

# Decriminalisation of prostitution essay



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Decriminalisation of prostitution is vital issue in protecting prostitutes from brutalisation by society. In this paper, emphasis is given to law govern decriminalizing and offering health and legal protection to the prostitutes themselves. Some information is added for decriminalisation of prostitution with reference to society in both economic and humanitarian aspects. It has been included that prostitutes would require regular health check-ups and the general public would have greater control on any sexually transmitted diseases.

At the closing stages, points were mentioned that how the decriminalisation of prostitution would benefit both society and prostitutes. Decriminalization has been considered as “ the removal of all prostitution specific laws and no government regulation of the trade;” in contrast, decriminalization “ with controls” means legal recognition with government regulation of some aspects of prostitution. Decriminalization means the repeal of measures that outlaw prostitution, soliciting, pimping, pandering, and brothels. Women and children in prostitution do need assistance.

In San Francisco, 89 percent of women in prostitution want out, but are trapped by violence, addictions, and hopelessness. There has been an increasing tendency within Australia to adopt a policy of decriminalizing prostitution. New South Wales was the first state to embrace the concept of decriminalization with the repeal in 1979 of the Summary Offenses Act (1970). Most Australian states and territories continue to criminalize aspects of the prostitution industry. Controversy over legal intervention in the prostitution industry remains at the centre of contemporary debate.

Many feminists, including activist prostitutes advocate the retreat of the law in this area. Sue Jackson and Dianne Otto ( 1984, 376) advise, “ Rather than supporting legislation to make prostitution legal, feminists should press for the repeal of all anti-prostitution laws so that prostitution becomes, simply, not illegal. ” The recent inquiry into prostitution in Queensland conducted by the Criminal Justice Commission ( 1991) recommended strengthening the criminal law to protect children and disadvantaged groups from sexual exploitation or coercion into prostitution.

It was also recommended that a Registration Board, comprised of representatives from the Health Department, the Police Service, the Local Authority, the Criminal Justice Commission, prostitutes and a government-based occupational health and safety expert, be established. There is currently “ an overwhelming trend toward decriminalization of prostitution throughout Australia, although some aspects of prostitution remain illegal in all jurisdictions. With the exception of New South Wales, street soliciting is a criminal offense in all states and territories.

It is also illegal to use premises for prostitution when they have been allocated to other purposes; there is a common law offence of keeping a brothel. While the history of prostitution in Canada and other countries suggests that it is an activity that is largely impervious to efforts to suppress it, most political perspectives—in various shades of liberalism, feminism, socialism, and religious moralise—argue that society should be rid of prostitution.

The moral conservatism of the 19th century, still an influential philosophy today, aspired to eradicate “ the social evil” as a form of sin and worked in concert with science to oppose commercial sex on epidemiological grounds. The advocates of a modern secular disapprobation portray prostitution as either an insidious source of neighbourhood decay or, at least, a general public nuisance, especially in residential areas. Socialism and feminism generally call for the long-term elimination of the prostitution trade because it represents one of the most extreme forms of co modifying and objectifying women.

Prostitution poses some difficult problems for feminist political action. On the one hand, it is crass sexual exploitation and ought to be eliminated. On the other hand, if women ought to be allowed to control their own bodies, they ought to have the right to prostitute themselves. From this perspective, many sex trade workers argue that prostitution is a form of labour, that sexual co modification is no different from any other form of human labour sold for a price, and that any position that criticizes the prostitute’s separation of sex and love is, in fact, an old-style moralise that is not conducive to sexual emancipation ( Bell 1987)

Police regulation of prostitution continues to be a strong feature of current law enforcement practices in Western Australia. The police in that state operate under a policy known as “ containment and toleration. ” (Dixon 1982; Edwards 1986, 1990). Most feminists argue for the decriminalization of prostitution, for a criminal code without (or with very few) prostitution laws. In Victoria, prostitution finally achieved a degree of legal status following the

implementation in August 1987 of substantial portions of the Prostitution Regulation Act ( 1986).

The stated objectives of this legislation are to protect young people of either sex from sexual exploitation; to protect adult prostitutes from intimidation and violence; and to protect the community from the disturbance caused by prostitution-related activities. To achieve these objectives the act imposes limitations on prostitution and associated behaviours and includes a range of penalties for soliciting, accosting or loitering for the purposes of prostitution in a public place.

One of the committee members opposed the nuisance law recommended by the majority in favour of a pure decriminalization approach.

Decriminalization would require removal of the term “ prostitution” from the criminal code altogether so that “ nuisances” would be defined generically to apply to all persons; pimps would be prosecuted under extortion laws.

COYOTE promotes the notion that prostitutes have basic rights to occupational choices and sexual self-determination: Prostitution is legitimate work, and women have the right to control their own bodies, including sale of sexual favours.

Denial of these twin rights constitutes the central grievance of COYOTE, whose chief goals are (1) public education regarding the costs of existing prostitution controls, (2) decriminalization of all aspects of voluntary adult prostitution, and (3) normalization of the occupation and the individuals involved in prostitution (Weitzer 1991). From our point of view, COYOTE’s most important position is its stand on the legal status of prostitution in the

United States. COYOTE advocates national decriminalization, the elimination at the federal level of all legal restrictions on prostitution.

Fear of displacement from one state to another is the reason for changing the legal status at the national level. The American Civil Liberties Union (ACLU), for example, has mounted constitutional challenges to prostitution laws and, in fact, has formally supported decriminalization since 1975, but the cause of prostitutes seems generally to be low on its long list of priorities. The feminist movement, particularly the National Organization for Women (NOW), which also endorses decriminalization, has offered little by way of material support.

Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER) and the U. S. Prostitutes' Collective, both less well-known than COYOTE, hold positions that are most consistent with the dominant feminist position of abolition. Both endorse decriminalization as an interim solution. The issue of free choice in employment dominates the rhetoric of the U. S. Prostitutes' Collective, but in contrast to COYOTE, this group feels that without full economic independence for women, such a choice, be it prostitution or an alternative, is no choice at all ( Weitzer 1991: 27-35).

Public health measures should be directed at the clients of prostitutes to increase their appreciation of the protection afforded by condom use and the need for regular medical examinations to detect symptomatic infections... The hazards attending prostitutes' activities were numerous: violence at the hands of clients or others, venereal disease, mismanaged abortions and

extortion by police officers. Many of these difficulties, of course, continue today ( Hatty 1989).

Indeed, early concern over the health aspects of prostitution, such as the transmission of venereal disease from prostitute to client ( Golder and Allen 1979/1980), now manifests itself as a concern over the spread of AIDS ( Select Committee of the Legislative Assembly Upon Prostitution 1986). Kruhse-Mountburton stresses that the rate of infection of HIV tends to be low or absent in non-drug-using prostitutes, but that clients are the ‘ largest component of the prostitution industry, their attitudes and behaviour largely determines the impact of prostitution on the community in terms of S. T. Ds’ (1992: 224).

Policing initiatives coming from anti-vice squads and sometimes drug squads point to the problems for residents living in areas where women work on the street and the need for policing to respond to residents’ needs, as street crimes, soliciting and kerb-crawling create nuisance for residents. Golding (1992) has written about the lack of national standards in the policing of prostitution. Matthews also examines the legalization/ decriminalization debate, and the socio-legal context to prostitution and the law, and suggests an approach he calls ‘ radical regulationism’ to deal with the issues and problems prostitution raises.

Radical regulationism speaks of ‘ protective intervention’ and is based upon a model which stands firmly on the side of residents in ‘ red-light areas’ in partnership with the police and the city or borough council. At the European Whores Congress, held in Frankfurt am Main in October 1991, delegates

were made aware of the legal and social situations for prostitutes in the sixteen countries attending the congress. Many whores were vociferously against young people entering prostitution who were vulnerable, emotionally needy and not really aware of their own needs around their sexuality (Dropler 1991).

The women at the congress were strong and articulate, demanding the decriminalization of prostitution and the same rights, civil liberties and rights to human dignity as other workers. Indeed the Women's Committee of the European Parliament calls on member states to decriminalize prostitution, and protect the health and safety of sex workers, pointing out that the 'semi-illegal, shady background against which prostitutes operate actually encourages such abuses as prostitution under duress, degrading working and living conditions, maltreatment and murder'.

The decriminalization of adult sex work freely entered into would not put sex workers beyond the law; but it would eliminate the anomaly of an essentially sexist body of law exclusive to a particular area of work. Nor would decriminalization in this country solve the growing global problem of 'stolen lives' due to 'sexual trafficking' (Altink 1995); but it would perhaps help loosen the grip of more or less organized crime syndicates and other criminals.

It should be noted, however that Matthews (1986) has taken a contrary view, namely, that decriminalization would in all likelihood increase the level of exploitation of prostitutes. While these government inquiries address the major dilemmas surrounding contemporary female prostitution, some appear



to perpetuate punitive ideologies about prostitution. For example, there is an overemphasis on sexually transmitted diseases within the Victorian report (Overs 1986). Also, the sitting of these inquiries within the government sector significantly reduces their scope.

There are structural and personal issues which simply cannot be canvassed, such as received ideas about sexuality and work. Because the models of sexuality and work contained within contemporary discourses on prostitution are powerful determinants of prostitution practices and society's response to these practices, it would seem particularly important to challenge these models. Packer maintained his faith in decriminalization and argued that “we can never effect changes in the criminal process until we limit and thereby decrease the case load that afflicts all the instruments of the criminal process.”

Packer hoped that due process would encourage legislatures to place less reliance on the criminal sanction especially with respect to abortion, incest, bigamy, gambling, public drunkenness, homosexuality, narcotics, pornography, and prostitution, all of which he believed were “victimless” crimes. Because these crimes involved “consensual transactions,” they required the police to engage in entrapment, electronic surveillance, searches, and interrogations.

The police were the most intrusive and visible, “when they are doing their least important” work. In advocating decriminalization of such crimes, Packer reflected much liberal thought of the time. With the exception of abortion and gambling, most of Packer's arguments for decriminalization did not win

the day and today seem dated and insensitive in light of new understandings of harms and risks and skepticism about whether disadvantaged individuals genuinely consent to such activities ( Roach 1999).

Decriminalized prostitution would remove the black market profit incentive for traffickers and would reduce the smuggling of women. Prohibition provides cover for traffickers and pimps. It allows them to use the laws against prostitution to intimidate, especially when it comes to children. Women and girls being held against their will are afraid to go to police because they will be treated as criminals. The existing law leads to isolation of women. This is especially true for those that have language barriers.

It prevents them from seeking police protection for themselves or others that are in trouble. Decriminalizing prostitution doesn't mean decriminalizing trafficking. The purpose of halting trafficking is to protect the women who are the victims of it, but until we decriminalize prostitution we will not achieve that goal. Existing zoning laws for all businesses would prevent brothels from locating in residential neighbourhoods. Other countries like Australia, New Zealand and the Netherlands have successfully decriminalized and regulated the sex worker industry.

We can use the existing models and experiences to ease the transition in our own country. Decriminalization of prostitution will not be the end of the problems or the answer to all our questions. It will however protect women and sex workers who have been marginalized in our community from acts of violence. It will be the beginning of the hard work that will follow in order to

come up with a real solution to a problem that has always existed and will not be solved by our present law enforcement approach.