

EMANCIPATION IN RED

UNEARTHING THE CONSEQUENCES OF
LEGALISING SEX WORK

SOCIAL
POLICY



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...and the entirety of the ELSA Malta National Board, 2023-2024.

The ELSA Malta 2023/24 National Board



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Foreword

By Hon. Rebecca Buttigieg, Parliamentary Secretary for Reforms and Equality



The debate over the ethics of sex work has been ongoing for decades, and questions of how whether countries should adopt a fully-regularised model or criminalised approach remain as relevant as ever. While some argue that sex work is inherently immoral, others advocate for decriminalisation and recognise sex work as a legitimate profession. However,

these dominant polarised discussions about sex work do not reflect its complexity and the different experiences of persons involved in sex work. Conversations about this topic must also take into consideration broader concerns about gender equality, globalisation and globalised sex markets, human trafficking, immigration, public health, and sex worker safety and rights.

In the real world, sex work legislation is much more complex and nuanced. Decriminalization, and criminalization policies and implications will rarely be identical from country to country. Domestic sex industries do not exist in a vacuum, and these complexities are further exacerbated when considering the potential impact of the domestic sex trade on international sex trafficking. The prevalence of harmful sex-and-gender-stereotyping and systems of oppression and inequality as well as the underlying sexism and misogyny and other systems of oppression and inequality should be also taken into account in the elaboration of any new law or policy. Stigmatisation and discrimination also need to be tackled through sustained and comprehensive strategies elaborated with all concerned national stakeholders, and appropriate measures should be taken to eliminate all forms of gender-based discrimination, violence and exploitation.

The Labour Party's electoral manifesto Malta Flimkien 2022 makes a bold commitment towards the protection of vulnerable persons, whilst also noting a person's right to make their own individual choices.

It is in this context that the Parliamentary Secretariat for Reforms and Equality has embarked on a process to draft a legislative framework through a multi-dimensional and intersectional approach.

As a Government, we are invested in protecting the most vulnerable in society, and it is for this reason that we do not believe that incarceration is the solution. Throughout these months, a number of meetings have been held with civil society and international organisations to discuss a way forward, in an effort to introduce a comprehensive reform that addresses this social reality. The primary objective of the reform is to dismantle stigma and discrimination, to ensure a more inclusive, equitable and safe society for all.

I applaud ELSA Malta who embarked on this project that brings together a body of work that explores the rationale behind sex work legislation and putting forward their ideas after evaluating the implications for the individuals involved and society. It is heartening to see students who are willing to engage and actively contribute to one of the most important discussions we will be having at national level. As the future generation, you can make sure the democracy you inherit is as good as we know it can be. But it requires your dedicated, informed and engaged citizenship.

Foreword

By Hon. Darren Carabott, Shadow Minister for Home Affairs, Security and Reforms



I am grateful to ELSA Malta for the opportunity to contribute to your paper. I would like to commend the organisation on the outstanding work done throughout these past years, which greatly complements the academic, social and professional development of many law students at the University of Malta.

I would also like to take this opportunity to applaud ELSA Malta's dedication to exploring complex and often contentious legal issues, which reflects the vibrant academic spirit that is essential for the evolution of our legal system. I am keenly aware of the multifaceted nature of the chosen topic: the legalisation of sex work. This topic has garnered significant debate around the world, with arguments that span the spectrum of social, moral, economic and legal considerations. I am sure that the studied opinions in this paper will be a testament to ELSA Malta's commitment to contribute to the chosen topic from a local perspective.

As at today, prostitution in Malta is not illegal - and often operates covertly.

Nonetheless, as policymakers entrusted with the security and welfare of our country, we must approach this issue with caution and a focus on the broader implications for today's society and the future generations.

As is internationally established, the arguments in favour of legalising sex work often hinges on the premise that it can provide better protection for those involved by ensuring safer working conditions, reduce the spread of sexually transmitted infections, offer sex workers access to healthcare and diminish risks associated with underground markets. These are noble goals that warrant serious consideration.

However, in the considered opinion of Partit Nazzjonalista, it is crucial to learn from the errors observed overseas when taking such an approach - the demand for prostitutes rapidly increased, which contributed to an increase in human trafficking cases, as well as inadvertently created sex tourism. Importantly, in such instances, the lines between consensual sex work and coercion became blurred.

In the preceding legislature, Partit Nazzjonalista took a clear position on the matter at hand: that of supporting legal amendments calling for the implementation of the Nordic model to the Maltese legal system. In doing so, Partit Nazzjonalista focused on the principle that a person who prostitutes himself/herself should be seen as a vulnerable person and should be offered help and support from the State to exit from prostitution. On the other hand, action should be taken against those who abuse from such vulnerable persons who pay for sex or profit out of sex. This approach to prostitution has been adopted in Sweden, Norway, Iceland, Northern Ireland, Canada, France, Ireland and Israel.

The proposal is built on three main objectives: first, that the person who is prostituting himself/herself is not held criminally liable and should be provided help; second, that the person buying sex is guilty of a crime because the act in itself is a form of violence; and lastly, that exit programmes and help schemes are created in order to help out victims of prostitution without delay.

We are therefore in favour of a revisiting the current consolidated laws in force which in some way or another effect prostitution. Following the necessary amendments, Partit Nazzjonalista also holds the view that a special unit within the Police is established to focus on the enforcement of these laws. Furthermore, ongoing training is to be provided for persons assisting victims of prostitution - be it in health, social and judicial sectors.

In conclusion, I urge ELSA Malta and its members to continue this important dialogue, considering all perspectives and the long-term implications of any legislative change. It is through such rigorous debates that we can aspire to create a just and equitable society.

Introduction to the Notion of Legalising Sex Work

By Julian Shaw

In contemporary discourse, few topics evoke as much controversy and impassioned debate as the legalisation of sex work. Rooted in complex ethical, moral, and socio-economic considerations, the issue of whether governments should decriminalise or legalise sex work is fraught with divergent perspectives. Advocates argue for the protection of sex workers' rights, health, and safety, while opponents often cite concerns regarding morality, exploitation, and societal harm. This essay will explore the rationale behind sex work legalisation, examining its potential benefits and challenges, and evaluating its implications for individuals and society.

Understanding Sex Work

Before delving into the debate surrounding legalisation, it is crucial to understand what constitutes sex work. Broadly defined, sex work encompasses a range of activities involving the exchange of sexual services for money or other forms of compensation. This includes prostitution, escort services, pornography, and erotic dancing, among others. Sex work exists in various forms across cultures and societies, often operating within legal grey areas or outright prohibition.

The Case for Legalization

Proponents of sex work legalisation advocate for a shift from criminalisation to regulation, citing numerous potential benefits. Foremost among these is the protection of sex workers' rights and well-being. In many jurisdictions where sex work is illegal, individuals engaged in these activities are marginalised, vulnerable to exploitation, violence, and discrimination. Legalisation offers an opportunity to empower sex workers by affording them legal protections, access to healthcare, and avenues for reporting abuse.

Moreover, proponents argue that legalisation can lead to a reduction in the prevalence of sexually transmitted infections (STIs) and HIV/AIDS. By implementing regulatory frameworks that mandate regular health screenings and promote safe sex practices, governments can mitigate the public health risks associated with clandestine sex work. Additionally, legalisation can facilitate access to support services, including counseling, addiction treatment, and vocational training, thereby improving the overall well-being of individuals involved in the industry.

From an economic standpoint, legalisation holds the potential to generate tax revenue and stimulate economic activity. By bringing sex work out of the shadows, governments can impose regulations, licensing fees, and taxes on the industry, thereby contributing to public coffers. Furthermore, legalisation can create legitimate employment opportunities in related sectors, such as hospitality, entertainment, and healthcare.

Challenges and Controversies

Despite the compelling arguments in favour of legalisation, the issue remains contentious, with critics raising several valid concerns. One of the primary objections revolves around moral and ethical considerations. Critics argue that legitimising sex work normalizes the commodification of human bodies and undermines traditional values surrounding sexuality and intimacy. Moreover, opponents contend that legalisation may exacerbate societal problems such as the objectification of women, the erosion of family structures, and the exploitation of vulnerable individuals.

Another significant challenge pertains to the potential for increased human trafficking and exploitation in legalised sex markets. Critics warn that legalising sex work may create a demand that cannot be met by consenting adults alone, leading to an influx of trafficked individuals coerced into the industry. This concern underscores the need for robust regulatory frameworks and enforcement mechanisms to prevent exploitation and protect the rights of all individuals involved.

Furthermore, the societal stigma attached to sex work poses a formidable barrier to legalisation efforts. Despite progress in destigmatising alternative lifestyles and professions, sex work remains taboo in many cultures, perpetuating discrimination and marginalisation. Overcoming entrenched attitudes and biases requires concerted efforts in education, advocacy, and community engagement.

International Perspectives & Policy Implications

The approach to sex work varies significantly across different countries, reflecting diverse cultural norms, legal traditions, and socio-economic conditions. Some nations, such as the Netherlands and New Zealand, have adopted progressive policies that either decriminalise or regulate sex work to varying degrees. These models prioritise harm reduction, human rights, and public health, aiming to minimise the negative consequences associated with the industry.

Conversely, other countries maintain stringent laws criminalising both the purchase and sale of sexual services, often driven by moral or religious convictions. In these jurisdictions, sex workers operate in clandestine environments, facing heightened risks of violence, exploitation, and legal repercussions.

The divergent approaches to sex work regulation underscore the complexity of the issue and the absence of a one-size-fits-all solution. Policymakers must carefully weigh the evidence, consult with stakeholders, and consider the unique socio-cultural context of their respective societies when formulating legislation.

Conclusion

The legalisation of sex work remains a contentious and polarising issue, eliciting passionate arguments from both proponents and opponents. While advocates emphasise the potential benefits in terms of human rights, public health, and economic empowerment, critics raise legitimate concerns regarding morality, exploitation, and societal harm.

Ultimately, the debate surrounding sex work legalisation transcends mere legal and regulatory considerations; it touches upon fundamental questions of ethics, morality, and social justice. As societies grapple with these complex issues, it is imperative to engage in informed, respectful dialogue, acknowledging the diverse perspectives and experiences of those involved.

Moving forward, policymakers must strive to strike a delicate balance between protecting individual liberties, safeguarding public health, and upholding societal values. By fostering open discourse, conducting empirical research, and learning from international best practices, we can work towards a more inclusive and equitable approach to sex work regulation, one that prioritises the rights and dignity of all individuals involved.

This is why this social policy paper is being penned – to bring life to an idea which succeeds in doing the aforementioned. Thus, let us explore the many intricacies beheld by the largely controversial notion of creating a regulated industry wherein sex work may be carried out safely.

Historical and Current Sex Work Laws

By Jake Navarro

Introduction

Any proposal for a revision of domestic sex work legislation must necessarily be preceded by an *ex post facto* understanding of the evolution of the same throughout the different periods of time. A comparative analysis of sex legislation is likewise crucial, all-the-more in light of the ever-growing *corpus* of EU Legislation.

In other words, it is pivotal to decipher the legal trajectory of Maltese sex work legislation, but also to accompany such an analysis with a comparative study as to how other legal systems deal with such an area. Cumulatively, such exercises will place the legislator in a sufficiently equipped position to contemplate a legislative change. To this effect, the hereunder section seeks to concisely reflect on the aforesaid.

General History of Sex Laws

At the outset, it must be stated that although there is general concurrence on fundamental historical events *qua* prostitution, the same events are heavily debated as to the exact extent, meaning, and scope. Thus, the hereunder synopsis must be read in light of this caveat.

By way of introduction, literature has often viewed prostitution as one of the world's eldest professions¹, arguing that prostitution is a consequence of Mesopotamian sacred rituals.

Although the notion of “sacred prostitution” remains contested, it has been argued that “*What seems to have happened was that sexual activity for and on behalf of the god or goddesses was considered beneficial to the people and sacred*”.²

¹ ‘Prostitution Laws in Europe’ (*Jakub Marian’s Educational Blog*) <https://jakubmarian.com/prostitution-laws-in-europe/>

² Lerner, Gerda. “The Origin of Prostitution in Ancient Mesopotamia.” *Signs*, Vol. 11, no. 2, 1986, pp. 236–54. *JSTOR*, <http://www.jstor.org/stable/3174047> Accessed 23/04/2024

In terms of Roman law, Sanger in his *“The History of Prostitution”*, states that *“Our earliest acquaintance dates from the reign of the Emperor Augustus”*. This notwithstanding, it is also accepted that prostitution was commonplace in Rome since ere.

The same author interestingly makes reference to the institute within Roman law wherein there was a system of registration of such “prostitutes”. Those which were registered were referred to as “meretrix” and the term “prostibulae” was then given to the unregistered ones.³ Interestingly, rules effected included the obligation that “loose prostitutes who were not registered had to be driven out of the city. Nonetheless, the same author describes the regulation as *“practically a dead letter”*.⁴

The proliferation of Christianity inevitably shaped the social overlook on prostitution, at least in terms of general policy. It is interesting to note that *“Several passages in the Gospel condemn porneia. The word carried a number of different meanings. At times porneia means prostitution, at other times it refers to nonmarital sex in general”*⁵ As to the impact of Christianity on legislation and societal attitudes in general, it has in fact been contended that at the end of the fifteenth century, *“attitudes had begun to shift from a reluctant tolerance of prostitution to an open disdain of it”*.⁶

In terms of the local context, Brincat notes how *“The State, the Church and between the years 1575 - 1798, the Inquisition, have always tried to suppress or at least curb this social malady”*.⁷ Once again, the extent to which there was such an influence remains a matter of considerable debate and interest.

Moreover, across different centuries, different states effected different legislative frameworks which either “regulated”, “criminalised” or even left “untouched” the act (or other ancillary activities).

³ William W San ger, *The History of Prostitution*’

⁴ *Ibid*

⁵ Brundage, James A.. *Law, Sex, and Christian Society in Medieval Europe*, University of Chicago Press, 1987. *ProQuest Ebook Central*, <https://ebookcentral-proquest-com.ejournals.um.edu.mt/lib/ummt/detail.action?docID=432200>

⁶ Leahy, Samantha, "Visions of Indecency: The Intersection Between The Church and Prostitution in Augsburg, Rome, and Southwark From The Twelfth to Seventeenth Century CE" (2018). Young Historians Conference. 13.

⁷ Brincat, M.J. (1995). *The regulation of prostitution: a comparative study* (Master's dissertation). <<https://www.um.edu.mt/library/oar/handle/123456789/60062>>

By way of example, the French system of legislation post-Revolution included the Code of 1971 – which can be dubbed as a case-study for evaluation. This is because:

1. On one hand, it left the issue of prostitution *per se* vague.
2. On the other hand, it banned solicitation “*because of its definition as an offence of the streets*”.⁸

In continuing with the different (and controversial) approaches, one can also cite the U.S Page Act of 1875 which prohibited the entry of “*women for the purposes of prostitution.*”⁹ Part of the controversy provoked in this context was due to the implications on immigration. One source remarks that the law “*severely limited Chinese immigration and spurred anti-Asian reactions*”.¹⁰

This incidentally attests to how prostitution can, on occasions, be multidisciplinary. In other words, issues of legalisation/otherwise of the area can overlap with other sensitive topics also requiring attention. One example which comes to mind pertains to massage parlours and the way in which they are often immersed in any discussion on sex-work.

Moving forward, a legal landmark was undoubtedly the 1921 International Convention for the Suppression of the Traffic in Women and Children”. The preamble of this human rights instrument touched on prostitution where, in no unclear terms, stated:

*“Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community,”*¹¹

Taking the above as a point of departure, the United Nations-mandated Conventions, and other international legal obligations for that matter, constitute an integral preoccupation with any proposal for amendment.

As made clear at the outset, space precludes a detailed analysis of the global historical trajectory of sex work and ancillary activities.

⁸ Conner, Susan P. “Politics, Prostitution, and the Pox in Revolutionary Paris, 1789-1799.” *Journal of Social History*, vol. 22, no. 4, 1989, pp. 713–34. *JSTOR*, <http://www.jstor.org/stable/3787545>. Accessed 16 Apr. 2024.

⁹ Pepper, George Anthony. “Forbidden Families: Emigration Experiences of Chinese Women under the Page Law, 1875-1882.” *Journal of American Ethnic History* 6, no. 1 (1986): 28–46. <http://www.jstor.org/stable/27500484>.

¹⁰ <https://www.socialstudies.org/system/files/2022-04/SE-86022273.pdf>

¹¹ International Convention for the Suppression of the Traffic in Geneva, 30 September 1921

This notwithstanding, *tramite* the above snippet, one can ponder reflection of the wider context and how deep-rooted in history sex-work and prostitution is. It is in this sense no wonder that the *lex* has had to grapple with its legalisation, or rather sanction, throughout different centuries and under the scrutiny of different social norms, values and standpoints. In this regard, Malta is no exception, and the subject-matter has been discussed locally.¹² Against this aforesaid bedrock, the hereunder commentary seeks to decipher the local cornerstones of sex-legislation.

Maltese History of Sex Laws

At the outset, it must be stated that prostitution *per se* does not breach penal law in Malta. This notwithstanding, ancillary matters and activities are. In the words of Attard, “*Since British rule, prostitution itself has not been illegal, but certain activities connected with it were and are still prohibited*”.¹³

This is being said with particular reference to loitering and soliciting for the purpose of prostitution. However, before explaining the current legal situation, it is worth briefly looking at the history of sex-work and laws *in toto* under Maltese law.

In this regard, it has been remarked that the *status quo* is in fact a deep-rooted situation. In other words, the same activities were “*also prohibited throughout the 19th century, and such were particularly reinforced in 1861*”.¹⁴ It goes without saying that this is arguably a central point of criticism.

Going back in time, prostitution laws were present at the time of the Order of St. John.¹⁵ The origins of the laws were such as to prohibit the earnings from prostitution, with punishments even extending to exile. Under these laws it was illegal to live off the earnings of prostitution.¹⁶

¹² *Vide* Edward Attard, II- Prostituzzjoni Malta, (1st edn, BDL Publishing 2014).

¹³ ‘Past Laws Regulating the Oldest Profession in Malta’ (*Times of Malta*, 25 October 2022) <https://timesofmalta.com/article/Past-laws-regulating-the-oldest-profession-in-Malta.511052> accessed 21 April 2024

¹⁴ Zammit, M.C. (2018). Sex work in Malta: implications for policy development (Master's dissertation).

¹⁵ Mizzi, M.C. (2019). The Regulation of Prostitution in the light of the history of Maltese Law and of Comparative Law: which model is to be adopted by the Maltese State? (Bachelor's dissertation), 23

¹⁶ Brincat, M.J. (1995). The regulation of prostitution: a comparative study (Master's dissertation).²⁶

Incidentally, and as will be made clear hereunder, this section remains subject to criminalisation as per Chapter 63. At the time, for obvious reasons, the punishments for such acts varied – in sharp contrast to the kind of punishments contemplated any modern penal law.

Thus, for example, one could be sent to a maximum of five years rowing on ships. Women who were found guilty were flogged and exiled from Malta. This however remains an exhibit as to how Maltese history has indeed remained generally constant in its tackling of sex-work.¹⁷

Albeit in a modern context, it has been remarked that Criminal Code provisions *qua* “*Crimes Affecting the Good Order of Families*” can be traced back to these Regulations¹⁸

This article is incidentally still reflected to date, as will be seen hereunder. This thus once again underscores how significant an understanding of the historical development is to the current legal framework. It is extremely clear that “concepts” which are part and parcel of today’s legal framework on sex-works are concepts which inhabit a long legal history.

Ordinance IV of 1861 in particular remains an important milestone in this context, besides the aforesaid, since prostitutes:

1. Were forced to appear before a medical examiner.
2. In the case of refusal for such admittance, an offence was committed.¹⁹

Moreover, it has been remarked that “ *diseased prostitutes were kept in custody, and on the same day of their examination were brought before the Court of Judicial Police*”.

It is in fact submitted that historically, prostitution has not necessarily been limited to legal rule merely in respect to how reprehensible it is, but also in respect to the health of the public in general.

¹⁷ Mamo, A. (2018). Prostitution : should it be decriminalised? (Master's dissertation) <<https://www.um.edu.mt/library/oar/handle/123456789/39591>>

¹⁸ *Ibid*, 21

¹⁹ n14, 23 .

For completeness's sake, the 1861 Ordinance was repealed by the Venereal Diseases Ordinance enacted on the 21st of May 1920. This is now found in Chapter 124 of the Laws of Malta. To further contextualise the analysis, the approach of the aforesaid legislation has been termed as partaking in the prohibitionist approach to prostitution.²⁰

Furthermore, literature also points at the Contagious Disease Act, which was passed in the United Kingdom 1864, as another important part of the legal history. This Act was extended in 1866 and 1869, before being repealed in 1886.²¹ Pursuant to this Act, police officers were allowed to arrest women on the suspicion of them being prostitutes. This was followed by medical checks and subsequent confinement in hospitals in the case of such diseases being discovered.²²

Moving on, further legislation was affected in 1898, with respect to lodging houses. In turn, this has been termed as "*another attempt to control prostitution*".²³ Through this law, the Code of Police Laws defined lodging houses which were "*considered so if they sheltered more than one public prostitute*".²⁴

Moreover, such a term meant that:

1. The police had the right to refrain from issuing their licence unless they possessed official permission from the commissioner of police.
2. Police sergeants, in the company of another officer, were expected to carry regular inspections in neighbourhoods known for prostitution so as to make sure that such laws were abided to (ibid).²⁵

The general theme which emerges from the discussion so far is that preceding legislation went to great extents with respect to placing heavy restrictions on prostitutes.

²⁰ Mizzi, M.C. (2019). The Regulation of Prostitution in the light of the history of Maltese Law and of Comparative Law: which model is to be adopted by the Maltese State? (Bachelor's dissertation), 23

²¹ The Contagious Diseases Act' (*Policy Navigator*) <https://navigator.health.org.uk/theme/contagious-diseases-act#:~:text=The%20Contagious%20Diseases%20Act%20made,determine%20who%20was%20a%20prostitute>

²² n14

²³ n17

²⁴ Cauchi Marie Claire, (2015) Behind closed doors: the creation and experience of the female prostitute' BA (Hons) Dissertation)

²⁵ *ibid*

1899 was a year where this was further attested to. More specifically, through an admixture of Regulations, laws and Ordinance XIII, prostitutes were subjected to the following rules:

- Prostitutes were prohibited to live in ground-floor levelled rooms or to share the same room with another sex worker.
- District medical officers were assigned to carry out inspections in all the houses where more than one prostitute lived.
- Following a government notice, it became illegal for a prostitute to live in a residence situated less than 50 yards away from a place of public worship.
- In December of that same year, a Government Notice ordered prostitutes to vacate Strait Street, the main red light area of the time.
- There were other streets in a number of localities around Malta where prostitutes were outlawed to live.²⁶

To this extent for example, one can cite a 1906 case in the names of '*Il-Pulizija v. Corradina Porzio*' wherein the Court held :

*“la legge vieta alle prostitute di abitare in stanze a pian terreno e non di occuparle pper l’esercizio della prostituzione”.*²⁷

Beyond trying to pigeonhole the “prohibitionist” approach, it can definitely be stated that heavy restrictions were present. This is thus indicative of the way in which Maltese legislation developed.

Once again, the abovementioned synopsis does not in any way render itself exhaustive of the local history on the matter.

Nonetheless, it can be stated that the above places the reader in a better context as to an understanding of the current legislation. To this effect, it is now opportune to deal with legislative enactments of relevance to date.

²⁶ N24

²⁷ Police vs Corradina Porzio 12.12.1906.

White Slave Traffic (Suppression) Ordinance

An extremely important milestone in sex work legislation is the White Slave Traffic (Suppression) Ordinance. This merits more in-depth observation – to the extent that it constitutes principles which are applicable nowadays.

For completeness' sake, the term “*important*” is being said with respect to the fact that a number of laws pertaining to sex work were laid down – thus further regulating the field. It has in this regard been noted that:

*“The aspiration of eliminating prostitution completely is somewhat unrealistic. This said, some form of regulation is necessary so as to ensure that all individuals involved are duly protected and respected”*²⁸

The legislative roots of today's Chapter 63 lie within the White Slave Traffic Suppression Ordinance. This was then replaced by Ordinance VIII of 1930, now Chapter 63 of the Laws of Malta. As to the legislative inspiration, it has been stated that “*Many of the provisions of the White Slave Traffic (Suppression) Ordinance have their roots in English law*”²⁹ wherein a close *nexus* with the UK Sexual Offences Act 1956 can be identified.

Naturally, a significant number of sections have been subject to amendment across the years, yet the Act remains wholly preoccupied with matters which are ancillary to prostitution.

In other words, whilst prostitution *per se* is not prohibited, however Chapter 63 lays down a number of laws on issues such as solicitation.

To this effect, section 7[2] makes it extremely clear that:

“Any person who in any street or other public place or in anyplace exposed to the public loiters or solicits for the purpose of prostitution or for other immoral purposes, shall be liable, on conviction, to imprisonment for a term of not more than six months”.³⁰

²⁸ Zammit, M.C. (2018). Sex work in Malta: implications for policy development (Master's dissertation). <https://www.um.edu.mt/library/oar/handle/123456789/99164>

²⁹ n4

³⁰ Chapter 63 of the Laws of Malta, Article 7(2)

By way of furthered example, Article 8 lays down that:

“Whoever shall keep or manage or share with others in the management of a brothel or of any house, shop or other premises or any part thereof which is or are , or is or are reputed to be resorted to for the purpose of prostitution or other immoral purposes shall be liable....to imprisonment for a term not exceeding two years and to a fine (multa) not exceeding four hundred and sixty-five euro and eighty-seven cents (465.87)”³¹

At this stage, it is also worth noting that certain offences which are penalised by Cap. 63 go beyond sex-work *per se*, thus shifting the context of the whole discussion. By way of example, Article 5 of the same Chapter stipulates as follows:

“Whoever detains, or is wilfully a party to the detention of a person, against his will, in any brothel, or in or upon any premises used for purposes of habitual prostitution even if such person may have resorted to such place of his own free will, and may have remained there to practice prostitution, and notwithstanding any obligation or debt which such person may have contracted with any person whomsoever, shall be liable, on conviction, to imprisonment for a term not exceeding two years, unless a higher punishment is applicable under any other provision of the Criminal Code or of any other law.”³²

This discussion has limited itself to an analysis of the pertinent legal amendments and framework in general.

As to **the adequacy or lack of it**, this is multi-dimensional, and should not be limited to just analysing the law. By way of example, it has been opined that *“In Malta prostitution has always been suppressed by the State, the Church and the Inquisitor.”*

Without entering into the merits of the argument, this is an attestation as to how the legislator **must** take into account several (social/cultural/socio-political/ethical) elements to:

1. Understand the current framework; and
2. Improve it.

³¹ Ibid, Article 8

³² Ibid, Article 5

Criminal Code Provisions

After having deciphered the main articles of Chapter 63 it is worth looking at the Criminal Code. *Ab initio*, it ought to be mentioned that Chapter 9 does not offer any definition of the word “prostitution”. Its *nexus with* prostitution is, however, still present.

To this effect, it has been contended that whilst the Criminal Code “*is targeted towards criminalizing the sex workers while the White Slave Traffic (Suppression) Ordinance forbids the trafficking of persons for the purpose of prostitution*”.³³ Moreover, within the Criminal Code, one can *inter alia* speak of three main articles which deal with prostitution. On first account Article 204 *inter alia* criminalises any person who:

*“In order to gratify the lust of any other person induces a person underage to practise prostitution, or instigates the defilement of such person, or encourages or facilitates the prostitution or defilement of such person.”*³⁴

Article 197(1) then postulates the prostitution of persons underage by an ascendant. More particularly, the section stipulates that:

*“Any ascendant by consanguinity or affinity who, by the use of violence or by threats, compels, or, by deceit, induces any descendant underage to prostitution, shall, on conviction, be liable to imprisonment for a term from six to twelve years.”*³⁵

Article 205 contemplates the prostitution of persons of age. *Verbatim*, it is stated that:

*“Whosoever in order to gratify the lust of any other person, by the use of violence, compels or, by deceit, induces a person of age, to practise prostitution, shall, where the act committed does not constitute a more serious offence, be liable, on conviction, to imprisonment for a term from three to seven years”*³⁶

³³ n28

³⁴ Chapter 9 of the Laws of Malta, Article 204

³⁵ Chapter 9 of the Laws of Malta, Article 197

³⁶ Chapter 9 of the Laws of Malta, Article 205

These aforesaid sections thus contemplate the criminalisation of conduct, conducted by a person other than the “sex-worker”. This once again attests to the point that local legislation does not criminalise sex-work *per se*.

Interestingly, prostitution is also mentioned in terms of the local definition of “Crimes Against Humanity” (which must be viewed in light of International Criminal Law in general). To this effect, Article 54C of the Criminal Code lays down that:

“crime against humanity is committed where any of the following acts is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack (Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity)”.³⁷

Civil Code Provisions

Prostitution is typically associated with criminal law. This notwithstanding, it is also opportune to note that it is also referred to under Chapter 16 of the laws of Malta (Civil Code) as befits Article 1618. This section is encompassed within the Title IX of Contracts of Letting and Hiring and lays down the following:

“Notwithstanding that the power to sub-let or to assign the lease has not been excluded and also where it has been agreed upon, the lessor shall have the right to recover possession of the premises, if such premises are sub-let or the lease thereof is assigned to any person using, causing or suffering the same to be used for purposes of prostitution or for other immoral purposes.”³⁸

³⁷ Chapter 9 of the Laws, Article 9

³⁸ Chapter 16 of the Laws, Article 1618

Regulations and Byelaws

It is further noteworthy that “sex-work” rules have also been manifested through the issuance of a number of byelaws, and these can be termed as “geographically specific” regulations. For completeness’ sake, these have come under significant scrutiny.

Taking one example, one can cite Subsidiary legislation 363.135 entitled “*Bye-laws dwar Tlajjar f’Torq Speċifikati f’Ta’ Xbiex (Kunsill Lokali ta’ Xbiex)*”. These regulations encompass *ad hoc* rules on solicitation in “Ta’ Xbiex”. The same byelaw contains Schedule 3 which delineates a List of streets in Ta’ Xbiex wherein no person shall loiter in. These are:

- *Giuseppe Cali Street*
- *San Gwann tas-Salib Street*
- *Testaferrata Street*
- *Emanuel Galizia Street*
- *Enrico Mizzi Street*
- *Giorgio Mitrovich Street*
- *Sir Ugo Mifsud Street*.³⁹

The significance of these regulations can be said to lie in the definition they afford to loitering. The regulation lays down that “*loitering*” means *the persistent presence of any person for no apparent reason, however excluding persons who are carrying out a duty in the specific streets in Ta’ Xbiex as shown in the Schedule*”.

Pursuant to the above context, Regulation 4 of the same byelaws lays down that “*Any person who is found loitering in specific streets in Ta’ Xbiex as shown in the Schedule shall be guilty of a contravention and shall, on conviction, be liable to a fine (ammenda) of sixty-nine euro and eighty-eight cents (69.88)*”.⁴⁰

The *raison d’être* behind these rules, it has been held, lies with the need to “*clamp down on specific social problems like drug abuse, prostitution and now immigration*”.⁴¹

³⁹ Subsidiary Legislation 363.15, Schedule 3.

⁴⁰ *ibid*, Regulation 4

⁴¹ ‘Maltese Loitering Rules: When “persistent Presence” Becomes a Crime’ (*MaltaToday.com.mt*)

<https://www.maltatoday.com.mt/news/national/89411/maltese_loitering_rules_when_persistent_presence_becomes_a_crime> Accessed 23 April 2024

This legislative approach of this Regulation has inevitably generated immense discourse. On first account, it has been noted that the *raison d'être* to control prostitution in certain distressed areas failed insofar as the surrounding areas were not included. This was in fact also noted by the mayor in office at the time.⁴² On second account, “*the wording of the Byelaw seems to be far from ideal because it implies that prostitutes may ply their trade elsewhere other than the streets mentioned in the Bye-Law*”.

Thirdly, one cannot but compare and contrast Article 7[2] of Chapter 63 with the wording of the above byelaw. Presuming that the general *rationae legis* for these byelaws concerned prostitution, one cannot but say that this section was not needed due to the general Article 7.

Lastly, one cannot but cast doubt on the constitutional nature of the provision in light of the Right to movement as protected through Article 44 of the *suprema lex*, i.e. the Constitution of Malta.

Conclusive Remarks

To close off this section on the historical trajectory of sex-work legislation, it is opportune to draw a number of observations which can be made in light of the abovementioned:

- A. As stated at the outset, an analysis of the historical trajectory is one which sheds light on the approach the Maltese legislator has had throughout the centuries, and thus a reflection of different societal norms and their development. After having viewed the laws which were in place – one can at the very least acknowledge a considerable conservative facet.
- B. Malta’s legislation has endured a considerable amount of change yet basic concepts which prevailed during the body of laws under the Order of St. John still persist to this day.
- C. Consequently thus, with several principles and tenants remaining constant, one cannot but question how adequate the same are to today’s day and age.

⁴² ‘Ta’ Xbiex council bans loitering... but only from seven specific streets’ (*Maltatoday*) <http://archive.maltatoday.com.mt/midweek/2007/08/29/t3.html> Accessed 21 April 2024

Arguments FOR Legalising Prostitution

By Thomas Sciberras Herrera

In 2021, the Government of Malta launched a White Paper⁴³ outlining its vision for the introduction of a legal regulatory cannabis framework. The forward of this White Paper read,

“Cannabis use is nothing new: for thousands of years, cannabis has been used by civilisations across the globe for a variety of purposes, from the medical, to the religious, and recreational. The criminalisation, on the other hand, is a much more recent phenomenon, and a relatively anomalous one.”

This does not only read true with regards to the cannabis realm but also to the prostitution realm. Prostitution is said to be the oldest profession in the world, it has existed since the dawn of man and yet is dismissed in many legal systems including ours. Interestingly if one were to read the letter of the law, prostitution per se is not illegal however its practice is almost impossible without there being a form of illegality.

The Criminal Code⁴⁴ punishes living off the proceeds of prostitution and loitering, it is mum on a woman prostituting herself, in her private owned residence, without loitering - yet such scenario as explains seems a stretch unless the woman uses some form of online loitering which the law makes no mention of.

The arguments in favour of legalising or regulating prostitution can only be purely positivist and far from any dogmatic view. Yet, since 2011, Malta has seen a progressive reform evolution time and time again, the legislator has parted from its purely dogmatic style of legislating to a style which is responsive to the behaviour of society at large.

⁴³ Government of Malta, ‘Towards the Strengthening of the Legal Framework on the Responsible Use of Cannabis: White Paper’, (March 2021)

⁴⁴ Laws of Malta, Chapter 9

Such evolution can be seen via the legalisation of, divorce, civil unions, gay marriage, IVF and cannabis. Most recently such fastened pace has taken a blow with Bill 28⁴⁵ dealing with abortion where its amended version made the original bill unrecognisable.

Despite this hiccup, the present Labour Government has a mandate to put forth policy regulating this area as per its manifesto⁴⁶. In Europe there are two main models of regulating prostitution, the German model and the Nordic model, the German Model can be described as full-blown regulation wherein the prostitute is regarded as a worker whereas the Nordic model does not regulate the area, but has decriminalised it on part of the prostitute but not on part of the client.

Hence, to understand benefits of legalising prostitution one must relate to the Germany model as a point of a departure. There are many advantages to legalising prostitution, namely; labour rights for sex workers, regulated businesses, health checks, tourism boost and new rights and services for disabled people.

A Regulated Business Protects All Sex Workers

The German model provides the prostitute not only with the *locus standi* of any worker, but an enhanced one reflecting the realities of sex world. The German Prostitution Act of 2017 views prostitution as another form of work and provides normal labour conditions, including rights to health insurance, pensions and other benefits⁴⁷. The enhanced *locus standi* awarded to the prostitute is that unlike other occupations - the employer is precluded from mandating the prostitute to engage in specific services and to engage with specific clientele. This *modus operandi* ensures that the sex worker's self-determination is heightened.

The labour rights awarded to the workers are also enhanced by means of proper sex licensing. This statement needs to be read in a broader light. Naturally sex work, is not only found on the streets by means of loitering and gentlemen's clubs but even in discreet businesses, particularly the massaging sector.

⁴⁵ Bill, 28, Malta

⁴⁶ Labour Party, Malta Flimkien 2022, proposal 663

⁴⁷ Mizzi Marie Claire, 'the Regulation of Prostitution in the Light of History of Maltese Law and of Comparative Law: Which Model is to be adopted by the Maltese State?', 16.

One main issue in this sphere is that in 2016, the Maltese Government removed the requirement for massage parlours to possess a business license as per Legal Notice 430 of 2016, as a result of this, the distinction between legitimate and illicit parlours is now rather opaque. The court has dealt with cases wherein men go to these parlours demanding sex from professionals masseuses as the inherent gut feeling is to associate massage parlours especially Asian massage parlours with sex work. This association underscores the premise that a prostitution reform should be far reaching embracing similar industries.

In *Police V. Hussain Abudalli Jama*⁴⁸, the defendant was guilty of causing grievous injuries to an Asian masseuse for rejecting to perform sexual acts. This can be seen as a direct result of the problem with the current weak law on prostitution as a whole, as if the legal framework makes it easier for men to find legitimate sexual harems cases such as this would be in decline.

A regulated industry would not only protect sex workers but also protect workers in different fields however closely related, as even in prior to 2016, there were cases⁴⁹ of licence revocations due to sex work in massage parlours.

⁴⁸ The Police (Inspector Mark Mercieca) v Hussain Abdullahi Jama, [2021] Criminal Court of Appeal, Malta

⁴⁹ Il-Pulizija v Alfred Attard, [2018] Criminal Court, Malta and Il-Pulizija v Brian Fenech [2017] Criminal Court, Malta

More Health Checks Reduces The Spread Of Sexual Diseases

In 2019, a Times of Malta article⁵⁰ revealed that 1 in 10 patients of the genitourinary (GU) clinic admitted to paying for sex at massage parlours. This addresses two issues, the first one already discussed, dealing with how the sex industry on the whole must be regulated, and the second one highlight the direct *nexus* between sex work and sexual transmitted diseases (STDs).

The German Prostitute Prostitution Act of 2017⁵¹ places safeguards for the reduction of STDs among sex workers, prospective workers are mandated to attend a free health consultation provided for by the Government. The health consultation may be revisited every six months if the prostitute is younger than 21 years old and every 12 months if the prostitute is over 21 years old. Moreover, the condom requirement in the same law dictates,

“A condom must be used during all sex acts oral, anal, and vaginal. Prostitutes have the right to refuse sex acts without a condom. Prostitution establishments must put up notice referring to the obligation to use a condom. Clients who do not use a condom may be fined. Operators and prostitutes may not promote unprotected sex⁵²”.

It can be argued that the culture created by the German Prostitute Prostitution Act of 2017 does not only protect the prostitutes but society at large. Such culture is impossible to replicate in the Maltese scenario unless there is substantial legislative intervention.

⁵⁰ <https://timesofmalta.com/article/more-than-500-men-infected-by-sex-workers-in-massage-parlours.730699>

⁵¹ <https://www.bmfsfj.de/resource/blob/117624/ac88738f36935f510d3df8ac5ddcd6f9/prostschg-textbausteine-en-data.pdf>

⁵² Ibid

Boosting The Economy

When advocating for and presenting arguments in favour of legalising prostitution - boosting the economy and tourism, is definitely the most arduous argument as yet again the arguments here are not just positivist but ultra-positivist. Within a regulated framework, tax collection is made easier and government funds can greatly be increased. Legalising prostitution in Germany has awarded the German government four new streams of income, via, income tax, VAT, entertainment tax and business tax. Naturally if such industry was not regulated these four income streams would vanish into thin air.

Boosting the economy by legalising prostitution is not just an arduous argument, but in actual fact is the least enticing, as even in monetary terms, the government income compared to the cost of the country does not justify the social and economic burdens associated with legalised prostitution. An alternative perspective emerges when considering whether the potential benefits outweigh the negative impacts, as seen in Malta legalising cannabis. They do but by a minimal fraction,

“Based on the assumption taken, the total economic benefits of legalising cannabis in Malta amounted to €37.7 million. From this figure, €0.75 million are allocated to budgetary savings while €37 million are attributed to potential tax revenue generated. On the other, hand the total economic costs reached €35.8 million, from which €28.7 million are attributable to cannabis use disorder, €4.8 million are allocated to physical and mental health costs and the remaining €2.3 million are due to road incidents.⁵³”

Whilst the direct impact is almost ineffective, the indirect impact is much larger. The *dicta* made by a myriad of magazines and newspapers from all over the globe has promoted Malta as a ‘cannabis island’ oftentimes providing free advertisements for the country. It is a no brainer that in the current situation, if one wants to go to Europe for sex tourism purposes as it stands their option is limited to Germany and the Netherlands. The argument in favour of this is simple - by Malta legalising this sector, Malta will be able to have small portion of this cake.

⁵³ Borg Gabriel, ‘The Economic Impact of Legalising Cannabis: the Maltese Context’

New Sexual Rights For Disabled People

Men with physical and sensory impairment are a core group of clients that visit commercial female sex workers⁵⁴. There is a link between disability and sexual exclusion, it is not just a link, there is also a significant taboo surrounding the topic too. No one seems to speak of it, and it is definitely not on the national agenda. Research in Malta based on this reality is very scarce and one must refer to foreign literature on this subject. The motivations for visiting a sex worker go beyond sexual realisation or relief or even pleasure, motives for such visits have to be linked with purely companionship with the opposite sex⁵⁵.

The University of Malta in 2022 was commissioned by the CPRD⁵⁶ to conduct a study on 'Intersectionality and Persons with Disability'⁵⁷. This study recognised that the parents of children with disability often encourage their children to conceal their sexual desires and abstain from any sexual activity⁵⁸. Therefore, it would be imperative for the CPRD to commission another study to provide a comprehensive and solidified understanding of the benefit of creating a new right for sexual expression for disabled people, one that is recognised by the legislator. Such research could provide insight into the social, emotional, and legal dimension of sexual rights of individuals with disabilities - ultimately forming policy directly stemmed from this marginalised group.

As the government drafts prostitution regulations, it should prioritise the sexual rights of disabled people to ensure their inclusivity and uphold their dignity and self autonomy. Addressing the issues of marginalisation in the broadest of senses.

⁵⁴ Tesla Sanders, 'The Politics of Sexual Citizenship: Commercial Sex and Disability', 439

⁵⁵ Ibid, 446

⁵⁶ Commission for the Rights for Persons with Disability

⁵⁷ Intersectionality and Persons with Disability, (Commissioned by the Commission for the Rights for Persons with Disability, March 2022)

⁵⁸ Ibid, 11

Conclusion

The arguments in favour of legalising prostitution in Malta align with the progressive positivist trajectory evidenced in other areas of reform such as cannabis. While acknowledging the historical and societal complexities surrounding these practices, the case for legalisation is strengthened by considerations for workers' rights, economic benefits and public health concerns.

The German model provides a blueprint, demonstrating how regulated prostitution can empower sex workers while mitigating risks inherent to the industry. By adopting a similar approach, Malta can position itself as a leader in progressive policymaking, prioritising the rights and dignity of all those persons involved including the most marginalised groups such as disabled persons.

Towards Progressive Sex Work Policies: Navigating Alternatives Beyond Full Decriminalisation

By Beppe Micallef Moreno

Abstract

The article examines legal strategies regulating the sale and purchase of sexual services, categorising them into full criminalisation, partial decriminalisation, and full decriminalisation. Focusing on high-income countries, it discusses laws pertaining to sellers, buyers, and third parties. The discussion acknowledges gender diversity within the sex industry and prefers the term "sex work" to underscore its economic implications. Importantly, the article distinguishes between sex work and human trafficking, cautioning against the oversimplification that assumes all or most sex workers are trafficking victims. It emphasises the need for nuanced understanding and data-driven analyses in shaping legal responses to the complexities of the sex industry.

Full Criminalisation

The chapter provides a comprehensive overview of the global legal landscape regarding the criminalization of selling, buying, and third-party involvement in sexual services, revealing varying approaches to legislation and penalties associated with sex work.

Selling Sexual Services:

Over 30 African nations, more than 25 Asian countries, around 20 European states, 11 in North America, 10 in Oceania, and 2 in South America completely ban the sale of sexual services (ProCon.org 2012b). Penalties for sellers range from fines in some countries to severe punishments like flogging or death in regions following Sharia or Islamic law.

In the United States, selling is generally illegal, except in specific rural Nevada counties. Penalties vary across states, including fines up to \$25,000 and imprisonment of three years or more for serial convictions (Bretns & Hausbeck 2001, Hagner 2009, Hindle et al. 2008).

The definition of selling can extend beyond sexual contact in some states, emphasizing the legal consequences associated with offering or agreeing to perform a sexual act. Several states have discriminatory laws targeting only female sex workers, despite constitutional challenges (Hagner 2009, Kaigh 2009).

Buying Sexual Services:

Governments criminalising the purchase of sexual services predominantly employ fines and incarceration as penalties, with some countries impounding vehicles or canceling driver's licenses ([ProCon.org](#) 2012c, Aronson 2006). In the United States, state penalties for buying sex have increasingly mirrored those for selling. South Africa amended its laws in 2007 to criminalise buying sexual services, reflecting a global trend of extending punishment to all participants ([ProCon.org](#) 2012c, Richter 2008).

The Swedish model, where buying sexual services was criminalized in 1999, outlining fines and imprisonment up to six months for offenders. Norway and Iceland later adopted similar laws. However, the effectiveness and public support for these measures are debated, with criticism suggesting potential negative consequences and the encouragement of clandestine markets (Bindel & Kelly 2003, Weitzer 2012). This, however, will be discussed in more detail later on.

Third-Party Involvement:

Over 80 countries fully criminalize third-party involvement, including pimping, procuring, and brothel ownership ([ProCon.org](#) 2012b). Penalties for these offenses typically exceed those for selling or buying. The United States considers pimping or operating a brothel as felonies in most states and consequently, many laws are reverse-onus, placing the burden of proving innocence on the accused ([ProCon.org](#) 2012c).

Critical Assessment:

Critics argue that criminalisation oversimplifies the economic and social heterogeneity of the sex industry, leading to negative consequences. Even where sex work is entirely prohibited, clandestine markets often thrive, disadvantaging sellers and reinforcing status hierarchies (Weitzer 2012).

The failure to regulate the consensual sex market results in greater advantages for buyers and third parties, who possess more economic, social, and cultural power and resources than sellers, especially those from disadvantaged groups (Harcourt et al. 2005). Criminalization also complicates the assessment of agency and personal choice among the most vulnerable sellers, potentially increasing the likelihood of violence (Sanders 2005, Shaver 2005).

Moreover, critics question the assumptions underlying laws criminalizing buying, such as the presumption that buyers always exploit sellers or are uniformly abusive. Research suggests that such assumptions may not hold universally true, and efforts to paint buyers uniformly as violent victimizers might lack empirical support (Weitzer 2012, Monto 2010). Antipimping laws are criticized for discouraging nonabusive managers from working with sex workers, potentially fostering exploitative relationships. Ironically, nonabusive managers may contribute to safer working conditions and support sex workers in accessing necessary services (Sieberg 2005).

The Nordic Model

The 'Nordic Model,' implemented in Sweden, Finland, and non-EU Norway, views prostitution as a violation of women's human rights, aiming to keep women out of prostitution. The model criminalizes the act of buying sexual services while decriminalizing the selling of sex (Honeyball, 2014, p. 11). It is considered a step towards gender equality in the European Union, focusing on holding buyers accountable rather than punishing female prostitutes.

Client criminalization is portrayed as a "woman-friendly" solution, emphasizing the humanitarian aspect to avoid further punishing women already in vulnerable situations. The ideological goal is to abolish commercial sex by targeting male perpetrators, such as clients, traffickers, and pimps. Nordic countries, particularly Sweden, stand apart from European countries like Germany, the Netherlands, and Belgium, which favor state regulation and decriminalization of various aspects of commercial sex (Skilbrei & Holmström, 2013).

Client criminalization finds its roots in feminism and welfare state ideology, considering commercial sex contrary to the welfare state's ideals and a manifestation of male domination (Skilbrei & Holmström, 2013). The women's movement has played a significant role in framing commercial sex as harmful to women since the 1970s and 80s (Hulusjö, 2013; Jahnsen & Skilbrei, 2017a; Vuolajärvi et al., 2017).

The Act aims to reduce commercial sex by targeting the demand side, emphasizing men's responsibility, and sending a symbolic message against the commodification of women and girls (Ekberg, 2004, p. 1189). The ultimate goal is to educate men out of patriarchal practices (Honeyball, 2014).

While the Nordic model claims to protect women, in reality, it criminalizes the selling of sex for migrants from outside the EU, leading to their exclusion and deportation. This dual regulation extends to service provision, where nationals have access to welfare state services, but migrants without a permanent residence permit are excluded.

The Nordic model's feminist-humanitarian aim to protect women clashes with the practical punitivist governance focused on abolishing commercial sex. This results in a form of humanitarian governance termed "punitivist humanitarianism," where the moral imperative to protect is accompanied by exclusionary and punitive practices. The model's international appeal lies in its humanitarian face, protecting women from male perpetrators, but its ties to immigration policy and the detrimental consequences for sex workers' safety and integrity have been overlooked. (Niina Vuolajärvi, 2018)

Full Decriminalisation

Selling Sexual Services: In certain nations, such as Venezuela and Ecuador, the sale of sexual services by consenting adults is not criminalized by the penal code, but it is subject to specific regulations and oversight (Camejo et al. 2003; US Dep. State 2007). In Venezuela, while the act itself is not prohibited, sellers are obligated to undergo monthly health checks for syphilis and biannual screenings for HIV, promoting public health and safety. Similarly, in Ecuador, the legality of selling sexual services is contingent upon businesses registering with the government and adhering to health regulations. Sex workers are required to carry a stamped permit, undergoing mandatory STI screenings every 15 days (Solomon et al. 2008).

Buying Sexual Services:

A significant number of countries across North and Central America, South America, Europe, Africa, the Middle East, Asia, and Oceania allow the purchase of sexual services, surpassing those that criminalize it (ProCon.org 2012b, Wikipedia 2012). Notably, some governments indirectly endorse this practice. In Curacao, for instance, the government has been operating Campo Alegre, one of the largest brothels in the Caribbean, since 1949. The police and immigration services are involved in overseas recruitment and worker registration to ensure that buyers engage with government-approved workers. The regulation even extends to prohibiting certain behaviors during transactions, such as alcohol consumption (Kempadoo 2004).

In New Zealand, legislation goes beyond the mere legality of buying sexual services. Customers are legally obligated to practice safe sex, including the use of condoms, with violations subject to fines imposed by the health department. This approach reflects a commitment to public health concerns associated with the purchase of sexual services (Kagan 2007). Similarly, in Nevada's brothels, buyers are required to be free of infections, and if male, to use a condom. This not only safeguards the health of the workers but also allows them to reject customers who appear to have an infection or refuse to use protection (McGinley 2006).

Third-Party Involvement:

The operation or ownership of businesses employing sex workers, often considered pimping, is fully decriminalized in at least 12 countries, including New Zealand, Australia, Fiji, and Germany (ProCon.org 2012b). In New Zealand, adults without serious criminal convictions can legally own sex work businesses nationwide, without laws prohibiting living on the avails of prostitution. Similarly, in New South Wales, Australia, brothels are not required to have a license but must gain local government approval (Sullivan 2010). While third-party involvement is permitted in Fiji and Germany, exploitative behaviors, such as holding someone against their will, are strictly banned. Local-level regulations in Germany allow municipalities to exclude third parties from operating in specific spaces (Kavemann & Rabe 2007; Weitzer 2012).

Critical Assessment:

Proponents of full decriminalization, rooted in libertarian principles, argue for minimal state interference in the consensual activities of adults (Phoenix 2009). They view the exchange of sexual services as akin to a contract between consenting adults, engaging in noncoercive commercial transactions (Collins & Judge 2008). Advocates contend that full decriminalization is the most effective way to protect sex industry participants, grant them benefits akin to other workers, and reduce the stigma associated with the profession. This perspective assumes a clear separation between consensual adult transactions and criminal exploitation, involving minors, drug dependency, coercion, and enslavement (Collins & Judge 2008).

Critics of full decriminalization argue that the regulatory frameworks established under this model may not guarantee improved conditions for sex workers. For instance, in Australia, where full decriminalization has been implemented, the reality for many brothel or escort workers remains complex. Despite the legal status, numerous sex workers are classified as subcontractors rather than employees, which limits their access to benefits traditionally provided to workers in other industries (Sullivan 2010). This classification raises concerns about job security, employment rights, and the ability of sex workers to assert their rights within the broader labor framework.

Critics also contend that the assumed separation between consensual adult transactions and exploitative practices may be overly optimistic. The underground nature of certain aspects of the sex industry, such as trafficking, may persist despite full decriminalization, making it challenging to completely disentangle consensual transactions from more sinister activities.

In essence, while full decriminalization aims to empower sex workers, critics argue that additional measures, such as robust labor protections and addressing underlying economic disparities, are necessary to ensure the holistic well-being and rights of individuals involved in the sex industry. The ongoing debate underscores the intricate balance required to create a regulatory framework that genuinely supports the rights and dignity of sex workers while addressing the complexities inherent in the industry.

Partial Decriminalisation

Some governments have adopted a nuanced approach to sex work, recognizing that its nature depends on context. This approach, known as partial decriminalization, allows selling in certain situations while prohibiting it in others, seeking to manage rather than abolish sex work (Phoenix 2009). At least six nations in Asia, Africa, North and Central America, over 15 in Europe, and three each in Oceania and South America have implemented partial decriminalization (ProCon.org 2012b, Wikipedia 2012).

Selling Sexual Services:

In the Netherlands, partial decriminalization involves legalizing the selling of sexual services with certain restrictions. Toppelzones, designated areas for street sex work, are established, and street workers must register with the city and obtain a pass. The safety of street-level selling is enhanced through features like easy access to police, shelters, condoms, and STI testing. Selling sex outside these zones is considered a misdemeanor (Daalder 2007; Weitzer 2012). The Dutch approach also allows municipalities to license and regulate brothels, ensuring compliance with federal labor laws and safety regulations. Some cities have opted to close toppelzones and prohibit street-level selling (Hubbard et al. 2008; Daalder 2007).

In Australia, partial decriminalization varies across regions. New South Wales decriminalized selling in many locations in 1979, including some street settings, while other areas permit licensed brothels and/or escort agencies. Tasmania allows up to two adults to sell sexual services from the same premises without requiring a brothel license (Perkins & Lovejoy 2007; Sullivan 2010). Other countries, like the United Kingdom and Canada, have legalized the selling of sexual services but imposed restrictions, such as prohibiting solicitation in public spaces.

Buying Sexual Services: Partial decriminalization for buyers involves legalizing the purchase of sexual services in certain areas while prohibiting it in others. In the United Kingdom, buying sexual services from a street seller is illegal, but it is legal in private locales (Sanders 2008). Many countries, including the Netherlands, Austria, and Mexico, designate tolerance zones or specific areas where buyers can arrange transactions with sex workers (Katsulis 2008; Weitzer 2012).

Another approach is to restrict buying to registered businesses in designated areas. Countries like Nevada, Greece, and Turkey permit buying only in registered brothels situated in specific locations (Weitzer 2012). Governments have regulated other aspects of buying sexual services, such as criminalizing transactions with those subjected to force, threats, or deception. The United Kingdom and Finland have enacted laws targeting such transactions, with penalties ranging from fines to imprisonment (Weitzer 2012).

Third Party Involvement:

Some countries partially decriminalize third-party involvement. For example, in Australia, licensed brothels and escort agencies are permitted in some areas but are prohibited from economically benefiting from the earnings of sex workers. Specific regulations, such as banning individuals with disqualifying offenses, are in place (Sullivan 2010; Hindle et al. 2008). Colombia, Belgium, and the Netherlands also allow brothel ownership and operation with a license in certain jurisdictions.

The United Kingdom has shifted away from prosecuting those living with sex workers, limiting sanctions to those who control workers and take their earnings (UK Parliam. 2003).

Critical Assessment

Supporters of partial decriminalization argue that legal strategies should focus on penalizing conduct that is violent or threatens force against sex workers or creates a public nuisance. They suggest that this approach reduces victimization by providing safer working conditions and does not necessarily lead to an increase in sex trafficking (Sanders & Campbell 2007; Weitzer 2009). Legalizing activities in safer environments, like brothels or massage parlors, allows sex workers to congregate, enhancing their rights and safety at work (Brents & Hausbeck 2005; Sullivan 2010). Partial decriminalization also enables sex workers to challenge discriminatory municipal regulations and report victimization more effectively (Craig 2011).

However, critics argue that partial decriminalization may create a two-tiered system, favoring those with greater financial resources who can afford discreet services in indoor markets. In places like Australia, regulations may lead to an increase in criminal sanctions against sex workers in unlicensed settings, particularly those who face economic challenges or limited access to licensed brothels (Sullivan 2010).

The requirement for sellers to register may encourage some to work in more precarious settings, perpetuating vulnerabilities (Kilvington et al. 2001).

Partial decriminalization may not address issues of police discretion or stigmatization, often relying on the same questionable assumptions used to justify full criminalization. The portrayal of buyers as abusive "users" may not align with available data on the demographics of buyers, challenging stereotypical assumptions (Brooks-Gordon 2010; Sanders 2008).

Violence rates among street workers are higher than those in off-street work, suggesting that partial decriminalization might contribute to the vulnerability of certain groups of sellers. The selective use of laws targeting sellers and buyers in public spaces may perpetuate inequality and disproportionately affect visibility (Lowman & Atchison 2006; O'Doherty 2011). Despite these critiques, proponents of partial decriminalization emphasize that it represents a step towards recognizing and safeguarding the rights of sex workers, though ongoing challenges persist in balancing these rights with public safety and societal perceptions.

Conclusion

Opinions on the regulation of the sex industry often vary widely, reflecting diverse moral, ethical, and political perspectives. Some might argue for full criminalization, emphasizing the potential social harms associated with the sex industry and viewing it through a lens of moral or cultural values. Others may advocate for full decriminalization, highlighting individual autonomy, workers' rights, and the potential harm reduction benefits of removing legal barriers.

The Nordic model, while aiming to address gender inequality and exploitation, faces criticism for its potential negative consequences, particularly concerning the exclusion and deportation of migrants. Proponents of the Nordic model might view it as a necessary step towards dismantling patriarchal structures, while critics argue that it falls short in achieving its feminist-humanitarian goals.

Partial decriminalization may be seen as a pragmatic compromise, attempting to balance the rights and safety of sex workers with broader societal concerns. Supporters may argue that it provides a middle ground, reducing harm while addressing potential negative externalities. Critics, on the other hand, might express concerns about creating a two-tiered system or perpetuating inequalities.

Public Health Implications

By Saskia Cassingena

Introduction

From the red-light districts of Amsterdam to the bustling streets of Bangkok, sex work has been the subject of ongoing global debate and legislation, with definitions ranging from purely transactional to nuanced expressions of agency, choice, and livelihood. The legalization of sex work, a complex and contentious issue with far-reaching consequences, prompts an examination of international cases, including the Maltese legislation on prostitution, offering insights into the potential benefits and challenges of regulating the industry. Navigating the complexities surrounding the legalization of sex work reveals a multifaceted issue intricately woven into the fabric of society, encountering myriad perspectives, ethical considerations, and socio-economic implications. In this discourse, public health takes centre stage, emphasizing the integral role of disease prevention when contemplating the ramifications of legalizing sex work. Disease prevention, extending beyond individual well-being to encompass the broader health of communities, intertwines with the second crucial pillar of this exploration: access to healthcare. Recognizing the importance of creating a safe working environment, the narrative seeks to weave a comprehensive understanding of the consequences of legalizing sex work on public health, emphasizing the delicate balance required to construct a regulatory framework that respects the rights of sex workers while safeguarding the health and well-being of individuals and communities.

Disease prevention and control

The legalization of prostitution is a contentious issue having ramifications for social justice, human rights, and public health. At the moment Maltese legislation addresses different aspects of prostitution, reflecting efforts to combat exploitation and protect vulnerable individuals. Article 54C⁵⁹ of the Maltese Criminal Code, for instance, targets coerced prostitution, viewing acts performed under conditions of broad or systematic attacks on civilian populations as crimes against humanity. Similarly, Article 204D prohibits child prostitution, recognizing such behaviour as prohibited sexual conduct.

⁵⁹ Criminal Code Chapter 9, The Laws of Malta

The topic of disease prevention and control in the sex work sector is central to this discussion. While legalization would make it easier to put public health initiatives into action, worries about hazards including exploitation and the transmission of HIV/AIDS and STIs still exist. The high prevalence of HIV and other sexually transmitted infections (STIs) among several communities highlights the need for a regulated framework for sex work, which includes regular health audits and examinations of sex workers. The precise prevalence of HIV among sex workers is still not well understood, despite decades of the epidemic. There are large gaps in public health interventions, as estimated by UNAIDS⁶⁰, with less than half of sex workers globally having access to HIV prevention programs. Due to a variety of human, biological, and structural factors, including work environment, violence, stigma, and legal contexts, there are significant regional and national variations in the prevalence of HIV among sex workers.⁶¹

The planned legalization of prostitution poses important questions regarding disease prevention and control in Malta. Regulation may present a chance to put comprehensive public health policies into action, but there are still concerns about how it can affect public health, especially in relation to the spread of several diseases. Legalizing prostitution might open the door for programs that encourage safer sexual behaviour, provide access to STI testing and treatment, and teach people risk-reduction techniques. Mandating sex workers and clients to undergo routine health examinations may help in the early discovery and treatment of STIs, hence preventing further spread within the society.

The dangers of normalization and the rise in demand for commercial sex, however, provide serious obstacles to attempts to prevent disease in addition to these possible advantages. Legalized prostitution may unintentionally worsen the exploitation of weak people and contribute to the spread of diseases if strict laws and enforcement are lacking. Therefore, any decision about the legalization of prostitution in Malta has to carefully balance the need to protect sex workers' rights and well-being with public health concerns.

A comparative analysis can be conducted to acquire a clearer understanding of the complexity surrounding the legalization of prostitution and its effects on public health, especially in the context of Malta. A more thorough insight can be attained by contrasting the Maltese situation with experiences from other nations like the Netherlands and Australia.

⁶⁰ Unaid, 'Unaid Report On The Global Aids Epidemic 2010' [2010] Global Report, Unaid Report On The Global Aids Epidemic | 2010

⁶¹ Shannon K And Montaner Jgs [2012] The Politics And Policies Of Hiv Prevention In Sex Work

While the Netherlands' legalization initiative was initially framed to mitigate exploitation and combat child prostitution, empirical evidence suggests that a substantial proportion of women engaged in its brothels were trafficked from foreign jurisdictions, thereby exacerbating disease transmission within the sex work community. Similarly, in Australia, the unregulated sector witnessed significant proliferation, undermining endeavours aimed at ensuring the well-being and safety of sex workers, despite anticipations that legalization and decriminalization would eradicate illicit activities and foster improved working conditions.⁶²

A number of Maltese instances, such as the ruling in *Il-Pulizija Spettur Godwin Scerri vs. Charlene Gatt* on July 8, 2020⁶³, make it clear that improved public health protection in the sex industry is desperately needed. This is emphasized on an international scale as seen in the case of *Canada (Attorney General) v Bedford*⁶⁴ where the Supreme Court of Canada's decision underscores the importance of allowing sex workers to take measures to protect themselves from the risks associated with their work, including the risk of violence and disease transmission. By striking down the provisions of the Criminal Code that indirectly restricted the practice of prostitution, the court recognized the rights of sex workers to security of the person and affirmed the principle that individuals engaged in legal activities should be able to take steps to safeguard their well-being. These court rulings highlight how crucial disease control protocols are to the sex industry. Legalization offers a way to successfully address these public health issues, taking into account the risks that sex workers confront on the job and their susceptibility to STIs. Legal recognition enables sex workers to easily obtain essential healthcare services, such as routine STI testing and treatment, as required by court orders.

⁶² Bonello BT, 'By Legalising Prostitution in Malta How Does This Effect Human Trafficking of Women? ' (dissertation, 2021)

⁶³ *Il-Pulizija Spettur Godwin Scerri vs Charlene Gatt Distrett Hamrun* (ecourts.gov.mt)

⁶⁴ *Canada (Attorney General) v Bedford* (Cornell Law School)

Access to healthcare for sex workers

According to Valerie Jenness (1993), a number of groups in Western countries advocating for the rights of prostitutes have highlighted the significance of changing the way that people talk about prostitution. These movements push for a change in the conversation about sex work, emphasizing work, choice, and civil rights instead of focusing on ideas of sin, sex, and crime.⁶⁵

When contemplating healthcare accessibility for sex workers, Malta might learn from the various regulatory frameworks used in nations such as China, Canada, and New Zealand. The Prostitution Reform Act, which decriminalized prostitution in New Zealand in 2003, is notable for emphasizing the creation of a secure and healthy workplace for sex workers. New Zealand wants to guarantee that sex workers have access to necessary healthcare treatments without worrying about discrimination or stigma by acknowledging brothels as legitimate enterprises. This strategy has made it possible for sex workers to get the essential healthcare services and gain equal recognition as employees.⁶⁶

On the other hand, as society views and legal frameworks changed over time, Canada's stance on prostitution has also changed. In addition to providing assistance to individuals who want to leave the profession, recent laws like the Protection of Communities and Exploited Persons Act of 2014 seek to address issues regarding human trafficking and exploitation.⁶⁷ The question of whether making the purchase of sexual services illegal will help sex workers have better access to healthcare is still up for debate. While some contend that these regulations could prevent exploitation and safeguard communities, others—such as proponents of the Nordic model—warn about possible harm to the health and safety of sex workers.⁶⁸

Furthermore, a historical analysis of China's prostitution policies can shed light on the challenges associated with policing the sex work sector. The difficulty of guaranteeing healthcare access for sex workers under different regulatory frameworks are highlighted by China's experience, ranging from attempts at regulation and taxation to more forceful measures in particular locations.

⁶⁵ Jenness V (1990) 37 From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem <<https://www.jstor.org/stable/800751>>

⁶⁶ New Zealand Parliament [2012] Prostitution law reform in New Zealand

⁶⁷ Library of Parliament [2022] Prostitution in Canada: International Framework, Federal Law, and Provincial and Municipal Jurisdiction <https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/2011119E>

⁶⁸ Zammit, M.C., 'Sex work in Malta: implications for policy development' (Master's dissertation 2018).

Continental China is still debating whether or not prostitution is allowed, but there are lessons to be learned from European nations that have adopted alternative regulation systems.⁶⁹

Conclusion

Malta has to create policies that address both wider societal issues and the health and welfare of sex workers in the context of these global viewpoints. Malta can endeavour to establish a setting free from prejudice and stigma where sex workers have access to complete healthcare services by taking into account the advantages and disadvantages of various regulation schemes. This could entail establishing collaboration between sex worker advocacy groups and healthcare practitioners, acknowledging the rights of sex workers as genuine workers, and offering education and outreach programs. In the end, guaranteeing sex workers' access to healthcare necessitates a comprehensive strategy that acknowledges the interconnected elements influencing their health and wellbeing.

⁶⁹ Platt L and others, 'Associations between Sex Work Laws and Sex Workers' Health: A Systematic Review and Meta-Analysis of Quantitative and Qualitative Studies' (2018) 15 PLOS Medicine

Analysing Sex Work in the Context of Human Rights

By David Camilleri

The varied lifestyle of the sex worker across Europe posits numerous concerns, with a multitude of which being closely attached to human rights concerns. Sex workers, like other individuals who seek to furnish a living through their occupation, are subject to the same rights and obligations vested in anyone else, and thus the analysis of sex work as contextualised by human right violations is warranted. Such workers are encountered by violent attitudes and behaviours on a daily basis, to an extent wherein infringements against human rights become blatant.

The main legal instrument which protects the fundamental rights of the individual is that of the European Convention on Human Rights (ECHR), to which 46 Member States are subscribed to in order to ensure equal protection of work, family life, discrimination, property, life, and even labour, in a harmonised way which should encompass and cover protection of vulnerable individuals as are sex workers.

Member States of the Convention tend to discourage publicisation of statistics and data pertaining to sex workers⁷⁰, and thus one must rely on information provided by various NGOs which shed light on the abuse laid out against sex workers. The European Convention on preventing and combating violence against women and domestic violence, coined the Istanbul Convention, is monitored by GREVIO, who in their 4th General Report⁷¹ have provided that 1 in 10 women have faced encounters of sexual violence since the age of 15.

⁷⁰ Council of Europe, Protecting the Human Rights of Sex Workers (15th February 2024) <<https://www.coe.int/en/web/commissioner/-/protecting-the-human-rights-of-sex-workers#:~:text=Sex%20workers%2C%20like%20all%20individuals,regardless%20of%20their%20chosen%20profession.&text=Across%20the%20continent%2C%20sex%20workers,levels%20of%20violence%20and%20abuse>>

⁷¹ Council of Europe, GREVIO 4th Annual General Report < <https://rm.coe.int/4th-general-report-on-grevio-s-activities/1680aca199>>

Such acts of violence render their work stigmatised, keeping the majority of sex workers suffering in the dark. Such private suffering does not discard the fact that decriminalising sex work would alleviate several human rights breaches from such workers, for the decriminalisation of sex work represents the ability to work freely, with the enhanced opportunity to report any abuses in regard to their work.

As a starting point, the criminalisation of sex work, including the commercial exchange of services of a sexual nature, is a direct violation of the fundamental right to private and family life, as governed by Article 8 of the ECHR. In *M.A v France*⁷², the ECtHR asserted that the applicants, who were engaged in lawful sex work in France, were entitled to claim victim status, thus allowing for the application to the ECtHR, as defined under Article 34 of the ECHR. This is significant because the argument brought forward to claim such status was that the criminalisation of the purchasing sexual relations between consenting individuals pushed for clandestinely in the profession, in turn exposing them to further risk and exploitation by stripping them of their opportunity to report any violations to the authorities. The same rationale may be contextualised by the criminalisation of sex work as a whole, since individuals exercising such a trade are forced to act in clandestinely, deprived of the lawful remedies intended to resolve human right violations or criminal acts done throughout their work.

The Council of Europe further examines the consequences of the criminalisation of third parties to sex work, in particular how there are negative impacts on sex workers, despite sex work itself being decriminalised. This is especially contextualised by the heinous crimes of human trafficking, for more often than not sex workers are exposed either directly or indirectly to trafficking, whether of children or of other sex workers. Owing to the penal consequences currently in force, sex workers are unable to provide information on human traffickers, since doing so would be indirect admission to the crimes of prostitution or pimping.

Arguments in favour of decriminalising sex work often advocate for the abrogation between sex work and other forms of trade or professions, for to create a distinction would be tantamount to discrimination by work. Such non-discriminatory regulations would imply permissible collective sex workers, legally construed organisations therefor, as well as the guarantee of a safe environment for sex workers to exercise their trade within.

⁷² *M.A and others v France*, ECtHR ([63664/19](#), [64450/19](#), [24387/20](#) et al.)

One of the approaches garnering popularity is that of the Nordic Model, in which there is full decriminalisation of prostitution, with penal consequences being suffered only by the buyer. The rationale behind such an approach is that there is a total shift of power from the buyer to the seller⁷³, which consequently allows the sex worker to freely report any abuses or acts of violence suffered throughout their work.

On a human rights level, the way forward should not be restricted to the sole decriminalisation of the prostitute, as suggested by the Nordic Model. The Council of Europe pushes for an ideal wherein sex workers are entitled the same access to health, to worker rights, to the rights to assembly and to private life, as well as the various social rights entitled to all professionals alike, without discrimination. The most important implication arising from this human rights approach is that there is no crime attached to the acts of consenting sexual relations between adults, in way that pushes for violent-free sex work.

Furthermore, the decriminalisation of sex work demonstrates proper upkeep of the right against slavery and forced labour, as protected by Article 4 ECHR, owing to the fact that rates of trafficking would decrease, since workers are able to freely seek adequate remedies to protect themselves from compulsory prostitution or deprived freedom of movement.

Perhaps the ultimate obstacle faced by sex workers as contextualised by the human rights legal sphere is that of the barrier to justice. The inability to report the countless incidents of violence to the relevant authorities is a theme reoccurring in the regime of sex work literature. The legitimate right to protection by enforcement is left inapplicable, thus implying that sex workers are not entitled to the minimum yet fundamental rights that have shaped legal systems across the globe. Furthermore, under-reporting of crimes to the police by sex workers have often been associated with a lack of trust in police or enforcement action⁷⁴, for the stigma remains that the work done by such workers is done out of their own volunta', again creating a prejudicial and discriminatory veil which separates sex workers from the right to remedy.

⁷³ Times of Malta, *Nordic model or full decriminalisation? Prostitution debate rages in a vacuum* (Times of Malta, 17th March 2021) <<https://timesofmalta.com/article/nordic-model-or-full-decriminalisation-prostitution-debate-rages-in-a.858691>>

⁷⁴ Rosie Campbell and Teela Sanders, *Sex Work and Hate Crime, innovating Policy, Practice and Theory* (Springer Nature Switzerland AG, 2021)

The right to access to justice and to a fair hearing is pivotal within the discussion of sex workers' rights for a number of reasons, yet the one that stands out the most is the absolute nature of the right. It is often contended that a human right is subject to limitations, in a manner laid out in *Sporrong and Lönnroth vs Sweden*⁷⁵. Here, the ECtHR held that in order to determine whether an act is considered to be in violation of a human right, the Court must first determine whether a “*fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights*”. However, in the case of the right to a fair trial, governed by Article 6 ECHR, as well as the right against torture and human degradation, there is no limitation as to the applicability of these rights. They are absolute in the widest sense, in that there may never be any permissible infringement of such rights under modern law. Thus, the criminalisation of sex work renders one of the first and only obstacles to these fundamental rights, in that sex workers are deprived of the various protections governed by Article 6 ECHR, including the right to innocence until proven guilty.

Thus, in order to ensure a non-discriminatory application of human rights across as wide of a population as possible, then the decriminalisation of sex work is imminent. No one ought to be deprived of the fundamental rights that shape the modern world due to stigmatisation and discrimination by profession or trade exercised, for such deprivation is tantamount to various disproportional infringements, such as the right to private life, the right against discrimination, and the ultimate and pediment which is the right to access to justice.

⁷⁵ *Sporrong and Lönnroth v. Sweden*, EctHR (23rd September 1982, 7151/75)

Social Stigma and Discrimination

By Julian Mifsud

Introduction

Society shies away from shedding light on sex work, even though sex work is the oldest profession in the world. The origins of prostitution may be traced back to Mesopotamian ceremonies in which men would give financial offerings to the goddesses of the temple in exchange for the holy bodies of women. Therefore, one ponders why nowadays the occupation of sex work is considered to be a taboo topic.

The World Health Organization defines sex work as “*sexual services for money or goods*”. In addition to this, sex workers are defined as “*women, men and transgendered people who receive money or goods in exchange for sexual services, and who consciously define those activities as income generating even if they do not consider sex work as their occupation*”.⁷⁶

The main stigmatization of sex work is that sex workers can be deemed to be vectors of disease and are portrayed to form part of the shallowest part of society. The reason behind this stigmatization against sex workers is that sex workers are considered to be disposable. In cultures where prostitution is illegal, sex workers are not protected by the law, thus are taken advantage and in some situations the outcome can be violence. The frowning upon on individuals who participate in this trade makes them insecure and can lead to sex workers not contacting law enforcement due to fears of their occupation they may be arrested.

One can argue that the impetus behind the continuation of the stigma is the Media in general. The Media nowadays is accessible by everyone, and the perception given by the media is a negative one. The majority of reports describing prostitution are mainly about a sex worker who was harmed and the media dehumanizes the sex worker by not referring to the person’s name, therefore society is indoctrinated with a sense of dehumanization towards prostitution. This once again, brings about the disposability of sex workers because persons who access their services ill intended, commit horrendous acts without the fear of any consequences.

⁷⁶ https://iris.who.int/bitstream/handle/10665/77745/9789241504744_eng.pdf?sequence=1

There are countries around the world that did legalize prostitution; the most prominent ones being, The Netherlands, Germany and New Zealand. Before these legal steps were made, the decisions taken by these states were questioned as to whether the direction they were taking was the right one.

Studies provide opposing findings⁷⁷. One study focusing on Sex Trafficking corroborated with Germany where data was collected pre-legalization and post-legalization. Germany passed the law regulating prostitution in 2002 and through this law sex work is on par with all regular jobs and is a taxable income. This study showed that prior to the legalization of prostitution there were less victims of human trafficking compared to after the law was promulgated. The study's shocking results shows that because sex work was legalized the market had upside potential, and a consequence of this was an increase of human trafficking. Albeit, it can be said that there was a domino effect which also had positive outcomes. It was also reported that working conditions improved and also the industry developed the "freedom of choice" for not only the sex worker, but also the client.

Furthermore, New Zealand also legalized prostitution reported encouraging findings after the country promulgated the Prostitution Reform Act in 2003. From this act, instead of being prosecuted, sex workers are protected by law and this protection reduces the risk of being exploited by criminals. Once again, like in Germany safer work conditions were reported and sex workers are found to be cooperative with law enforcement. New Zealand's Government happily reported that the number of violent crimes against sex workers has decreased since sex workers can report crimes against them without fearing arrest. In several instances, police have even guaranteed payment to prostitutes for their services and have even brought theft charges against their clients who tried to abuse of them.

⁷⁷ Cho, Seo-Young and Dreher, Axel and Neumayer, Eric (2013) Does legalized prostitution increase human trafficking? *World development*, 41 . pp. 67-82. ISSN 0305-750X DOI: 10.1016/j.worlddev.2012.05.023

The Way Forward for Malta

Like many other countries around the world Malta's culture obstructs the view society has on prostitution. Article 2 of Malta's Constitution states that "*The religion of Malta is the Roman Catholic Apostolic Religion.*"⁷⁸ Over and above that same article of the Constitution makes it clear that "*The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong.*"⁷⁹ With 82.6% of Malta forming part of the Roman Catholic Church it is highly likely that the majority of the country have a negative connotation towards sex work.

Catholicism bases itself on honesty and forgiveness, therefore although sex work is sinful in the eyes of the Church, this does not mean that persons who resort to sex work as their occupation are shun away from the Church.

In 2019, The Catholic Voices Malta urged for the non-prosecution of prostitutes. However, they opined that prostitution should remain a criminal activity, additionally imposing heavier punishments on human traffickers and club operators. They are pushing the government to reconsider the Reform and adopt approaches that deal with the decrease of human trafficking and reintegration of prostitution into respectable jobs.

It is clear that the Church has a role to play when it comes to the stigma of sex work. As the Constitution states that "*The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong*", therefore, the fact that the Church in Malta has the duty to teach its followers, there is a chance for the church to help in trying to end the stigma around the sex work industry.

The Church have the ability to make a public calling that even though the profession is frowned upon, the Church welcomes sex workers in the community with open arms. The church is the forefront of many communities around Malta, thus sex workers will no longer feel "alone" and will be able to open up with the community.

⁷⁸ <https://legislation.mt/eli/const/eng>

⁷⁹ <https://legislation.mt/eli/const/eng>

Final Remarks

Alec Carter

The topic in question is quite a controversial one, and I am aware. However, it would be nigh imprudent to keep shying away from discussing the potential legalisation or decriminalisation of a regulated prostitution industry in Malta. Thus, it would bode well to embrace the abovementioned notion, and to ultimately embrace the change – because change is prone to happen.

The creation of a regulated framework for an industry of sex workers bears more pros than it does cons. As discussed above, sex work is unequivocally the oldest profession occupied by humankind. And it will keep on persisting until man is no more – because from a fundamental point of view, sex work heeds the inherent natural instincts borne by any animal: one of which is man himself.

From a humanitarian point of view, regulating an industry already active from within the shadows only means that those partaking in such a profession are afforded all the protections owed to any worker hailing from any occupation. And in furtherance, the regulation of sex work succeeds in producing a multifaceted solution to a multitude of societal challenges – thus prioritising the overall health and safety of sex workers, mitigating exploitation and trafficking, reducing social stigma, and bolstering public health efforts.

From an economic perspective, introducing a rigid and thought-out framework for such a booming industry would only lead to fiscal affluency. The pioneers of legalising and regulating prostitution as a fully-fledged occupation would have thus created a magnet for tourism and overseas investors akin – thus bolstering the economy of the state. Moreover, this opens avenues for taxation and the allocation of resources toward support services and education.

Ultimately, all those supporting a future wherein sex work may be regulated, safe, and accessible have oceans to brave and mountains to move – because it is imperative that one maintains sight of what this policy paper is all about: envisioning a better future for sex workers, and striving to create one.

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