

Why you should support decriminalisation even if you are against sex work

Sex work is a crime in South Africa, as is brothel keeping, living off the earnings, as well as many other activities of the sex work industry.

The arguments to keep the sex work industry criminal are mostly a fear of moral and social collapse, a fear of the spread of STI's and the fear of a link to organised crime. An additional reason given for criminalising the industry is the harm inherent in sex work, i.e. that the women and men who sell sex are psychologically and physically damaged by the work they do.

The ultimate aim of the criminalisation of sex work is the eradication of sex work in its totality. Thus far criminalisation has failed to stop persons engaging in sex work and, after 17 years of criminalising the industry, the impact these laws have had on the eradication of sex work is minimal if non-existent.

If our current system is not effective in achieving the aims it has set, then it must be time to think beyond the standard reaction of criminalising what we do not like and hoping it will go away. We need to start considering other options if it is indeed our aim to prevent the exploitation of women and men in the industry, to contain the spread of STI's and to address concerns around "moral and social collapse".

Other countries have already started to look at a variety of options, such as criminalising the client¹, establishing red light districts² and creating laws to specifically deal with the sex work industry³.

In South Africa we currently have the opportunity to look at the history of dealing with the sex work industry, look at what has worked or not worked in other countries and then to tailor a response appropriate to the South African situation, in line with our Constitution and the rights contained within it.

The South African Law Reform Commission ("SALRC") is in the process of producing a Discussion Paper on possible changes to the legislation dealing with adult sex work, following on from the Issue Paper produced in 2002. Once this Discussion Paper is produced the public will have the opportunity to make submissions. It is important that those submissions are well informed and all factors taken into account. This article therefore analyses the motives behind the support for the criminalisation of the industry and the flaws in this argument.

Involvement in organised crime

Not all sex work is linked to organised crime. No doubt there is some overlap between the two. This is not surprising, as it is the illegal status of sex work that makes it an appropriate partner to organised crime. Persons selling sex are involved in an illegal activity. They are therefore restrained by issues such as the inability to find accommodation where their work is tolerated. Accommodation is however always available and on offer from drug dealers. The fact that this may include selling drugs overshadows by far the need for a roof over your head. Drugs are freely available and their use is encouraged. The sex worker's dependence on the

¹ Sweden

² Germany and the Netherlands

³ The Prostitution Reform Act in New Zealand

drugs is of benefit to the dealers. In addition the fact that very little assistance is forthcoming from the police or at the very least there is a perception that this is the case, then protection must be obtained elsewhere. Sex workers are reluctant to approach the police when they are being arrested on a continuous basis for assistance if been beaten or raped. Protection is therefore sought in the form of pimps, boyfriends or other sex workers.

“As for criminals, hookers tend to be surrounded by felonious confederates because what they do is illegal. The enterprise attracts violent people because violence is often useful in a business that can't expect protection from the cops. The retail liquor trade used to be that way too, during Prohibition. Since repeal, it has been about as violent as the dairy industry.”⁴

Decriminalising the sex work industry would obviate the need for protection outside of the police services. It would also enable sex workers to access services, which are taken for granted by persons able to prove an income, such as opening a bank account, securing accommodation and access to loans. Decriminalisation would make them less reliant on services provided by persons involved in organised crime.

The spread of infectious diseases

Sex workers are often seen as 'vectors of disease'. This makes them a threat to public health. Criminalisation has not deterred persons from entering the industry but its effects have serious implications in relation to addressing public health issues.

Organisations involved in outreach work to sex workers, such as SWEAT and the Reproductive Health and Research Unit (“RHRU”) are involved in the education of sex workers regarding the prevention of the spread of STI's, including HIV. This outreach is made more difficult by the criminalisation of sex workers and it presents huge challenges to such organisations to access sex workers. Our HIV/AIDS prevention campaigns are focused on education and this becomes increasingly difficult to implement if the target audience has to continuously hide and move in order to avoid the authorities. Some police officers have taken the amount of condoms a woman carries as evidence that she is a sex worker. Sex workers therefore tend to be fearful of carrying condoms.

As long as the sex work industry remains illegal and operates as a largely underground activity, large sections are not being accessed nor have access to non-judgmental health services. It is therefore the criminalisation of sex work itself that is a threat to public health.

Comment [S1]:

Social and moral collapse

If we view the existence of sex work as leading to the social and moral collapse of our society our aim should be to encourage sex workers to exit the industry, as well as to prevent them from entering the industry.

Women and men enter the industry for a variety of reasons. Many enter the industry out of economic need. If we are serious about wanting to make sex work a less attractive choice and thereby reducing the industry we should look to poverty alleviation and educational opportunities for women rather than criminalising people making such choices.

⁴ Steve Chapman, “Fighting a futile war on prostitution”, 14 July 2005, Chicago Tribune. <http://www.chicagotribune.com/news/columnists/chi-0507140125jul14,0,220653.column>

South Africa currently has a very high rate of unemployment, with the trade union movement COSATU quoting percentages as high as 40%. This makes it difficult enough to find a job and any form of employment is hotly contested. A criminal record makes it even more difficult to find employment. So, although many groups claim to encourage sex workers to leave the industry, their method of doing so, criminalising the industry, in fact adds to the factors keeping women and men in sex work.

Criminalising sex work, because we believe it to be inherently harmful to the women in the industry or morally reprehensive, is treating the symptom and not the cause.

If sex work were to be decriminalised then those working therein would access labour rights and protections and be in a far better position to have control over their work environment, their health and their safety. Such a work climate allows persons to make decisions and choices regarding their future, including further education and skills training, and opens up opportunities to change work, if they should wish to do so.

A firm stand by government not to label sex workers as criminals will be a first step in breaking down this barrier to exit. The lessening of constant arrests by the police will further assist. Government's stand will also contribute to the lessening of the stigma.

It is interesting to note that a moral argument was made when the selling of sex was criminalised in 1988, as opposed to the criminalisation of the rest of the industry, which occurred much earlier. One argument made was that prostitution (together with homosexuality) was characterised as 'the first signs of a disintegrating community'.⁵ If we have abandoned criminalising homosexuality because it cannot be justified in terms of our Bill of Rights, then we need to analyse the validity of claiming morality as a reason to keep the sex work industry criminalised.

In any event, it has been shown that criminalising the industry has done nothing to decrease sex work and has therefore not in any way lessened the 'moral decline' of society.

Exploitation or the perpetuation of women as objects

Many feminist groups have claimed that sex work is inherently exploitative and perpetuates women as objects. This argument has led some groups to claim that criminalising the industry is the best option. Again, this is an argument for the eradication of sex work in its entirety. As we have argued above, criminalisation does not prevent persons from entering the industry and in fact acts as a barrier to exiting the industry. It seems a stark contradiction to argue for the protection of women in the industry, and claim them as victims, and at the same time argue for the criminalisation of these very 'victims'.

In response, many groups have argued that it is not the sex worker who should be criminalised, as she has much less bargaining power in the relationship, but instead we should criminalise the client.

⁵ (Debates of Parliament 15 February 1988 col 889, 891 and 893 cited in Milton & Cowling at E3-2 n 17 at 149, Report of the Ad Hoc Committee of the State President's Council on the Immorality Act (PC 1/1985) Par 4.13 cited in Milton & Cowling at E3-2 n 17 at 149, quoted in the SALRC Project 107, Issue Paper 19, at 77.

In theory this addresses the imbalances between sex workers and clients. In practice however, this approach harms the sex worker far more than it does the client and does not lead to a lessening of the industry as a whole. Sweden has criminalised the client and decriminalised the sex worker. If it was difficult to prove that a sex worker has broken the law it is even more difficult to prosecute clients for such a breach. Very few prosecutions of clients have occurred in Sweden. In addition sex workers from Sweden and the Netherlands report that life has become more difficult since the clients have been criminalised. As in any other business the supply will follow the demand. If the demand has to hide from the police so will the supply. This means less access to sex workers. Sex workers have also said that the criminalisation of the client may have an impact on the “good” clients and kept them away but it left only those men that sex workers would normally avoid: the clients who are potentially dangerous.⁶

Sex workers by necessity rely on their instincts when contemplating accepting a client. Some reports have said that the fact that the clients are criminalised makes them more nervous and therefore not prepared to spend time talking to the sex worker. She has to get into the car immediately. The discussion, during which sex workers evaluate their clients, has therefore been cut short and the possibility of going with a dangerous client is increased.⁷

Criminalising the client also influences our ability to assist victims of trafficking. Where women are held against their will and controlled to such an extent that they have little or no contact with the outside world, their only hope is the client. A client who makes himself vulnerable to prosecution and is labeled a criminal is less likely to report that women are being held against their will. Criminalising the client, or the industry as a whole, is therefore not an option if the motive is to assist the women and men in the industry, to protect them from harm or to help them exit the industry.

Our personal opinions about sex work and the “inherent harm” in it should not cloud our perception in such a way that our course of action becomes detrimental to the sex workers themselves. It is arrogant to assume that we know better than persons in the industry and to decide accordingly. If we do we are perpetuating the image of persons in the industry as victims unable to make decisions. Treating women in the industry as children makes us complicit in the perpetuation of the stereotype that women cannot think and act for themselves.

“Politicians may think prostitution is a grim, degrading life. But prostitutes think the same of politics. At any rate, arresting practitioners doesn’t exactly improve their lives. And if they see it as the best of the available options, eliminating it merely forces them into choices they see as worse.”⁸

Conclusion

Persons entering the industry do so *despite* the risks. Lifting these risks by decriminalising the industry simply makes some aspects of the work less dangerous. Criminalising the industry creates an environment where sex workers are more exposed to criminal acts, such as rape

⁶ Petra Östergren, “Sexworkers Critique of Swedish Prostitution Policy”, available at www.petraostergren.com, posted 2004-02-06

⁷ Ibid.

⁸ Steve Chapman, “Fighting a futile war on prostitution”, 14 July 2005, Chicago Tribune. <http://www.chicagotribune.com/news/columnists/chi-0507140125jul14,0,220653.column>

and assault, and advocating for its continuation makes us an accomplice to those crime perpetrated against sex workers.

“Legalizing prostitution would not be a moral endorsement of paid sex, any more than the 1st Amendment is a moral endorsement of supermarket tabloids. It would just be a recognition of the right of adults to make their own choices about sins of the flesh – and of the eternal futility of trying to stop them.” “... confusing the effects of prostitution with the effects of laws against prostitution.”⁹

Government and civil society now have the opportunity to critically examine criminalisation and its effects and to engage with the real possibility of alternatives that can address the very concerns that strong supporters of criminalisation seek to address.

⁹ Steve Chapman, “Fighting a futile war on prostitution”, 14 July 2005, Chicago Tribune. <http://www.chicagotribune.com/news/columnists/chi-0507140125jul14,0,220653.column>