



TWO FAILED EXPERIMENTS

**STAND AGAINST SEXUAL EXPLOITATION
AUGUST 2019**

**HOW LEGALISATION AND
DECRIMINALISATION (OF BOTH SALE AND
PURCHASE OF SEX) ARE FAILED POLICY
REGIMES**

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POLICY OPTIONS

Fierce Debate

The debate relating to prostitution policy is heavily polarised to the extent that at either end of the debate (which essentially centres on whether or not to challenge/criminalise demand and pimping) even the nature of the evidence relating to policy regimes is contested. The key elements to consider in relation to prostitution policy are as follows:

- **Sale of Sex**

Whether people selling sex (the majority of whom are women) - as well as activities related to sale of sex, such as soliciting - should be criminalised, decriminalised, legalised, or regulated. In the UK, the sale of sex is not illegal but the related activities of soliciting, running a brothel, and pimping are. Debates relating to this centre on what will make women safer and what kind of harms are being avoided - namely, avoiding stigma, criminalisation, and/or physical and psychological harm.

- **Pimping**

A distinction can be made between whether to criminalise pimping and whether to criminalise those who are having sex for money. In a legitimised sex industry, pimps are referred to as 'managers' and it is argued that they simply support the operation of a business. The coercion and exploitative practices that we know happen in the sex industry are often obscured by this language. There is debate about whether exploitation can be designed out of the industry or whether increased demand means that pimps will procure people to sell sex by any means available to them.

- **Services for People in the Sex Industry**

The way that people selling sex (or who have sold sex) are supported must also be addressed. Should services focus on helping people to change their lives if they wish to do so (an exiting approach)? Or should they simply offer basic safety and health advice (harm minimisation)? Should exit (leaving prostitution) be discussed/encouraged/avoided for fear of stigmatization? In regimes where prostitution is completely legalised or decriminalised there is arguably less incentive to provide support as it is considered a 'job like any other'.

- **Purchase of Sex**

The most hotly debated aspect of prostitution policy relates to the purchase of sex and whether demand for purchasing sex should be stopped. This fact is sometimes hidden in debates about whether to fully decriminalise or legalise prostitution, with advocates of this failing to highlight that they are advocating not only decriminalisation of sale but also of pimps and punters. Again, the options are to criminalise, decriminalise, legalise, or regulate. However, there is also the option of challenging the normalisation of demand, as discussed below.

Prostitution law and policy must address: sale of sex, pimping, service provision, buying of sex, and public attitudes.

- **Public Attitudes**

This concerns whether prostitution should be considered a completely normal part of society - 'the oldest profession' or whether harms and exploitation should be highlighted. Challenging normalisation of the sex industry would mean making the prospect of buying sex unattractive or undesirable. This can be an end of itself or pave the way for future criminalisation of demand. This feeds into a wider debate on intimacy, sexual consent, the limits of 'choice', and to what extent we are willing to commodify people's bodies.

Key Approaches

- **Legalisation (with or without regulation)**

Tends to be silent on service provision. Supports legalisation and normalisation of both sale and purchase of sex. The public are encouraged to see prostitution as a 'job like any other'. Sometimes regulation is included as a form of 'protection'. There is dissonance regarding why people working in an 'ordinary' job would need 'protection'. Harms and exploitation are glossed over in favour of destigmatisation. It is argued that by not driving the industry 'underground' this makes women safer and means that they have an unencumbered source of income.

- **Full Decriminalisation**

Is essentially the same as legalisation, except that there is less likely to be regulation of the industry. People often advocate full decriminalisation as a better model because it does not formalise the industry in the way that legalisation does, leading to the kind of ghettoisation of red light zones that became very problematic in countries such as Amsterdam (discussed further below). However, in reality the effect is the same as legalisation but without the (albeit ineffective) checks and balances and scrutiny of a legalised regime - or alternatively, it becomes the same as legalisation because of state intervention and regulation.

- **Nordic Model**

The Nordic Model is a three pronged approach to prostitution policy. Each prong is essential to the effective implementation of the regime. These are: decriminalising the sale of sex, criminalising pimping and purchase of sex (a step towards the Nordic model is to challenge purchase without criminalising), and to offer service provision to help women to exit. The Nordic model has been successfully implemented in many countries. When first introduced in Sweden, the police were skeptical about the law and did not think it would help, however, they now say that they can see the positive effect it has had.

- **Prohibition**

Full criminalisation of both sale and purchase is still the legal position in many countries. The drawback of this approach is that it criminalises people who have been exploited and/or made very difficult decisions in the face of disadvantage. Criminalisation of sale leaves those selling sex more vulnerable through, inter alia, the pressure of fines, periods in prison, and inability to find alternative work.

- **A Mixed Approach**

In certain jurisdictions, of which the UK is one, there may be no one clear position adopted and instead a mixed approach. In the UK, certain activities are criminalised that are related to the sale of sex - such as soliciting - and certain activities relating to the purchase of sex - such as kerb crawling. The actual approach taken towards the sale of sex may depend on the local government and whether they take a hands off approach, police the violence towards people involved in prostitution, or control prostitution as a public nuisance. A mixed approach like this often makes the policy environment confusing and sometimes hostile to vulnerable people.

SPOTLIGHT ON FULL DECRIMINALISATION AND LEGALISATION

Rationale

The key arguments made for these policy approaches are:

- We'll be able to see and control the abuse better because it won't be 'underground'
- It shouldn't be hard for people to engage in prostitution, it could turn punters violent
- We don't want to reduce the industry, women should be able to make an income
- We should normalise the industry so that people selling sex are not stigmatised

In short, the key responses to this are:

- Both policy regimes have demonstrated that as demand grows so does the black market, with associated exploitation and harms. Further, even in the 'visible' and 'legitimate' establishments, it is easy to hide exploitation and even ensure that women do not report abuse for fear of repercussions
- Making it harder for people to buy sex actually deters people from buying sex. This reduces the risk of harm by removing more potential perpetrators. In addition, the punters who are driven by violence are not put off either way and the violence still occurs in legalised/decriminalised regimes. In fact, in Nordic Model countries there are fewer instances of prostitute murders
- The best way of securing a viable financial future is to help people to NOT have to make the choice to sell sex and to find alternatives. If there is no alternative to prostitution that is a problem that needs to be addressed as opposed to simply leaving it as a viable option for people who are struggling financially. Involvement in prostitution should not be inevitable
- People selling sex should never be stigmatised. Many people, however, do not want to be prostitutes and even in regulated regimes do not register as one. Stigma is present no matter what the regime. It is not stigma that causes violence and other harms and keeps people without alternatives. The best way of reducing stigma is to help women to engage in society in meaningful ways through service provision, as well as to raise awareness of the strength and resilience of survivors

SEDUCTIVE AGENDAS

The full decriminalisation and legalisation agendas are both seductive. They play upon the idea that supporting prostitution is sexually liberal and that women who ‘enjoy’ or ‘choose’ to sell sex should have the ‘right’ to do so. This is interesting language because there is no ‘right’ to sell sex – it is not the same as the right to have sex, which isn't in dispute.

The impact of commercialisation is the most important aspect of prostitution and is largely ignored in policy debates. It is its commercialisation that leads to huge amounts of exploitation, and ultimately modern slavery, because people are using human beings to profit and/or capitalising on their economic need in order to coerce them into sex and a variety of sex acts. The reality of a prostitution transaction is that consent is being bought and ‘bought’ consent is actually not free and enthusiastic consent borne out of mutual attraction. Sexual violence in general will not be reduced until the notions of mutuality and ‘enthusiastic consent’ are key standards for sexual interactions.

The ‘choice’ involved is also misleading. Firstly, it is overwhelmingly women who are catering to male sexuality. It is therefore self-evident that gendered structural dynamics are at play beyond individual agency. Secondly, the quality of a ‘choice’ is actually far more important than the fact a choice is made. A choice can be rendered meaningless if the only choices available are undesirable. The focus on ‘choice’ ignores the complexity of social, economic and psychological factors that make up that choice. This is why the third prong of the Nordic model – exiting service provision – is particularly important in order to create more and better choices.

In addition, it is rare for markets to go unchecked. In fact, there are very few examples of ‘commodities’ – which is what purchased sex becomes – that are not regulated. In other words, we place rules on what can be bought and sold all the time, both nationally and internationally, including on the provision of ‘services’.

Another argument made in relation to full decriminalisation and legalisation is that it is not possible to reduce demand at the same time as helping women to be safer. However, it has been shown that even without changing the law, it is possible for policing of prostitution to avoid criminalising people selling sex and instead offer support while also challenging men's demand for sex (Matthews and Easton 2011; Poland 2008). This is achievable even without changing the law and has been a successful approach in both Ipswich and Glasgow. Purchasers and pimps do not need to be treated with impunity in order for those selling sex to be treated fairly and supported.

SPOTLIGHT ON THE LEGALISATION AGENDA

Consequences of legalisation include:

- A market unencumbered by police and civil society's scrutiny where exploitation and abuse thrive
- Demand for sexual services is normalised and grows, leading to a higher demand for people to provide these services
- Methods of procurement continue to include targeting teenagers (who are easier to groom) and the most vulnerable (including women leaving care, learning disabled women, women fleeing violence, women in poverty, and women with addictions) and includes the use of abuse, coercion, and deception
- A small percentage of women benefit from legalised mechanisms, such as registration, whereas a black market grows and most women do not benefit from legal protections
- Women do not want to register (they do not actually want to be selling sex) and if they do they hide abuse, control, and exploitation, including not reporting violent pimps or punters for fear of it ruining their business
- Competition increases and with that working conditions deteriorate meaning women are pressured to reduce prices and consent to unsafe practices or sexual acts they are not comfortable with
- There continues to be a market for underage girls and trafficking. Serious organised crime dominates the industry
- There is little to no exiting provision and support services beyond sexual health

Such issues have been documented in a number of areas including Amsterdam, Germany, Nevada, and Rhode Island.

See Raymond 2013; Raymond 2007; Bindel and Kelly 2004; DW 2017 and 2018, BBC 2019; Asthana 2007; NPC 2008; Farley 2007; FT 2006; MJP 2004; Poulin 2005; Shapiro and Hughes (undated)



Amsterdam is the most well known example of the legalisation experiment and yet in recent years the legalised regime has been dismantled because of increasing problems in the red light district (Raymond 2010; 2013; Abel et al 2009). Unsurprisingly serious organised crime continued to operate within the industry even after legalisation, and in the same vein, violent and coercive pimps and punters continued to abuse and exploit women. The problem of organised crime created ghettoization in the red light district that the Government found difficult to control. Conversely, the veil of legitimacy offered by legalisation meant that criminals and exploiters were able to carry out their activities with little intervention or scrutiny.

The 'illegitimate' side of industry that it was claimed could be sanitized by legalisation - such as child prostitution, trafficking, addiction, and control by third parties - all continued under the regime. Working conditions deteriorated, with women working long hours, having their money taken from them, being victims of violence and coercive control, being forced into cosmetic surgery and abortions, and deteriorating health. Meanwhile, Amsterdam became a sex tourism destination, demand for sexual services grew, and illegal brothels were common, as well as trafficking and women working against their will. It has been proven that trafficking increases in legalised regimes (Cho et al 2013).

Similar findings are present in other legalised regimes. In Nevada, for example, it was found that women's emotional wellbeing was poor and there have been reports of gross human rights abuses (Farley 2007). Further, those who are campaigning for change to the Nordic Model are facing threats of violence (see the SWAAP survivors group in Western Australia).

Further, normalization of the industry has led to harmful attitudes that have even infiltrated the courts. A recent ruling in Australia provided for a known violent sex offender to use prostitutes as an outlet in an attempt to control his violent urges (Guardian 2019).

To regulate or not to regulate?

One of the major issues with both legalised and decriminalised regimes is the extent to which there is state intervention into the sex industry. Where there is no state intervention, the industry can proceed unfettered and there are no mechanisms for identifying abuse.

In New South Wales, state decriminalisation is at odds with local council attempts to control legalised zones (see Jordan 2005). In Rhode Island (see Shapiro and Hughes, undated), where prostitution was legalised but there were no regulatory mechanisms in place, the police took a hands off approach and even serious crimes were not dealt with, including trafficking. The police themselves called for a prostitution law so that they could better investigate issues with trafficking and abuse. The law was eventually changed because of growing violence and exploitation.

Unfortunately, as mentioned above, regulation does not actually mean women are protected. In New Zealand, a decriminalised regime discussed further below, there is only patchy and inconsistent 'inspection' of brothels (see below for more information) and so women are largely unprotected. In Germany, women resist being registered (they do not want to be prostitutes) and very little violence is reported for fear of it affecting their business (DW 2017; 2018). In Nevada, women were coached in how to pass inspections (Farley 2007).

As such, there is no clear solution to protecting women under a legalised or decriminalised regime.

What makes women safer?

In Sweden, where demand is criminalised and the police have powers to intervene and investigate prostitution, there has been only one murder of a prostitute since the law changed. This murder had nothing to do with her involvement in prostitution and was instead to do with her ex partner and custody of her children. In contrast, in the Netherlands over the last 30 years at least 127 women involved in prostitution have been killed and in Germany since 2002 at least 34 have been killed, as well as 20 attempted murders (see bibliography for a list of sources). Violence continues to be a huge problem in legalised countries.

DECRIMINALISATION: A FALSE ALTERNATIVE

Proponents of full decriminalisation are often those who were once supportive of the policy agenda of legalisation but who have observed its failure in places such as Amsterdam and Nevada. Despite attempting to make a distinction between the two, in reality both full decriminalisation and legalisation have the same effect.

Decriminalisation has failed to address any of the problems associated with legal regimes

As discussed above, the fully decriminalised and legalised regimes tend to have the same problems and similar results. However, this section delves deeper into the example of New Zealand, which is often put forward as a 'success story'. Supporters of decriminalisation say that failures in legalised regimes can be attributed to mistakes (such as having tolerance zones in isolated locations) or that strict controls are both moralising and prevent brothels from becoming legal. However, this overlooks the fact that it is naïve to imagine that serious organised crime would simply hand over the industry to the Government.

Although a 2008 New Zealand report (NZMOJ 2008) purports that decriminalisation has been a success, a more recent report making the same conclusion nevertheless appears to admit that there is a problem with the unknown numbers of women involved in prostitution, their work conditions, the location of the industry (in other words, an admission there may be a black market), and their inability to find any tangible evidence of positive change (NZP 2012).

There can only be limited knowledge about the industry because smaller premises are not required to register, licensing does not appear to be scrutinized (see Crofts and Summerfield 2007), and there is only limited scope to intervene - on the basis of safe sex as opposed to exploitation - and investigate regardless (see the Prostitution Reform Act 2003, sections 8,9,26,27). There are no compulsory inspections and they are generally not carried out (only 11 between 2003 and 2013, with the only consequence being one client fined \$400 for violating safe sex requirements).

- The best claim that can be made is that there has been *no increase* in the amount of people involved in prostitution, thus avoiding mushrooming as happened in Amsterdam (Abel et al 2009). However, the 2008 report itself in section 8 demonstrates an increase in numbers in 2007 (as opposed to the 2006 figures that conclusions were drawn from). Further, it has been conceded that there are still marginalised and hard to access people involved in prostitution in New Zealand and so it is difficult to estimate actual numbers
- There is very limited monitoring of the sex industry and so little can be known about illegal practices, abuse, and exploitation (Penk 2007). The frameworks for protection are thin but do afford legitimacy to the industry. Underage and street prostitutes are unprotected (Saphira 2008)
- There is evidence that trafficking has increased and there has been considerable violence, including the murder of three women (Jeffreys 2009; Instone and Margerison 2007). Safety is an ongoing issue (Merilutoto et al 2015) despite some suggestion that screening clients is easier, albeit that the need for screening and inherent lack of safety remains (Armstrong 2014). The 2008 report admits that pimping and coercive control remains a problem (p46)
- The 2008 report demonstrates that women do not feel safer to report violence to the police and the majority feel that little can be done about the violence that occurs
- The industry still appears to be in the hands of organised crime (Fleming 2006) and the law reform committee estimated an expansion of the industry - despite conflicting evidence in the 2008 report - including a large black market (PLRC 2005)
- Working practices have not improved (Kelly et al 2009; Abel et al 2009). In fact, Sabrina Valisce (BBC 2017) - a survivor of the regime in New Zealand - describes deteriorating conditions and a striking lack of respect for women working in the industry. Violence is normalised as part of the 'service'
- There is a dearth of exiting support (Penk 2007; NZMOJ 2008) and women involved in prostitution have begun lobbying for the Nordic Model (Voxy 2013)

POLICY THAT PROTECTS

The case for the Nordic Model

The Nordic Model involves criminalising demand (including changing public attitudes), decriminalising sale, and providing exiting services.

Eradication of Harm

- It is clear that both full decriminalisation and legalisation are weak when it comes to being able to actually eliminate the harms associated with prostitution. By contrast, the Nordic Model takes an *eradication* agenda (not just harm minimisation) by:
 - a) helping women to change their lives and exit prostitution - exit is the only way to actually make sure women are safe
 - b) reducing demand - fewer women are procured into the industry to meet that demand

Deterring Demand

- Contrary to the prostitution myths, it is actually relatively easy to discourage men from buying sex. Almost any technique for making it harder to purchase helps to significantly reduce demand - this includes fines, police presence, or naming and shaming
- The first step is to challenge and reduce demand, followed by criminalisation when policy ready (this is recommended for the UK in Matthews and Johnson 2016)

Policing

- The Nordic Model gives the police significant powers to protect people involved in prostitution without the risk that they themselves will be criminalised. Even skeptical officers in Sweden now acknowledge that the model has helped improve lives

Listening to Women

- Survivors who speak out against the sex industry are frequently dismissed while pimps and punters dominate the modern discourse in an attempt to normalise industry. Exited women say that they would have liked exiting support earlier and recognition of the harms they face
- The interests of those who are most likely to be abused or exploited should be promoted above those who genuinely have a 'choice' and, therefore, easy alternatives

The Nordic Model has so far been adopted successfully in: Sweden, Norway, Iceland, Lithuania, France, Finland, Canada and Ireland

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