The Sussex Centre for Gender Studies hosts a group of 20 core faculty and over 100 doctoral students engaged in gender-related research and teaching in a variety of departments across the University, including Sociology, Politics, Law, Anthropology, Education, Media Studies and English Literature. This submission has been drafted on behalf of the Centre by a group of core faculty with research interests in and relating to the sex industry; in drafting this we have focused on the questions where we are able to contribute substantive expertise. These relate to potential models of legal regulation, and the issue of defining prostitution as violence against women. We strongly advise against the adoption of the ‘Nordic Model’ of criminalising sex workers’ clients, and we also highlight some of the ways in which the definition of prostitution as violence against women invalidates sex workers’ consent and may put them at risk.

1. Should criminal sanction in relation to prostitution continue to fall more heavily on those who sell sex, rather than those who buy it?

1.1 We object to the leading formulation of this question, which offers a choice between two modes of criminalisation rather than asking about all possible legal models, and which situates the criminalisation of sex workers and their clients as separable when in reality they are not. It is generally accepted that people who sell sex should not be criminalised: however, we wish to point out the negative consequences of models criminalising sex workers’ clients in an effort to ‘end demand’ for sexual services. Research from Sweden and other countries where ‘end demand’ frameworks have been enacted (including research by government agencies) has clearly shown that criminalising sex workers’ clients is a de facto criminalisation of the sex worker and creates a number of additional risks. Some of these are listed below.

1.2 Some disadvantages of ‘end demand’ models:

- Sex workers can experience greater harassment due to the policing of clients on the street (Norwegian Ministry of Justice and Police Affairs 2004).
- Stigma against sex workers increases, which puts them at risk of violence from clients and community retribution (this stigma has been explicitly positioned as a positive effect of the Swedish legislation, since it is thought it will deter people from entering the sex industry – see Skarhed 2010).
- Displacement of sex workers to outlying areas or more secluded times, for client protection, which creates additional risk (Hester and Westmarland 2004, Crago 2008, Kinnell 2008, Krüsi et al 2014, Lyon 2014). A report published on the Swedish sex purchase law by the Norwegian government (Norwegian Ministry of Justice and Police Affairs 2004) found that violence had increased.
- Some sex workers engaging in theft to make up for lost earnings (Levy and Jacobsson 2014), and thereby being criminalised by other means.

• Clients becoming less willing to give sex workers their contact details, which is an important safety measure (Levy and Jacobsson 2014), or insisting on ‘outcall’ venues rather than those familiar to the sex worker (Norwegian Ministry of Justice and Public Security 2014, ScotPEP 2015).

• Criminalisation deters clients who do not wish to commit a crime, but is less likely to deter clients who intend to abuse sex workers. Criminalising clients is likely to increase the proportion who are aggressive or dangerous, especially those willing to purchase sex on the street (UNAIDS 2009, ScotPEP 2015).

• Increased reliance on potentially exploitative managers and third parties due to clients being less willing to negotiate the purchase of sex directly (Norwegian Ministry of Justice and Police Affairs 2004, Swedish National Board of Health and Welfare 2007, ScotPEP 2015).

• Effects on provision of services, with sex workers having to conform to the narrative of the disempowered victim in order to access support (Levy and Jacobsson 2014) and funding for health and wellbeing services for sex workers taking lesser priority in relation to exit projects.

• Effects on relations with police, with sex workers reluctant to report dangerous or violent clients due to concerns over a loss of their livelihood (Krüsi et al 2014, Amnesty International 2015) and evidence that police are conducting surveillance and searches on sex workers and engaging in practices such as confiscating condoms for evidence, which create additional risks of HIV and other STIs (Kulick 2003, Krüsi et al 2014).

• In both Sweden and Norway, these laws have provided cover for practices such as the removal of sex workers’ children and deportation of migrant sex workers (Kulick 2003, Amnesty International 2015, ScotPEP 2015).

• Sex workers face being reported to hotels or evicted from housing, as it is illegal to provide premises where sex work will take place (Levy and Jacobsson 2014). An Oslo police operation entitled ‘Operation Homeless’ involved police posing as clients to discover sex workers’ addresses, and threatening landlords with criminal sanction if they did not evict them. Once someone is listed as an evicted sex worker, it is very difficult to find new housing (Ulla Bjørndahl Oslo 2012).

• Negative relations between sex workers and the authorities means that they are less likely to reach out when they witness trafficking, abuse and exploitative working (Norwegian Ministry of Justice and Police Affairs 2004).

1.3 A Norwegian government report on the Swedish sex purchase law found that it had created a ‘buyers’ market’ (Norwegian Ministry of Justice and Public Security 2014), which suggests that such laws do not operate to the benefit of sex workers (ScotPEP 2015). Furthermore, Levy and Jakobsson (2014) argue that there is no reliable evidence to support the claim that the Swedish sex purchase law (seksöpsslagen) has created a reduction in prostitution (there is some evidence of a reduction in street prostitution but no reliable evidence to confirm that this has not been displaced into indoor markets). The premise of ‘end demand’ approaches is
that men’s demand for sex is responsible for the existence of the industry. However, this conceals the economic conditions which lead many people to work in the sex industry. Attempts to eradicate the sex industry via the criminal law will only create risk and harm for sex workers, without any reduction in the sale of sex, if the economic context of poverty and austerity economics remains unaddressed. The provision of state benefits, education, training and alternative employment opportunities, rather than ‘ending demand’, is the key to reducing the number of people selling sex. In a context of high unemployment, benefit cuts and sanctions, depressed wages and increased homelessness and debt, it is irresponsible to consider any model of sex industry regulation which would make it more difficult for marginalised people to survive.

1.4 In contrast to ‘end demand’ models, full decriminalisation of the sex industry was successfully implemented in New Zealand in 2003 and is the preferred model of leading international organisations and groups such as UNAIDS (2009, 2012), UNDP, UNFPA (2012), the Global Commission on HIV and the Law (UNDP 2012), the World Health Organisation (2012) and Amnesty International (2015). This model does not endorse or condone the existence of the sex industry but is motivated by a harm minimisation principle (Jordan 2005). Full decriminalisation has been found to protect sex workers and reduce the risk of violence and exploitation, allowing sex workers to work together for safety, making them more likely to report violence and exploitation to the authorities, giving them more power to negotiate with clients, and granting them workplace rights and the protection of employment legislation (Abel et al 2007, Global Alliance Against Traffic in Women 2011). This model has also not led to an increase in people working in the sex industry (Abel et al 2007), further supporting the argument that it is economic and social factors, rather than particular forms of legal regulation, which are responsible for the prevalence of prostitution.

2. What are the implications are for prostitution-related offences of the Crown Prosecution Service's recognition of prostitution as violence against women?

2.1 Defining prostitution as violence against women situates sex workers as victims: while this may be considered preferable to defining them as criminals, it has a number of negative consequences and potentialities. These are listed below.

2.2 Some disadvantages of defining prostitution as violence against women:
- Defining prostitution as violence against women erases sex workers’ rights to agency and autonomy. This places all decision-making about their lives in the hands of the state, reduces their power to act for themselves, and increases the likelihood they will be subject to violence (World Health Organisation 2013, Amnesty International 2015). Since the majority of workers in the sex industry are women, this perpetuates gender inequality (Global Alliance Against Traffic in Women 2011).
- If all sex work is violence, there is no way to distinguish between sex workers who are working voluntarily and those who are being exploited, and sexual encounters which are consensual and those which are not. However, sex workers themselves are well able to distinguish these things. Indeed, the evidence suggests that sex workers are engaged in detailed stipulation with
clients over acts they will and will not engage in, more so than people engaging in non-commercial sexual encounters (Sullivan 2007). If sex workers are always already the victims of rape however, this denies their experiential reality and undermines their consensual capacity and ability to pursue complaints and criminal cases of rape (Sullivan 2007).

- Clients who believe that women are commodities and it is impossible to rape a sex worker may be more likely to be violent, exploitative and abusive than those who subscribe to ideas of sex workers’ rights (e.g. that services should be negotiated and that sex workers have a right to be safe) (Global Alliance Against Traffic in Women 2011). O’Connell Davidson (2003) found that men who saw prostitution as a sector of work were more likely to be concerned about trafficking, while those who were most likely to use the services of trafficked sex workers perceived women as commodities and felt that payment signified ownership rather than exchange.

- The designation of prostitution as violence against women also creates a distinction between this and other forms of female-dominated and low-status labour (for instance, cleaning or catering), which may be equally exploitative. This creates additional stigma for sex workers and also prevents fruitful conversations from happening about the similarities and differences between working practices and problems in the sex industry and other professions (Anti-Slavery International 1997).

2.3 We argue that a decriminalisation model (rather than a victimisation model) would be most effective in terms of ensuring sex workers’ safety and wellbeing, since this would allow them more control over their working conditions and relations with clients, and make it more likely that they will access health and support services and report violent incidents. It is a cruel irony that defining prostitution as violence against women actually puts sex workers at greater risk of violence.

References


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