

Which Legal Approach to Prostitution Protects the Sex Workers Best?

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The “world’s oldest profession” employs more than 40 million people, predominantly female, 75% of them between 13 and 25 years old (Schulze, Canto, Mason, & Skalin, 2014). Critical issues linked with prostitution, such as exploitation and trafficking, violence and the vulnerability of the poor highlight the need to explore the best option to address prostitution’s role in society. There are generally four legal approaches to prostitution worldwide, namely criminalization, legalization, the Nordic Model and decriminalization (Abel, Fitzgerald, & Brunton, 2009). Criminalization is characterized by defining prostitution as a criminal offence and punishing all engaged people in an attempt to repress and eliminate it, whereas legalization means that criminal justice sanctions against prostitution are replaced by regulations for contracts and conditions of selling sex (Phoenix, 2007). Aiming at eliminating prostitution, the Nordic model punishes only consumers of sex, whereas sex workers are not penalized by law (Danna, 2012). Decriminalization encompasses a thorough abolition of penalties for sexual trade and related work (Abel, Fitzgerald, & Brunton, 2007). In order to seek the most effective outcomes for society, many countries are re-evaluating their prostitution policies (Abel et al., 2009). After reviewing and exploring the views and findings of several researchers, this essay holds the view that decriminalization best protects sex workers as it seems to create the safest working environment for this vulnerable population.

Despite the large number of countries which criminalize prostitution (ChartsBin, 2016), it is strongly argued in academia that the conditions of sex workers will deteriorate under this

situation. Phoenix (2007) points out an unprecedented consequence—sex workers being over-policed and offences against them being under-policed. In England and Wales, the common penalty for prostitution is a fine—heavy enough that a destitute sex worker will probably pay by continuing selling sex (Phoenix, 2007). Instead of discouraging sex workers from selling sex, to a large extent, it is the law that keeps them in the sex industry (Phoenix, 2007). Moreover, in many places where prostitution is criminalized, carrying condoms is deemed substantial evidence of having the intention of committing prostitution (San Francisco Public Defender's Office, as cited in Lutnick & Cohan, 2009). Phoenix's argument is quite compelling, since it is imaginable that women in the sex industry lack alternatives and tend to continue selling sex to make ends meet. Additionally, in order to avoid arrest, sex workers may not carry condoms when soliciting in the street, which may give rise to HIV risk and further exacerbate their situation. Thus, instead of stopping prostitutes from selling sex, criminalization may trap them in the mire and worsen their lives.

Legalization seems to be the opposite of criminalization, yet it is not without its problems. According to Mitrovic (as cited in Phoenix, 2007), it does little to eliminate the stigma of engaging in prostitution or enhance sex workers' working conditions. Phoenix (2007) argues that it is still hard for sex workers to claim their legal and promised rights, since numerous sex workers are casually employed by brothels or they privately contact their pimps, which makes the sex industry hard to monitor. In addition, countries legalizing prostitution commonly impose special regulations and licensing procedures on sex workers and stipulate their work venues, and failure to comply with these regulations is deemed illegal (Lutnick & Cohan, 2009). In many places like Germany, notwithstanding the legalization, prostitution related jobs are not advertised (Phoenix, 2007). Marginalized female immigrants from minor ethnic groups who need money

desperately and have no access to a legal brothel may be compelled to breach the law. Therefore, even if prostitution is legalized, it may create a two-tier system to some degree and be unable to protect those sex workers who are not legally registered.

Although the Nordic Model enjoys great popularity among Swedish people (Danna, 2012), it has been widely debated and questioned in academia. The Nordic Model was introduced to Sweden on 1 January 1999 (Chu & Glass, 2013), aiming to reduce prostitution by punishing only consumers of sex but not sex workers. The idea behind the Nordic Model is that prostitutes, who tend to suffer severe psychological trauma and financial hardship, should be protected by the state (Danna, 2012). However, after examining official and academic sources, Chu and Glass (2013) conclude that prostitution activities have merely shifted from visible places to more hidden ones, which may increase the possibility of prostitutes being abused. In contrast, Danna (2012) asserts that it remains uncertain whether prostitution in hidden places is more prevalent or not. Another issue under the Nordic model framework is that sex purchasers are worried about being arrested when they are negotiating with sex workers. Hence, prostitutes are likely to compromise by making hasty decisions when screening potential clients, which increases the chance of meeting dangerous sex buyers (Chu & Glass, 2013). Whether there are more or fewer sex workers in a hidden prostitution industry due to the framework remains controversial, but existing sex workers do not seem to be as well protected as the law wishes.

Being broadly supported but still intensely opposed by some scholars, decriminalization might be the most debated legal approach to prostitution. Two renowned organizations devoted to women rights and equality, UN Women and Amnesty International, call for decriminalizing prostitution (Shapiro & Hughes, 2017). Nevertheless, by carrying out a descriptive case study on the decriminalization from 1980 to 2009 in the US state of Rhode Island, Shapiro and Hughes

(2017) revealed abuses and exploitations exerted on prostitutes and conclude that women's bodies become legal entertainment and profit tools of others under a decriminalization context. While their work is meticulous and important to the debate, it does not necessarily lead to the dismissal of decriminalization as an effective measure to regulate prostitution. Instead, it is worth noticing that decriminalization in Rhode Island is somewhat different from the general definition. Decriminalization, apart from repealing laws which criminalize prostitution and related sexual work, commonly relies on current laws to regulate the sex industry, which is regarded as normal business (Jordan, 2005). However, in the case of Rhode Island, prostitution is hardly regulated or controlled by laws (Shapiro & Hughes, 2017). Hence, one limitation of the case study is that, apart from the decriminalization, defects in the law regulating crimes could have been another factor which led to this unintended consequence. As these defects are not discussed in the study, it is not plausible to argue that decriminalization necessarily leads to the same outcome if applied to other places. On the other hand, after cautiously studying a recent case of New Zealand, where prostitution was decriminalized in 2003, Abel et al. (2007) highlight a number of positive effects of decriminalizing the sex industry. While illustrating the screening methods employed by prostitutes when facing potential clients in the streets in New Zealand, Armstrong (2014) also emphasizes the importance of the decriminalization legal framework. If a woman does not have to worry about either side being arrested, she will have enough time to make deliberate decisions when facing a client and face much less danger (Armstrong, 2014). Additionally, Abel et al. (2009) find that decriminalization has little impact on the number of people working in the sex industry, which eliminates the concern about an increase in the number of sex workers following the decriminalization. Therefore, it can be argued that, in the

case of New Zealand, decriminalization maintains the size of its sex industry without compromising sex workers' wellbeing and security.

Based on the comparison and analysis above, it can be concluded that decriminalization is more effective than the other approaches in protecting sex workers. While evidence showing unintended consequences resulting from decriminalizing prostitution exists, criminalization, legalization and the Nordic Model seem even less likely to keep sex workers away from harm. It is recommended that researchers examine why decriminalization may bring different outcomes in different places and suggest additional ways to regulate sexual crimes within the decriminalization context. Furthermore, governments should also make effort to find effective ways to supervise the sex industry under the framework of decriminalization. Decriminalization may not be a perfect solution yet, but it is suggested to be adopted in more places for the wellbeing of sex workers.

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