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The Decriminalization of Sex Work

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Introduction

Sex work is defined as the exchange of sexual services, performances, or products for material compensation (Lutnick & Cohan, 2009). Sex work is a diverse field that does not discriminate. Sex workers can have a college level education; sex workers can be male, female, transgender, and non-binary; sex workers can also be people of color, and while there is a particular notion that sex workers are young adults, usually in the mid to late 20's, older adults in their 30's and 40's who have dependents to look after can also be sex workers. Benoit et al., (2014, pp. 3-4, 7) conducted a study to examine the many people linked to the sex trade industry in Canada. In particular, the sample consisted of 218 sex workers. Of the 218 sex workers, the majority were Caucasian; 15 percent reported having a Bachelor's degree or higher; half of the workers were in intimate relationships; 39 percent reported having a dependent to look after; 77 percent identified as women; 17 percent identified as men, and 6 percent identified as non-binary or transgender; 35 percent also identified as suffering from a long-term disability, and the average age was around 34 years old. Sex work is often called the world's oldest profession as it has been practiced since ancient times. Sex work is a global phenomenon, with many people all over the world engaging in this profession. While sex work has a troubled history with the law, some places, such as New Zealand (WHO, 2020, Prostitution Reform Act of 2003, section 3), have decriminalized sex work, with remarkable benefits to the workers, ensuring their safety, as they are able to move freely without regulation and fear of punishment from law enforcement (Abel, 2010a). Other countries such as Holland have legalized sex work. Decriminalization vs legalization are often two terms that get confused. Legalization involves heavy regulation, where the workers are told where they can work and when they can work, as well as registration fees; failure to comply with these regulations can often result in punishments (Center for Health and Gender Equity, 2016, p. 8). However, decriminalization removes these restrictions and the workers are given the same rights and protections as other workers, without the heavy regulation

and possible penalties (Center for Health and Gender Equity, 2016, p. 8). Currently, sex work is illegal in Canada, where the Nordic Model is used to prosecute sex workers. While the Nordic Model was created to protect sex workers, the regulations vary slightly from country to country, and sex workers are still being prosecuted. Nordic Model Now (2018) states that sex workers are often forced into this profession as a result of abuse, grooming, and betrayal; Nordic Model Now also views sex work as inherently violent and that it damages those who are involved. Some individuals who work in the sex trade industry, however, have heavily criticized this model. Many sex workers in Canada feel this model endangers their lives even more, as this model pushes sex workers underground as they attempt to work while also hiding from law enforcement (Tucker, 2014).

Further, the Nordic Model under current law also prohibits advertising for the sale of others sexual services, both online and in print (Tucker, 2014), despite the fact sex workers already experience high amounts of coercion and abuse from law enforcement, excessive amounts of social stigma, and a high rate of violence. Goffman (1963, p. 3) described social stigma as a phenomenon whereby an individual has an attribute that is deeply discredited by their society, and, as a result of this attribute, is rejected. The Nordic Model also does not represent a departure from historical approaches to regulating sex work as it still views sex work as inherently dangerous to society. Rather than offering a radical departure, the Nordic Model is just a modern-day version of an old idea where sex workers are both criminals and victims.

Sex Work as a Profession

Sex work has been around since ancient times (Jenness, 1990), going as far back as the ancient Greeks (Kapparis, 1999), Romans (Dillion & Garland, 2005, p. 382), and Mesopotamia (Rathus, Nevid, Fichner-Rathus, & McKay, 2016, p. 462). While sex work is currently illegal in many parts of the world, sex work was legal in Ancient Greece (Kapparis, 1999) and Ancient Rome (Dillion & Garland, 2005, p. 382) with both men and women engaging in sex work. Today, there are millions of sex workers around the world. A report by the organization Fondation Scelles (2012, p. 5) suggests there are between 40 and 42 million sex workers currently in the world. While some countries have legalized sex work, many others prohibit it by

law. New Zealand, however, has opted to decriminalize sex work, offering a possible model for other countries to follow (Lutnick & Cohan, 2009).

The Nordic Model

The Nordic Model, as the name implies, started in Sweden after researchers concluded that most of the prostituted women at the time were forced into prostitution as a result of abuse, grooming, betrayal, violence, and extreme poverty (Nordic Model Now, 2018). The Nordic Model has four key aims, according to The Global Network of Sex Work Projects (NSWP) (2017, p. 4):

1. To create change by sending a message that society should not tolerate sex work as it is a form of violence against women.
2. To reduce the demand for sex work. This is accomplished by criminalizing the buyers. If there is no one to buy, there is no one to sell.
3. To reduce trafficking by reducing the client pool and making it an unattractive venture for traffickers.
4. To convince other countries around the world that sex work is inherently violent towards women so the buyers should be criminalized, and the ideology should be condemned.

Adverse Effects of Criminalizing Sex Work

Sex workers are one of the most vulnerable populations who are at risk of contracting an HIV infection (WHO, 2016). Sex workers who use drugs are at even higher risk due to unprotected sex, syringe sharing, violence, and dependence on drugs or alcohol (Rusakova, Rakhmetova, & Strathdee, 2014). Fear of law enforcement and incarceration discourage condom possession, as even carrying a condom can provide officers reason enough to arrest and prosecute them (Alexander, 2001). This fear and abuse by law enforcement also limit the time and the methods that sex workers can use to screen their clients (Kinnell, 2006) as cited by Campbell and O'Neill (2013) in their book *Sex Work Now*. Because of this fear and abuse, sex workers may move to more isolated areas, which increases the risk of violence against them

(Shannon & Csete, 2010). Another harmful effect of criminalization is the stigma that comes along with being a sex worker.

While sex workers view their jobs as legitimate, they are often seen as immoral and deserving of punishment by many in society (including law enforcement officials who claim to protect and serve the public). This stigma, more often than not, results in the exclusion of sex workers from healthcare, education, and housing as a result (Mgbako, 2016; World Health Organization, 2012). Many authorities have also shut down many online sex work forums. These online forums allowed sex workers to screen their clients better, thus increasing protection (Conger, 2014). Police hold power over sex workers when sex work is illegal. As a result, abuse and unethical behaviour are commonplace for many. In Europe and Asia, many sex workers report being sexually assaulted by police needs citation. Ninety percent of sex workers in Kyrgyzstan said they were sexually assaulted (Crago, 2009). In Cambodia, nearly half of the sex workers have been beaten and raped by the police (Jenkins, 2006).

In contrast, seventy-five percent of sex workers in brothels have been beaten and raped by police (United States Agency for International Development, 2006). In places like Namibia and Siberia, sex workers reported being raped while in police custody, often without condoms and often as a pre-release for bail (Arnott & Crago, 2009; Rhodes et al., 2008). In many parts of the United States, individuals convicted of sex work-related activities must register as sex offenders, where they are required to carry documents, identifying themselves as sex offenders. As a result, many are unable to apply for loans, scholarships, or public housing (Best Practices Policy Project, 2010). Being labelled a sex offender may make it difficult for sex workers to find non-sex work-related work if they so choose. Laws criminalizing sex work also have a disproportionate effect on women and LGBTQ+ individuals as they make up a majority of sex workers, where these laws act as a form of state control over their rights to have bodily autonomy, sexual freedom, and expression (Slamah, Winter, & Ordek, 2010).

Positive Effects of Decriminalizing Sex Work

Arguments for decriminalizing sex work are plentiful. While sex work has remained criminalized in Canada or the U.S., we can look at countries around the world to see the possible

outcomes. Even without looking to those countries, however, the World Health Organization (WHO, 2020) states that decriminalizing sex work could lead to a 46% reduction in new HIV infections in sex workers over ten years. The WHO also says that eliminating sexual violence against sex workers could lead to a 20% reduction in new HIV infections. Advocates also argue that by decriminalizing sex work, the workers will feel much safer, and it would be easier for law enforcement and the government to focus on sex trafficking instead (The Canadian Alliance for Sex Work Law Reform, 2017). While there is this idea that sex work and sex trafficking are synonymous with one another, the critical distinction is consent. Within the framework of sex work, there is consent among the workers and the buyers. In sex trafficking, there is often manipulation, coercion, betrayal, and a lack of consent, forcing the victims to engage in activates they do not want to but often do for fear of their lives (NSWP, 2011). Decriminalizing sex work may enable sex workers to maximize their legal protection, giving them the ability to exercise legal justice and access health care.

When we decriminalize sex work, we decrease the violence and stigma and increase protection, dignity, and equality within society. After sex work was decriminalized in New Zealand, many sex workers (around 57%) reported that police attitudes and interactions towards them had become much more positive (Abel, 2010b, p. 235). In New Zealand, sex workers have an increased ability to screen their clients, work in safer environments, and have better access to security services. Sex workers are also able to inform the police when act violence is occurring or is about to happen since they do not need to worry about prosecution from law enforcement (Armstrong, 2014). When New Zealand decriminalized sex work, it enabled sex workers to go to the police without this fear of prosecution (Abel, 2014, p. 6).

Decriminalization, to an extent, removes the stigma, discrimination, prosecution, and police surveillance (Decker et al., 2015). Sex workers can also be allies to fight against sex trafficking as sex workers in India were able to identify and support women who were part of sex trafficking (Jana, Dey, Reza-Paul, Steen, 2014). When sex workers do not need to worry about criminal penalties against them, they can collaborate with law enforcement to prevent sex trafficking. Finally, decriminalization not only gives sex workers bodily autonomy, but it also respects gender equality, privacy, and sexual rights for everyone.

Conclusion

A majority of sex workers, and many people not even associated with the industry, feel that criminalizing adults for engaging in sexual activity that goes against societal norms is incompatible with the human rights to personal autonomy, sexual freedom and expression, and privacy. The laws against sex work are not based on research, but rather, based on subjective morality that stems from the fact that society still accepts patriarchal norms and religious intolerance towards sexual freedom and expression. The government should not be able to dictate what two consenting adults do behind closed doors. Criminalizing sex work harms the workers in various ways, wastes time and money that could be spent better on fighting sex trafficking and provides a barrier that makes it almost impossible for workers to access health services, education, and housing.

The best example, as outlined throughout this paper, is to follow the same plan that New Zealand has set out. The workers are safer, the police can focus on more important issues, and various rights are upheld and respected. When sex work undergoes decriminalization, not only is the stigma removed from many areas of their lives, but access to health services increases. Interactions with law enforcement officials also become more positive, education is obtainable, and the workers have safer environments from which to work in and can adequately screen their clients. Lastly, sex workers, like so many of us who are privileged in this world, are finally given the inalienable rights they deserve. The right to bodily autonomy, the right to sexual expression and freedom, the right to be treated and seen as equal without discrimination, and the right to privacy. Sex worker rights are human rights.

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