitution was not desirable but should be overlooked, and 6% indicated there was nothing wrong with it. *Id.* at 258 n.59 (citing NAIKAKU SORIDAJIN KANBO KOHOSHITSU [OFFICE OF THE PRIME MINISTER], Baishun ni Kansuru Seron Chosa [Public Opinion Survey Concerning Prostitution] at 5 (Nov. 1976)). In a similar survey conducted in 1985, 64.6% said prostitution should not be permitted, 27.4% said it should be overlooked, and 4.9% said there was nothing wrong with it. *Id.* (citing BAISHUN TAISAKU SHINGIKAI, BAISHUN TAISUKO NO GENKYŌ [THE CURRENT STATE OF PROSTITUTION POLICY] at 2-3 (1986)).

Japanese police often know the location of prostitutes but generally ignore their presence, due to the structure of the Antiprostitution Law. See DAVID H. BAYLEY, FORCES OF ORDER: POLICING MODERN JAPAN 109 (1991). For a discussion of the structure of the Antiprostitution Law, see *infra* Part IV.

126. Salzberg, *supra* note 43, at 258; see also BORNOFF, *supra* note 2, at 331 (stating that conservative estimates place the number of prostitutes at well over 250,000).

127. Senzoku 4-Chome in Tokyo is the old Yoshiwara and is still called the Yoshiwara by Soapland employees, devotees, and magazines promoting the trade. *Id.* at 263-64; see Bayley, *supra* note 125, at 108 (noting that the Yoshiwara in Tokyo is still widely identified with prostitution).

128. See Salzberg, *supra* note 43, at 258; see BAYLEY, *supra* note 125, at 108-10. The Yoshiwara and other designated areas kept this fantasy world physically separated from everyday society. See, e.g., BURUMA, *supra* note 12, at 76.

change this tradition. On the surface, it has succeeded. The brothels that existed before the law's passage are now closed; however, the law was not able to eliminate the fantasy world from the Japanese mind. As a result, the prostitution industry has reinvented itself in a guise reminiscent of the meeting places and tea houses that proliferated during the reign of the Yoshiwara.

Japanese society is able to maintain this duality by applying the ever-useful *honne* and *tatemae* phenomenon. The *honne* is that prostitution exists in Japan, and the *tatemae* is that prostitution is illegal and thus does not exist in Japan. In this way, both parts of society are satisfied. The police and the government, on one hand, are allowed to claim that prostitution and brothels, which previously existed in Japan, are gone forever. Japanese men, on the other hand, are satisfied because they know that in reality prostitution exists in Japan and they can enter this fantasy world whenever they choose.

The *mizu shobai* (the water trade)¹²⁹ is the modern *honne* and *tatemae* accepted expression of the fantasy world.¹³⁰ The *mizu shobai* includes all businesses that in the eyes of the government are enterprises affecting public morals.¹³¹ This is a vast category including anything from restaurants and pubs to striptease theaters and bath houses with private rooms.¹³² Although the category is broadly inclusive, prostitution is not instantly thought to be included. Indeed, the sexual services provided by the various establishments are not advertised, but are nonetheless well understood.

1. Types of Prostitutes

Within this realm of hidden existence, five recognized categories of prostitutes exist: streetwalkers (*gaishogata*), hostesses at bars and other regulated establishments (*fuzokueigyogata*), private room bath attendants (*koshitsu yokujogata*), hostesses or employees at adult entertainment spots (*shin fuzokutengata*), and call girls (*hakengata*).¹³³

As of the mid-1980s, streetwalkers constituted approximately fifteen percent of the prostitutes in Japan.¹³⁴ Most of these

129. This expression is a poetic metaphor for impermanence because business in this realm tends to come and go like floating water. BORNOFF, *supra* note 2, at 225. There is also speculation that the term came about as an allusion to unlicensed prostitutes aboard little pleasure boats on the rivers in earlier times. *Id.*

130. *See id.* at 223-25.

131. *Id.*

132. *Id.* at 224; Salzberg, *supra* note 43, at 261; *see infra* Part IV.

133. Salzberg, *supra* note 43, at 262.

134. *Id.* at 263.

women walk the streets within the mizu shobai and are permitted a degree of freedom by the police.¹³⁵ In fact, a mutual understanding between the prostitutes and the police often exists.¹³⁶

Hostesses at bars and other regulated establishments often work at small bars, holding as few as ten customers.¹³⁷ The patrons customarily are all male, and the bar provides the female companionship of hostesses, waitresses, dance partners, and the like.¹³⁸ The prostitution usually occurs at nearby love hotels.¹³⁹

Private room bath attendants work at private room bath houses, or "soaplands."¹⁴⁰ Unlike the previously mentioned bars, all of the activities occur within the soapland.¹⁴¹ Each attendant has her own room, which she rents on a monthly basis; the act of prostitution occurs in the room.¹⁴²

The hostesses or employees of adult entertainment spots work at a variety of ever-changing establishments, demonstrating that prostitution in Japan truly is a fantasy world.¹⁴³ In the late 1970s, no-panty tea shops, where women served the customer without wearing underwear, were the rage.¹⁴⁴ These were replaced by *fashion* and *herusu salons* (massage parlors).¹⁴⁵

135. See BAYLEY, *supra* note 125, at 110-11. Police around the major entertainment areas learn to recognize habitual prostitutes and their protectors. *Id.* at 110. The officers often know the prostitutes' names. *Id.*

136. See *id.* Police and prostitutes often exchange banter like opponents in a well-understood game. *Id.*

137. These are traditionally packed side by side. Salzberg, *supra* note 43, at 261-62.

138. *Id.*

139. *Id.*

140. Soaplands, which came into existence shortly after the licensed brothels closed, were initially called *torukos*, named after Turkish baths, but after protests by a Turkish diplomat the name was changed. Bornoff, *supra* note 2, at 265. In 1985, the Japanese Bath Association held a competition to select a new name. *Id.* Eventually a panel of judges selected "Soapland." *Id.*

141. *Id.* at 269.

142. *Id.* at 268-69; BURUMA, *supra* note 12, at 102; see BAYLEY, *supra* note 125, at 108.

143. See Sebastian Moffett, *Strange Moves: In Japan, Sexertainment Reveals Bizarre Versatility*, FAR EAST ECON. REV., Dec. 14, 1995, at 29; BORNOFF, *supra* note 2, at 295-300.

144. ALLISON, *supra* note 118, at 170 (describing *nopan kissa*—no panties coffee shop where the waitresses wore clothes but no underpants and customers could look but not touch). There were also karoake (karoake service with *nopan* waitresses), *nozoki* clubs (Peeping Tom clubs where customers look up through the glass ceiling to a simulated subway car where women sit wearing no underpants). *Id.*; see also BORNOFF, *supra* note 2, at 295-96 (stating that the *nopan kissa* that still exist are actually more like prostitution); Moffett, *supra* note 143, at 30; BURUMA, *supra* note 12, at 111-12.

145. BURUMA, *supra* note 12, at 111-12; BORNOFF, *supra* note 2, at 296-98 (describing what actually occurs in a health massage).

Today the rage is image clubs, in which the men are allowed to act out various fantasies usually prohibited in everyday life.¹⁴⁶

The last category of prostitutes, the call girl, is the fastest growing and is said to account for more than half of Japan's prostitution.¹⁴⁷ Originally, call girl establishments required the man to call a central line and arrange to meet a woman at a designated place, before the couple proceeded to a love hotel.¹⁴⁸ Lover banks, where men pay a membership fee and receive regular dates, emerged from these basic call girl prostitution businesses.¹⁴⁹ The lover bank acts as an agent, maintaining computer files on both the clients and the women.¹⁵⁰

This type of information is extremely valuable as Japan's sex and prostitution industry thrives on the fetishes of the male customers.¹⁵¹ One particularly well-developed fetish is the Lolita complex, in which older men desire young girls.¹⁵² The call girl prostitutes and date clubs often satisfy this demand by arranging for the women to meet the men at high schools.¹⁵³ In addition, other non-prostitution businesses, such as *buru-sera* shops, have developed.¹⁵⁴ These shops sell used underwear, uniforms, and other garments previously worn by senior high school girls.¹⁵⁵

146. See Moffett, *supra* note 143, at 29-30. Image club is *ime-kura* in Japanese. The theme of the fantasy may include being on the subway, in the office, or in a doctor's office. The price is approximately \$200 an hour. *Id.*

147. Salzberg, *supra* note 43, at 263. These types of establishments require little overhead or capital expenditure, are fairly mobile, and until the recent laws were enacted, were almost invisible to police. *Id.* For a discussion of the new law, see *infra* Part IV. In the mid-1980s, 42% of prostitutes were call girls. Salzberg, *supra* note 43, at 263.

148. Salzberg, *supra* note 43, at 263.

149. *Id.* at 280-81.

150. *Id.*

151. See Moffett, *supra* note 143, at 29 ("Japan's sex industry is notorious for following the waves of offbeat sexual fashion.").

152. See Michael Stroh, *Girls Who Offer Sex Upset Japan*, L.A. TIMES, Sept. 30, 1996, at A1. See generally Michael A. Lev, *In Japan, Schoolgirls Accepted as Porn Objects: Women's Rights Activists Raise Protests, Only to Be Drowned Out By a Cacophony of Images that Equate Innocent 9th Graders with Playboy Bunnies*, CHI. TRIB., Feb. 16, 1997, at C4.

153. BORNOFF, *supra* note 2, at 279.

154. *Buru-sera* is the abridged word for bloomers and sailor suits worn by senior high school girls. See National Police Agency, *Government of Japan*, JAPAN WHITE PAPER ON POLICE 1994, at 70 (Police Association trans.) [hereinafter JAPAN WHITE PAPER]. *Buru* refers to bloomers; *sera* refers to the sailor uniforms female high school students wear. ALLISON, *supra* note 118, at 196 n.18.

155. These types of establishments have become widespread across the country. See JAPAN WHITE PAPER, *supra* note 154, at 69. Some dealers sell these garments with pictures of the girls for approximately \$60 at a rate of 100 yen to \$1. See Moffett, *supra* note 143, at 29.

2. Telephone Clubs

The advent of portable phones (*keitai denwa*), beepers (*pokketo beru*), telephone cards (*terefon kado*), and multiple phone lines has allowed for even more innovative services that cater to the Lolita complex and other fetishes.¹⁵⁶ Telephone clubs originally began around 1983, and, by continuously adapting to ever-changing technology, they have burgeoned in number.¹⁵⁷

A basic telephone club requires a man to come to the club, pay a fee, and then wait in a room for a call from a woman.¹⁵⁸ Once the woman calls, the two have a conversation that often results in an agreement to meet at another time for an *enjo kosai* (compensated date).¹⁵⁹ Recently, telephone clubs have diversified, making it even easier for the man to contact the woman. The clubs now sell "two-shot dial" telephone cards that allow the man to call from anywhere and be connected with a woman.¹⁶⁰ Another recent development is the *dengon dial*, a message system that allows the man to call and, for a certain fee, listen to messages left by women and then leave a message himself.¹⁶¹ The ultimate goal is once again to meet later for a compensated date.

Realizing their business hinges on a constant supply of women, telephone clubs allow women to call at no charge.¹⁶² In addition, the clubs solicit women by advertising in magazines and

156. See generally JAPAN WHITE PAPER, *supra* note 154, at 69-70; BORNOFF, *supra* note 2, at 281 (catering to those interested in middle-age women).

157. The exact date these clubs came into being is open to debate, but was approximately around this time. Report from Gifu Prefecture Police Department Headquarters Life Safety Sergeant Hayashi Hideki (Andrew D. Morrison & Miho Mita Morrison trans., 1997) (on file with Author) [hereinafter GIFU POLICE REPORT].

Figures vary, but at least 2000 telephone clubs exist throughout the country. See Stroh, *supra* note 152, at A11; Chris Hawke, *Japan Investigates Teen Prostitution*, UPI, Apr. 24, 1996, available in LEXIS, Nexis Library, UPI File.

158. See Stroh, *supra* note 152, at A1.

159. *Id.*

160. The two-shot dial refers to the business of arranging for telephone conversations between unacquainted men and women. Specifically, a man buys a prepaid card from a street vending machine or pays a certain amount of money to a bank account, then dials a code number and is connected with an operator. The operator through a "two-shot switchboard" connects the man with a girl, who calls on a toll-free basis. *Id.*; see JAPAN WHITE PAPER, *supra* note 154, at 69 n.1.

161. Gifuken Seishunen Hogo Ikusei Jyorei [Gifu Prefecture Juvenile Nurture and Development Bylaw]. The new telephone club regulation begins at article 15-4 of this law, but see *infra* Part IV for further explanation. Article 15-4 partially explains the *dengon dial* system.

162. See Stroh, *supra* note 152, at A1.

newspapers, on subway trains, and by direct mail.¹⁶³ They also distribute tissues with the club's telephone number at train stations and hang announcement signs on utility polls.¹⁶⁴ Thus far, these tactics have been successful, as women and, most recently, teenage girls have called the clubs to meet men.¹⁶⁵

The fact that teenage girls are using these clubs to engage in prostitution has alarmed parents and set the country into motion.¹⁶⁶ Juvenile welfare groups, Parent Teacher Associations (PTAs), and legislatures in forty-six prefectures¹⁶⁷ throughout the country have worked together to pass laws regulating the telephone clubs.¹⁶⁸

C. Japanese Teenage Prostitutes

Japanese teenage prostitution did not begin with the telephone clubs and even today it is not the only means girls use

163. See BAYLEY, *supra* note 125, at 109; TANAKA, *supra* note 113, at 90 (stating that the amount of advertising is numbing).

164. TANAKA, *supra* note 113, at 90.

165. In a survey conducted in Tokyo, approximately one in three high school girls stated they had called a telephone club at least once. Approximately four percent of the girls had engaged in compensated dating. *Id.* Of junior high school girls, 25% said they had called telephone clubs and 3.8% said they had engaged in compensated dating. See *Many Students Call Phone Clubs: Survey*, JAPAN TIMES, Oct. 12, 1996, at 2; see also *1 in 3 High School Girls Involved in 'Telephone Clubs'*, Kyodo News Serv., Oct. 11, 1996, available in LEXIS, Asiapc Library, ALLASI File; *25% of Schoolgirls Tap Telekura*, JAPAN TIMES, Aug. 17, 1996, at 2 (stating that one in four girls had called a telephone club).

166. See Stroh, *supra* note 152, at A10; see also Gifu Police Report, *supra* note 157, at 4-5. The residents collected signatures and conducted rallies. Later the local PTAs filed the petition for the enactment of the club restrictions. Valerie Reitman, *Japan's New Growth Industry: Schoolgirl Prostitution*, WALL ST. J., Oct. 2, 1996, at A14.

167. For purposes of local government, Japan is divided into prefectures, as the United States is divided into states. See REISCHAUER, *supra* note 18, at 255. The prefectures are further divided into cities, towns, and villages, with the largest cities further subdivided into wards. See *id.*

168. See Noto Tomohiko, *Telephone Clubs are to be Regulated in 46 Prefectures, Yet, the Rings Won't be Silent*, ASAHI NEWSPAPER, Dec. 7, 1996, Social Section (Andrew D. Morrison & Miho Mita Morrison trans.) (on file with Author).

Some telephone club operators in Gifu prefecture have responded to these actions by filing a lawsuit in district court against the prefectural government claiming the law is unconstitutional. *Id.* The operators claim it violates their right to operate a business. *Id.*; see also *Phone Date Clubs to Sue Over Ad Ban*, JAPAN TIMES, Dec. 6, 1995, at 2; Stroh, *supra* note 152, at A10.

Article 22 of the Japanese Constitution provides that each individual may choose his or her occupation so long as it does not interfere with the public welfare. BEER & ITOH, *supra* note 85, at 655 (citing Kenpō, art. 15). Despite this fact, the Supreme Court has consistently held that, when the legislature passes a law, any activity in contravention of the law is against the public welfare. See generally *Marushin Industries, Inc. v. Japan (1972) (The Osaka Small Business Restraint Case)* and *Sumiyoshi, Inc. v. Governor, Hiroshima Prefecture (1975) (The Hiroshima Pharmacy Location Case)* reprinted in *id.* at 183-99.

to meet men.¹⁶⁹ According to reports by the National Police headquarters, the number of teenage prostitutes started to climb around 1974, and by 1984, the number of teenage girls willingly taken into police custody had reached alarming levels.¹⁷⁰ Nearly all of these girls willingly became involved in prostitution primarily to earn money.¹⁷¹ Today's teenage prostitutes are similar to their predecessors in that their goal is often money, but they are far more sophisticated in nearly every other respect.¹⁷²

Interviews with the girls reveal that the telephone club is just a means to an end and not necessarily the cause of the problem.¹⁷³ The girls indicate they see nothing wrong with having sex with men for money.¹⁷⁴ For the girls the sole issue is money; if they have it, they can buy whatever they want.¹⁷⁵

169. See Reitman, *supra* note 166, at A14. Teen prostitutes also use date clubs, which are often condominiums where men go to pick up young girls. *Id.*

170. TANAKA, *supra* note 113, at 87 (reporting that 10,000 girls were taken into police custody). In the mid-1980s, in Shinjuku (part of Tokyo), teenage prostitutes began walking the streets and hanging out in discos and video game halls. See BORNOFF, *supra* note 2, at 275.

171. TANAKA, *supra* note 113, at 87 (citing stories of high school girls engaging in prostitution for money). Sixteen-year old Mikako, who is from an ordinary middle-class family, picked up her clients on the way home from school. *Id.* Several trips to a hotel resulted in expenses of as much as \$1120 a month. *Id.* In Yamanashi prefecture in the mid-1980s, the police broke up a group prostitution ring of approximately 100 girls. *Id.*; see also BORNOFF, *supra* note 2, at 274-75.

172. *Clueless in Tokyo*, ECONOMIST, June 8, 1996, at 66 (describing how girls use portable phones and message services to hide their prostitution from their parents and schools—their ultimate goal to buy fancy clothing).

173. See Reitman, *supra* note 166, at A14 (describing the many ways girls meet clients).

174. The girls describe their meetings as strictly business. See Stroh, *supra* note 152, at A1. They often can earn between \$300 and \$1000 for each sexual liaison. *Id.* The girls distinguish between sex with customers and sex with others, because they may not charge “handsome” men. *Id.*

175. “It seems that prostitution is the fashion for kids . . . Kids want brand-name clothes like Chanel; their friends have them, and their parents don’t give them the money . . .” Yoshikatsu Nakamura, Deputy Director of the Juvenile Division of the Tokyo Metropolitan Police, reported in Reitman, *supra* note 166, at A14. “I wanted to make a lot of money all at once.” Aya, a fifteen year old girl who began to engage in prostitution in October 1995, made this comment while taking a break from hanging out on a corner waiting for customer. *Id.* The following interview was conducted during a television program that appeared on Japanese television on January 28, 1997:

Q: When did you start calling?

A: Right after I entered high school.

Q: Why did you start?

A: I wanted to buy things. I wanted everything.

Q: About how many guys have you met?

A: How many? I didn’t count, I don’t know.

Q: Do you have a “papa,” so to speak?

A: Yea, several.

....

Q: How much do you receive per person?

These girls only use telephone clubs to meet new clients.¹⁷⁶ Once a girl has met a man, she does not use the phone club any longer, but deals directly with her "papa."¹⁷⁷ Girls are now beginning to bypass the telephone clubs completely by posting their picture along with their portable telephone or beeper number on boards at shopping arcades, or they simply meet men through other friends who are prostitutes.¹⁷⁸

Apparently, these girls understand what they are doing and are willingly participating in prostitution.¹⁷⁹ What the girls, the telephone clubs, and the men who use the telephone clubs do not realize is that this newest form of prostitution is once again redefining the role of prostitution in Japanese society. Modern technology, portable telephones, and beepers, in particular, have created an industry in which prostitutes can lead dual lives. They can provide sexual services at one time and lead a normal life in mainstream society during other times. This is unprecedented in Japanese society. The barrier between the fantasy world and everyday society has always been clearly defined either physically by red-light districts, or mentally by differentiating between

A: About [\$950] per person.

Q: Per person?

A: Yes.

Q: It's expensive?

A: I'm expensive.

Q: Anyone?

A: Not anyone, when I meet the person if I think he might be a bit strange or dangerous, I run away.

Q: Do your parents know?

A: No, in front of my parents I dress in rather shabby clothes and pretend I am rather poor.

Q: Do you feel guilty?

A: No, not at all. Now I feel if it's fun that's fine.

Q: Are you going to keep doing this for awhile?

A: Yea, sure.

Q: When are you going to quit?

A: When I grow up.

Q: In the future do you think you will be able to stop given that you live a luxurious life?

A: No, I don't think I can get out of this. Once you start doing this you can't stop.

Kayō Gōrudon Waidō: Nerawareteiru shiseikatsu 24 Jikan Ugomeku, Demwa No Uragawa [Tuesday Golden Wide: Your Private Life is the Target, the Reality Behind the Phones Does Not Rest 24 Hours a Day] (Terebi Tokoyo broadcast, Jan. 28, 1997).

176. See *id.*; Reitman, *supra* note 166, at A14.

177. See Stroh, *supra* note 152, at A10 (stating that a girl meets about 10 clients regularly); Reitman, *supra* note 166, at A14.

178. See Reitman, *supra* note 166, at A14.

179. The societal question of whether the girls are actually being victimized by Japanese society is beyond the scope of this Note. Rather, this Note only acknowledges and attempts to address the fact that these girls are willing participants in prostitution.

women who worked in the mizu shobai and other women in society.¹⁸⁰ The worlds, however, are now merging into one.

IV. THE INABILITY OF EXISTING LAWS TO REGULATE TEEN PROSTITUTION

Japan's current legal environment is designed to protect the *honne* and *tatemae* surrounding prostitution in Japan. On the surface, prostitution is illegal, but in application it is permitted to exist so long as the authorities can control the prostitution industry.

A. National Laws

Nationally, two statutes regulate prostitution, the Prostitution Prevention Law,¹⁸¹ and the Law Concerning Enterprises Affecting Public Morals.¹⁸² Neither of these statutes directly addresses the problem of teen prostitution. Instead, the statutes create a net of indirect and informal regulations with large loopholes permitting teen prostitution.¹⁸³

1. The Antiprostitution Law

The Antiprostitution Law was finally approved on May 18, 1956, promulgated on May 24, 1956, and entered into force on April 1, 1957. During the intense legislative process, the bill went through various drafts, which reflected the intense debates concerning whether the act of prostitution should be criminally punished and what measures should be taken for the rehabilitation of the prostitutes.¹⁸⁴ In the end, the act of prostitution was not made criminally punishable, and homes for the rehabilitation of prostitutes were established.¹⁸⁵

180. See generally Yayori Matsui, *Asian Migrant Women Working at Sex Industry in Japan Victimized by International Trafficking*, in *TRAFFIC IN WOMEN: VIOLATION OF WOMEN'S DIGNITY AND FUNDAMENTAL HUMAN RIGHTS* 109, 116 (1993) (stating that the dichotomy between "good women" and "bad women" continues today, as well as the philosophy that "bad women" are needed to protect "good women").

181. Baishun boshi hō [Prostitution Prevention Law], No. 118 (1956) [hereinafter Antiprostitution Law].

182. Enterprises Affecting Public Morals Law, *supra* note 68.

183. See Salzberg, *supra* note 43, at 260.

184. See *supra* Part II.

185. The law specifically overruled any prior prefectural laws that made the act of prostitution or the act of being a prostitute illegal. See Antiprostitution Law, *supra* note 181, at Supp. ¶¶ 4, 5. The criminal penalties and the provisions for the establishment of women's guidance homes did not go into effect until April 1, 1958. *Id.* at Supp. ¶ 3.

a. Overview of the Statutory Scheme

The law itself is rather brief and can be divided into four main sections. The first sets out the general provisions of the law, including the purpose of the law and the definition of prostitution.¹⁸⁶ The second describes the criminal penalties.¹⁸⁷ The third requires the government to establish women's guidance homes and describes the role of these homes.¹⁸⁸ The last section requires local governments throughout the country to establish consultation offices for the protection and rehabilitation of women who are thought to be prostitutes.¹⁸⁹

b. General Provisions

The law first states that its purpose is "to suppress and prevent prostitution by punishing certain acts, such as promotion of prostitution and at the same time by taking measures for the rehabilitation of those females who are prone to prostitute themselves judging from their disposition, behavior and environments"¹⁹⁰ The law then defines prostitution as "sexual intercourse with an unspecified other party for compensation or for a promise of compensation."¹⁹¹ Next, the law articulates a prohibition on prostitution.¹⁹² Last, the general provisions mandate cautious enforcement of the law so the rights of people are not infringed without due cause.¹⁹³ In essence, this requirement provides legal justification for the police to fail to enforce the law.¹⁹⁴

c. Penal Dispositions

Neither the act of prostitution nor the act of buying a prostitute is criminally punishable.¹⁹⁵ Rather, the law delineates and criminalizes certain activities related to prostitution,

186. *Id.* at ch. I, arts. 1-4.

187. *Id.* at ch. II, arts. 5-16.

188. *Id.* at ch. II, art. 17.

189. *Id.* at ch. IV, arts. 34-40.

190. *Id.* at ch. I, art. 1.

191. *Id.* at ch. I, art. 2.

192. *Id.* at ch. I, art. 3. This provision is meaningless because Chapter II of the law regarding disposition does not criminally punish these activities.

193. *Id.* at ch. I, art. 4.

194. See Fujita, *supra* note 37, at 494-95 (suggesting that this provision takes all of the bite out of the law); BAYLEY, *supra* note 125, at 109 (asserting that there is legal justification for ignoring prostitution).

195. See Antiprostitution Law, *supra* note 181, at ch. II. Chapter II of the Antiprostitution Law, entitled "Penal Dispositions," has no provisions for punishing these acts.

including public solicitation,¹⁹⁶ the furtherance of prostitution as an intermediary,¹⁹⁷ concluding a contract requiring another person to engage in prostitution,¹⁹⁸ furnishing a venue for prostitution,¹⁹⁹ compelling a person to stay in a place owned or controlled by the offender for purposes of prostitution,²⁰⁰ and furnishing capital, land, or buildings for the business of prostitution.²⁰¹

d. Guidance Disposition

The law states that in lieu of issuing a criminal sentence for a woman twenty years of age or older who is convicted of public solicitation, a court may place the woman in a women's guidance home.²⁰² The period of "guidance," unlike the required criminal penalty, is set at only six months.²⁰³ In addition, the guidance home has the power to discharge the woman before the conclusion of the six-month period under a probation system.²⁰⁴ While a resident in the guidance home, the woman receives treatment to ease her re-entry into society.²⁰⁵ Specifically, the woman will receive social education, vocational guidance, and medical care for both mental and physical ailments.²⁰⁶ The social education is actually moral training designed to teach these women to conform to the norms of Japanese society.²⁰⁷ The vocational guidance is designed to teach women basic work skills for a variety of occupations.²⁰⁸ The medical treatment is designed

196. *Id.* at ch. 2, art. 5.

197. *Id.* at ch. II, art. 6.

198. *Id.* at ch. II, art. 10.

199. *Id.* at ch. II, art. 11.

200. *Id.* at ch. II, art. 12.

201. *Id.* at ch. II, art. 13.

202. *Id.* at ch. III, art. 17. Article 25 of the Penal Code authorizes the district courts to suspend sentences to imprisonment under extenuating circumstances for less than three years when the defendant has not been previously sentenced to prison or has not been sentenced to prison within the previous five years. This provision has been instrumental in allowing the courts to send women to guidance homes rather than issuing criminal punishments. See Johnson, *supra* note 34, at 36. At first, homes of this kind were set up in Tokyo, Osaka, and Fukuoka, but by 1988 there was only one home in Tokyo. MINORU SHIKITA & SHINICHI TSUCHIYA, CRIME AND CRIMINAL POLICY IN JAPAN FROM 1926 TO 1988: ANALYSIS AND EVALUATION OF THE SHOWA ERA 197 (1990). The number of residents in these establishments has declined steadily since the Antiprostitution Law first came into force, and it is not clear from statistics that the one home in existence is used at all. *Id.* at 198, Fig. 35; see Johnson, *supra* note 34, at 36.

203. Antiprostitution Law, *supra* note 181, at ch. III, art. 18.

204. *Id.* at ch. III, arts. 25-27.

205. See Johnson, *supra* note 34, at 36-37.

206. *Id.*

207. *Id.*

208. *Id.*

primarily to treat any sexually transmitted disease the woman may have acquired.²⁰⁹

e. Protection and Rehabilitation

The law mandates that prefectural governments throughout the country set up consultation offices.²¹⁰ Each office must have a director and staff that provide counseling, conduct investigations, and when appropriate, provide temporary protection for women.²¹¹ Similar to the women's guidance homes, the women receive medical treatment, psychological counseling, and functional training.²¹² The prefectural government also may set up additional facilities for housing women on a more long-term basis.²¹³ This service, like all required services, must be funded partially by the prefectural governments.²¹⁴

2. The Enterprises Affecting Public Morals Law

The Enterprises Affecting Public Morals Law works in conjunction with the Antiprostitution Law to regulate the prostitution industry.²¹⁵ Essentially, the law establishes a regulatory scheme for all of the business within the *mizu shobai*.²¹⁶

a. Overview of the Statutory Scheme

The law contains four main sections. The first section establishes the basic definitions for which enterprises must apply for government permits or report various stipulated facts to the government.²¹⁷ The second delineates the regulations for the enterprises described as *fuzoku eigyo* (adult entertainment businesses).²¹⁸ The third section articulates the regulations for enterprises known as *fuzoku kanren eigyo* (businesses related to

209. *Id.*

210. Antiprostitution Law, *supra* note 181, at ch. IV, art. 34.

211. *Id.* at ch. IV, art. 34.

212. *Id.*

213. *Id.* at ch. IV, art. 36.

214. *Id.* at ch. IV, arts. 37-40.

215. Salzberg, *supra* note 43, at 260.

216. *Id.* at 261.

217. Enterprises Affecting Public Morals Law, *supra* note 68, at chs. 1-4, arts. 1-35.

218. FOREIGN LAWS AND ORDINANCES RESEARCH GROUP, *supra* note 68, at 233 (defining *fuzoku eigyo*); Enterprises Affecting Public Morals Law, *supra* note 68, at ch. 3, arts. 12-26.

adult entertainment businesses).²¹⁹ The fourth section includes supervisory and enforcement guidelines.²²⁰

b. Permits and Reports

The law first designates which enterprises are *fuzoku eigyo* and which are *fuzoku kanren eigyo*.²²¹ *Fuzoku eigyo* are bars, cafes, cabarets, dance halls, night clubs, late night coffee shops, tea rooms with less than a statutorily-stipulated degree of illumination, and gambling establishments.²²² *Fuzoku kanren eigyo* are private room bath houses or "soaplands" and establishments such as strip bars, love hotels, and adult video or magazine shops.²²³ The law further states that owners of *fuzoku eigyo* must apply to the Prefectural Public Safety Commission (PPSC) for a permit²²⁴ and owners of *fuzoku kanren eigyo* must report certain stipulated facts to the PPSC.²²⁵

c. Regulations of *Fuzoku Eigyo*

To receive a permit a *fuzoku eigyo*'s application must contain the name, address, and designation of the owner of the enterprise and the same information for the enterprise, including the type of enterprise, the physical structure of the building and the equipment, and the name and address of managers and other company executives.²²⁶ Once the enterprise receives the permit, it must prominently display it at the enterprise location and immediately notify the PPSC of any changes that occur thereafter.²²⁷ In addition, the enterprise must notify and receive permission from the PPSC for any physical changes to its enterprise.²²⁸

The PPSC also has the power and authority to regulate the location,²²⁹ hours of operation,²³⁰ the amount of lighting in the establishment, the amount of noise, and the type of

219. Enterprises Affecting Public Morals Law, *supra* note 68, at ch. 4, arts. 27-35.

220. *Id.* at chs. 5-7, arts. 36-51.

221. *Id.* art. 2.

222. *Id.* art. 2, ¶ 1.

223. *Id.* art. 2, ¶ 4.

224. *Id.* art. 5.

225. *Id.* arts. 3, 27 ¶ 1.

226. *Id.* art. 5.

227. *Id.* arts. 6-9 ¶ 3.

228. *Id.* art. 9 ¶ 1.

229. *Id.* art. 4 ¶ 2.

230. The enterprise is not permitted to operate between midnight and dawn. *Id.* art. 13.

advertising.²³¹ The enterprise may not solicit clients, and juveniles are not permitted to enter as customers.²³² Juveniles cannot interact directly with patrons after 10 p.m. if they are employees.²³³ When the PPSC determines an establishment has violated a formal regulation or is harmful to public welfare, it may advise the establishment to correct the problem.²³⁴ If the violation is more serious, the PPSC may suspend or partially shut down the enterprise.²³⁵

d. Regulation of *Fuzoku Kanren Eigyo*

As with the *fuzoku eigyo*, the law requires a *fuzoku kanren eigyo*'s report to include the name, address, and designation of the owner of the enterprise and the same information for the enterprise itself: the type of enterprise, the physical structure of the building and the equipment, and the name and address of the managers and other executives of the company.²³⁶ Once again, the enterprise must notify the PPSC of any changes.²³⁷ The enterprises are prohibited from soliciting customers and may not allow juveniles to enter except as employees in a limited capacity.²³⁸ The prefectural government can also regulate advertising and hours of operation.²³⁹

Fuzoku kanren eigyo also are prohibited from operating within 200 meters of schools, libraries, child welfare facilities, and other facilities designated as necessary by the local government authorities.²⁴⁰ In addition, the local government can prohibit these enterprises from locating in any given area—to prevent harm to the good morals, a pure moral environment, or for the healthy development of children.²⁴¹ Moreover, if one of these organizations violates either the Antiprostitution Law or other specific penal provisions related to obscene behavior, the PPSC may suspend the enterprise's operations.²⁴² On issuing a

231. *Id.* arts. 13-16.

232. *Id.* art. 22. There is an exception for dance halls, and the restriction only applies after 10 p.m. *Id.* art. 22 ¶ 4.

233. *Id.*

234. *Id.* art. 25.

235. *Id.* art. 26 (for a period of not more than six months).

236. *Id.* art. 27 ¶ 1.

237. *Id.* art. 27 ¶ 2.

238. They cannot work as hosts or in a position that requires them to interact with customers. *Id.* art. 28 ¶ 5.

239. *Id.* art. 28 ¶ 1.

240. *Id.* art. 28 ¶ 1.

241. *Id.* art. 28 ¶ 2.

242. *Id.* art. 30 ¶ 1 (for a period not exceeding eight months). The related Penal Code provisions are contained in Chapter XXII (Crimes of Indecency, Rape and Bigamy) of the Penal Code of Japan: Keihō, art. 174 (Public Indecency); KEIHŌ,

suspension, the PPSC must place a sticker on the door of the establishment announcing that the enterprise is suspended and not open for public use.²⁴³ If the enterprise is operating in a restricted area and commits one of these offenses, the PPSC can close the enterprise permanently.²⁴⁴

e. Supervisory Provisions

The law articulates that the National Public Safety Commission (NPSC), which gives power to the PPSC, may entrust its power to the Commissioner General of the National Police Agency.²⁴⁵ The law also allows the PPSC to enter both *fuzoku eigyo* and *fuzoku kanren eigyo*, excluding rooms with private baths, to enforce the law.²⁴⁶ The law does allow *fuzoku eigyo* owners to form an organization to promote a healthier environment for their business; but, if such an organization is formed, the group must file a report with the NPSC within thirty days after the establishment of the organization.²⁴⁷

B. Prefectural Laws

Under Japan's legal system each prefecture has the power to enact legislation that is enforceable within the confines of the prefecture.²⁴⁸ Accordingly, all prefectures have passed legislation that significantly supplements national legislation affecting the teen prostitution problem.²⁴⁹ Gifu prefecture was the first prefecture to pass regulations concerning telephone clubs, and therefore, its legislation will be used as a prototype. These regulations were added to the Gifu Juvenile Protection and

art. 175 (Distribution of Obscene Literature, etc.); KEIHō, art. 182 (Inducement to Illicit Intercourse).

243. Enterprises Affecting Public Morals Law, *supra* note 68, art. 31 ¶ 1 (talking about soaplands, love hotels, and adult theaters). The suspension is of both licenses.

244. *Id.* art. 30 ¶ 2.

245. *Id.* art. 45. See FOREIGN LAWS AND ORDINANCES RESEARCH GROUP, *supra* note 68, at 10 (translating this provision as Commissioner General of National Police Agency).

246. Enterprises Affecting Public Morals Law, *supra* note 68, art. 37 ¶¶ 2, 4 (stating that the authority must not be interpreted to permit police officers to be admitted into the establishment for criminal investigations).

247. *Id.* art. 44.

248. BEER & ITOH, *supra* note 85, at 664 (text of Kenpō, art. 94).

249. In October 1997, Tokyo passed a regulation aimed specifically at teen prostitution. *Tokyo Revises Rules to Ban Teen Prostitution*, Daily Yomiuri, Oct. 11, 1997, at 2, available in LEXIS, Asiapc Library, YOMIUR File; see also Suvrendrini Kakuchi, *Japan: Law Banning Teen Prostitution May Have Little Impact*, Inter Press Serv., Oct. 17, 1997, available in LEXIS, World Library, INPRES File.

Development Bylaw to strengthen previously existing legislation regarding sexual relations between adults and children.

1. Telephone Club Law

As a result of tremendous societal pressure from PTAs and other juvenile protection groups, Gifu prefecture passed Japan's first Telephone Club Law on October 9, 1995, effective January 1, 1996.²⁵⁰ The law is part of the Gifu Prefecture Juvenile Protection and Development Bylaw.²⁵¹ The general purpose of the Juvenile Protection and Development Bylaw is to protect juveniles—anyone older than six years of age and under eighteen years of age—by preventing acts that impair their healthy development.²⁵²

a. Overview of the Structure of the Telephone Club Law

The structure of the law is strikingly similar to the Enterprises Affecting Public Morals Law. First, it designates what businesses are telephone clubs and requires telephone clubs to register with local government authorities.²⁵³ Second, the law regulates where telephone clubs can operate, how they can sell and advertise their services, and who is allowed to patronize and work at the telephone club.²⁵⁴ Third, the law gives the prefectural government authority to impose criminal and monetary penalties.²⁵⁵

b. Definition of Telephone Club and Registration

The term "telephone club" includes all currently-used systems: the regular sit-down style telephone club, the "two-shot dial," and the *dengon dial* message system.²⁵⁶ Recognizing these telephone clubs may not necessarily have a fixed place of

250. Gifu Prefecture Juvenile Protection and Development Bylaw Amendment, Oct. 9, 1995. This amendment will be referred to as the "Telephone Club Law" throughout the rest of the paper. The citations will be presented as Telephone Club Law at art. X. The sections are actually those of the Gifu Juvenile Protection and Development Bylaw.

251. Prior to passage, there was a debate as to whether the law should stand separately or be included in the Gifu Prefecture Juvenile Protection and Development Bylaw. GIFU POLICE REPORT, *supra* note 157, at 6.

252. Gifu Prefecture Juvenile Protection and Development Bylaw, art. 1.

253. Telephone Club Law, arts. 15-4, 15-5.

254. *Id.* arts. 15-6 to 15-12.

255. *See id.* arts. 15-13, 19-23.

256. *Id.* art. 15-4, explanation 1.

business, the explanation of the laws defines the office as the place where the communicative equipment is located.²⁵⁷

Any person who wishes to open a telephone club must file a written report with the prefectural government thirty days before beginning operations.²⁵⁸ This registration must include the owner's name, address, and designation, the name and address of the telephone club, the name and address of the club manager, other executives, and any company representative who will sell telephone cards, the name of the financial institution and the account number where the club plans to deposit its receipts, and the telephone numbers it will use for business, including interoffice numbers.²⁵⁹ Thereafter, the telephone club must report any changes to the prefectural government within fifteen days.²⁶⁰

c. Regulation on Telephone Club Operations

Telephone clubs are prohibited from operating within 500 meters of any of the following facilities: schools and other educational facilities,²⁶¹ libraries,²⁶² child welfare facilities,²⁶³ hospitals and clinics,²⁶⁴ parks,²⁶⁵ culture centers,²⁶⁶ or museums.²⁶⁷ The prefectural government also can prohibit a telephone club from operating within 500 meters of any other facility when such prohibition is deemed necessary to ensure the healthy development of juveniles.²⁶⁸

Telephone clubs are also prohibited from selling telephone cards through vending machines, unless the machine is located in an establishment juveniles are not permitted to enter.²⁶⁹ This regulation does not prohibit direct in-person sales to adults, and the law contains a grace period for businesses already operating at the time the law was enacted.²⁷⁰

With regard to any future vending machines, the telephone clubs are required to file a written report indicating the following

257. *Id.* art. 15-4, explanation 3.

258. *Id.* art. 15-5.

259. *Id.* art. 15-5, ¶ 1, art. 15-5, ¶ 3, explanations 4 & 5.

260. *Id.* art. 15-5 ¶¶ 2, 3.

261. GAKKŌ KYŌIKUHŌ [School Education Law], No. 26 (1947), art. 1.

262. Toshokanhō [Library Law], No. 118 (1950), art. 2, ¶ 1.

263. JIDŌ FUKUSHIHŌ [Child Welfare Law], No. 164 (1947), art. 7.

264. IRYŌHŌ [Medical Law], No. 205 (1948), arts. 1-5, ¶¶ 1 & 3.

265. TOSHI KŌENHO [Municipal Park Law], No. 79 (1956), art. 2.

266. Shakai Kysikuhō [Society Education Law], No. 207 (1949), art. 21.

267. Hakubutsukanhō [Museum Law], No. 285 (1951), arts. 2 & 29.

268. Telephone Club Law, art. 15-6, ¶ 1, § 9.

269. *Id.* art. 15-8. This does not solve anything because men, not girls, buy the cards.

270. *Id.* art. 15-6, ¶ 2.

information to the prefectural government fifteen days prior to the start of operation: the name and address of the company, the location of the vending machine, the name and address of the owner of the business where the machine is located, and the type and serial number of the vending machine.²⁷¹ Once again, the telephone club must notify the government within fifteen days if any of this information changes.²⁷²

In conjunction with these sales restrictions, telephone clubs are also limited in their ability to advertise. They are prohibited from advertising in areas open to juveniles.²⁷³ They are also no longer permitted to distribute any documents, pictures, or any other materials that have the club's name.²⁷⁴ These prohibitions are particularly damaging because they eliminate the ability to hand out complimentary tissue advertisements at local train stations, place posters on utility polls, and use direct mail. In addition, the law is broadly drafted to prevent telephone clubs from paying others to conduct these types of advertising for them.²⁷⁵

All of these prior restrictions are designed to limit juveniles' exposure to telephone clubs. But the law has additional restrictions prohibiting direct interaction between the telephone clubs and juveniles. Telephone clubs may not allow juveniles to enter the club as clients or to call and use the other phone services as clients; sell telephone cards to juveniles; permit juveniles to work at the club; or allow juveniles to use the club's services in any manner.²⁷⁶

d. Enforcement Power

The law gives enforcement power to prefectural government authorities. If a club violates any of the previously mentioned restrictions, there are criminal and monetary penalties.²⁷⁷ Moreover, the prefectural authorities may suspend the telephone club's operations for up to six months if it violates the Antiprostitution Law or other laws related to the distribution of obscene literature²⁷⁸ or the inducement of illicit intercourse.²⁷⁹ If the telephone club violates either the Antiprostitution Law or the other prohibited provisions and the business is located within a

271. *Id.* art. 15-9, ¶ 1.

272. *Id.* art. 15-9, ¶¶ 2 & 3.

273. *Id.* art. 15-10, ¶ 1.

274. *Id.* art. 15-10, ¶ 2.

275. *Id.* art. 15-10, ¶ 3.

276. *Id.* art. 15-11, 15-12, 15-7.

277. *See id.* arts. 20-23.

278. MINISTRY OF JUSTICE, *supra* note 242 (printing text of KEIHŌ, art. 175).

279. *Id.* art. 15-13, ¶ 1 (citing KEIHŌ, art. 182).

prohibited area, the local authorities can close the club.²⁸⁰ The local government also has the authority to enter the telephone club's offices and investigate the records to determine whether a violation has occurred.²⁸¹

2. Prohibition on Sexual Acts with a Juvenile

Gifu prefecture's regulation on sexual acts with juveniles, like the telephone club regulations, appears in the Juvenile Protection and Development Bylaw.²⁸² The law makes it illegal for anyone to perform either sexual acts with a juvenile or obscene or lewd acts with a juvenile.²⁸³ The provision does not apply to women who are under eighteen years of age but are legally recognized as adults, such as married women.²⁸⁴

C. Problems with the Existing Legal Framework

The fundamental problem with the existing legal framework, both national and prefectural, is that the laws attempt to regulate prostitution as if women, or most recently teenage girls, are only victims rather than willing participants. Essentially, Japanese legislatures have constructed a theoretical paradigm in which prostitution is a two-sided issue between the man and the *mizu shobai* establishment. The woman is only a part of the transaction and, thus, a victim. This is the legal formalization of the centuries-old Japanese view that prostitution is accepted, but only in its proper place, the *mizu shobai*.

All of the current legal inadequacies stem from the failure of the Antiprostitution Law to eliminate prostitution. The first major problem with the law is that the definition of prostitution is limited to sexual intercourse. The effects of this narrow definition are compounded by the failure to make it criminally punishable to be a prostitute or to be the client of a prostitute. The law criminally punishes only those attempting to run a prostitution business. Yet, because of the fundamental flaws in the law, business owners easily circumvent the law by arranging room-rental schemes or providing services that, on the surface, do not constitute prostitution.²⁸⁵ In addition, because women were not

280. *Id.* art. 15-13, ¶ 2.

281. *Id.* art. 19.

282. *Id.* art. 13-2.

283. *Id.*

284. Gifu Juvenile Protection and Development Bylaw, art. 2-1 & cmt. 1.

285. *See supra* Part III.B.

the targets of the law, the effectiveness and usefulness of the women's guidance homes have never materialized.²⁸⁶

Due to the failure of the Antiprostitution Law, the national government uses the Enterprises Affecting Public Morals Law to control the prostitution industry. In many respects, this regulatory system amounts to nothing more than licensed prostitution. The police know where most of the prostitution occurs, either at the *fuzoku eigyo* or *fuzoku kanren eigyo*, and they have the power to control these organizations on a daily basis through formal regulation, and on a more permanent basis through suspension and abolition.

This system worked well until the industry evolved with the advent of modern technology. At first, telephone prostitution exemplified the Japanese ideals of prostitution. It was readily available in a manner invisible to society, the ultimate *honne* and *tatema*. Customers quickly realized, however, that telephone clubs provided the easiest way in and out of the fantasy world, and the clubs spread throughout society. This widespread proliferation exposed the weaknesses of the informal regulation system of the Enterprises Affecting Public Morals Law. The system works only if the enterprise affects public morals and is located in one place. Telephone clubs, however, may not necessarily affect public morals and do not need to be located in any particular place. All they need is telephone linking equipment and a sophisticated message system. Thus, Japanese authorities were left with the dilemma of how to control these forms of prostitution.

Ultimately, outraged parents and juvenile welfare groups petitioned local authorities to regulate the telephone clubs, blaming the increase in teen prostitution on the telephone clubs. Not surprisingly, the response was not to seek legislation eliminating prostitution altogether or to enforce more strictly the prohibition on adults' having sex with minors, but rather to enact a specific regulation system for the telephone clubs, the Telephone Club Law.

The Telephone Club Law, similar to the Enterprise Affecting Public Morals Law, is an inadequate response to the shortcomings of the Antiprostitution Law. Most of the prohibitions will have limited effect on the teens who utilize the telephone clubs to meet clients. The registration requirements do not affect them. The physical restrictions are of no use because teen prostitutes already congregate where telephone clubs are forced to locate. The vending machine requirements do not affect them because they do not buy the cards. Only the provisions that deal with

286. See Johnson, *supra* note 34, at 37.

advertising and using the services to meet people may affect the teenage prostitutes. As a result of the restrictions on distributing complimentary tissue advertisements, placing fliers on billboards, and using direct mail, the girls may have a slightly more difficult time finding a telephone number to call. These restrictions are ineffective, however, as more and more girls are meeting clients on their own. Therefore, Japan cannot realistically expect the Telephone Club Law to stop teen prostitution. Instead, by requiring registration, the law will push telephone clubs into the realm of the *mizu shobai*, where the police can monitor their activities. Thus, the actual purpose of the law, despite its location in the Juvenile Protection and Development Bylaw, is to allow the government to maintain some control on this new form of prostitution that has joined the existing congeries.

In their traditional unwillingness to view women as anything other than victims in a prostitution arrangement between the men and a *mizu shobai* enterprise, the national and local legislatures failed to realize this is simply a short-term solution. Women or teenage girls who wish to engage in prostitution have demonstrated they will find a way. Thus, if the legislatures continue to refuse to recognize the reality of modern society, in which technology allows young girls to engage in prostitution without social repercussions, they will lose the control of the *mizu shobai* they are trying to maintain.

V. LEGAL SOLUTIONS

Any legal solution to the current teen prostitution problem or the general prostitution problem in Japan must accept the *honno* and *tatema* of prostitution in Japan. The country does not believe prostitution should be totally eliminated from society. Rather, society wants prostitution restricted to a certain group of people in a designated physical locale.

To that end, the way Japan regulates prostitution must change. It is no longer acceptable to view women and today's teenage prostitutes as merely part of an exchange between men and the *mizu shobai* establishment. These girls are active participants in the prostitution industry. The problem, therefore, is how to change the laws to hold not only the men and the *mizu shobai* establishments responsible but also the women, without eliminating prostitution completely. Fortunately, these goals can be achieved with small adjustments in the current Antiprostitution Law and the enactment of one new national law.

The first step is to broaden the definition of prostitution in the Antiprostitution Law. A realistic example for today's society is presented by the Minnesota state criminal code:

"Prostitution" means engaging or offering or agreeing to engage for hire in sexual penetration or sexual contact.²⁸⁷

"Sexual contact" means any of the following acts, if the acts can reasonably be construed as being for the purpose of satisfying the actor's sexual impulses:

- (i) The intentional touching by an individual of a prostitute's intimate parts; or
- (ii) The intentional touching by a prostitute of another individual's intimate parts.²⁸⁸

"Sexual penetration" means any of the following acts, if for the purpose of satisfying sexual impulses: sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of an individual's body by any part of another individual's body or any object used for the purpose of satisfying sexual impulses. Emission of semen is not necessary.²⁸⁹

The next step is to make the act of prostitution or of purchasing the services of a prostitute criminally punishable. The final step is to alter the provisions for women's guidance homes; the age limit must be removed, and the terms of stay must be revised to reflect the criminal punishments these women would otherwise receive.²⁹⁰ These changes do not alter the other provisions of the Antiprostitution Law—in particular, the caution in application provision. Thus, the revised Antiprostitution Law would outlaw prostitution, broadly defined, while at the same time provide authorities with a legal rationale to apply the law as strictly or leniently as needed in a given circumstance. Essentially, these changes are a Japanese *honne* and *tatemae* solution to the current problem. On the surface, prostitution would be totally illegal, but in reality the authorities would not have to enforce the law unless they decided it was necessary under the circumstances.

Japan also needs to enact a national law outlawing sex between adults and juveniles to supplement the revised Antiprostitution Law. This should be done not because of the effect the law would have on its own, but because of the effect it would have in conjunction with the revised Antiprostitution Law.

287. MINN. STAT. § 609.321, subdiv. 9 (1996).

288. *Id.* subdiv. 10.

289. *Id.* subdiv. 11.

290. The Osaka Prefecture Police have begun a policy of holding the girls responsible for their actions. See *Police Launch Crackdown on Teenage Prostitution*, JAPAN TIMES WEEKLY (Int'l Ed.), June 2-June 8, 1997, at 4, available in LEXIS, Busfin Library, ABI File.

This law would tell Japanese society that juvenile girls are officially excluded from the world of adult sexuality.

The revised Antiprostitution Law and new prohibition statute could solve the current teen prostitution problem and any future problems presented by more advanced technology in the following manner: First, any girl convicted of prostitution would be either fined, sentenced to penal servitude, or admitted to a women's guidance home. The man would be required to pay a fine or would be sentenced to penal servitude. The true power of these laws would not be in the criminal penalties but in the social repercussions. Currently, the girls, because of authorities' reluctance to accept their role in prostitution, are able to engage in prostitution without any long-term societal consequences. Under the new law this would change; the girl would be held responsible for her actions by being required, at the very least, to live in a guidance home. For the man, the social repercussion would be even more severe because he would be punished for mixing the fantasy world with everyday society after the express warning that this is unacceptable behavior.²⁹¹

The revised Antiprostitution Law would also have broader effects when combined with the Enterprises Affecting Public Morals Law. These two laws would give the police a level of control they have not enjoyed since before the Antiprostitution Law was passed. The owners of establishments within the *mizu shobai* would realize the police have the power to shut them down at any time either for violating the laws or for assisting in violating the laws. At present, prostitutes can do whatever they want in their own rooms or in love hotels, and owners can claim ignorance.

The revised Antiprostitution Law and the new national law criminalizing sexual intercourse between juveniles and adults would provide a new legal framework for the entire prostitution industry. These revisions provide the *honne* and *tatema* balance that is essential in Japanese society. Prostitution would be officially illegal, but the law would only come into effect when someone steps outside the newly-defined rules of accepted behavior, such as by hiring a teen prostitute.

VI. CONCLUSION

The current teen prostitution problem in Japan raises the question of whether society leads law or law leads society. In this

291. See generally REISCHAUER, *supra* note 18, at 128-39 (describing the role of the group in Japanese society).

case, it is apparent society is leading the law. The teenage prostitution problem forced local governments throughout Japan to react; however, the method they have chosen will not alleviate the problem, primarily because it does not attack the root of the problem. As the proposed legislation indicates, Japanese society must recognize that these girls are engaging in prostitution willingly and must react accordingly.

Thus far, Japan has demonstrated no desire to accept this challenge. A long-term failure to act will have significant effects on Japanese society. Ultimately, if teen prostitution continues along its current path, it will erase the line between the fantasy world and everyday society that has existed in Japan since the beginning of licensed prostitution. While the proposed legal solution to the teen prostitution problem does not attempt to describe how Japanese society should deal with all of the societal factors that have caused the current teen prostitution problem, it does present a framework for reforming current Japanese laws.

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* J.D. Candidate, Vanderbilt University School of Law, May 1998; B.B.A., George Washington University. I would like to thank my wife, Miho Mita Morrison, for all of her assistance and endless patience. Additionally, I would like to thank Dean Kent D. Syverud, Vanderbilt University School of Law, for his assistance in contacting Professor Atsushi Kinami to review the English translations of Japanese laws; Professor Atsushi Kinami, Kyoto University Faculty of Law, for reviewing the English translations of Japanese laws; Professor Stephan M. Salzberg, Director, Japanese Legal Studies, University of British Columbia Faculty of Law, for reviewing the English translations of Japanese laws and a draft of the Note to ensure it accurately reflected the content of those laws; and Kenzo Kawanabe and Seth G. Morrison for their editorial suggestions.

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