

The Moral Obligation for Sex Worker Rights

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Abstract

The female body is the site of endless controversy, with sex work as one of the most hotly debated issues. Historically viewed as an ethical and moral issue, arguments to criminalize sex work were dominant until the mid-to-late twentieth century when sex workers began to argue for decriminalization of adult “consensual” commercial sex. As one of the most marginalized populations in the world, sex workers are subjected to a multitude of violations against their bodies and their human rights. They routinely face physical and sexual violence, arrest and incarceration, extortion and harassment (frequently by police and other members of law enforcement), as well as forced HIV testing and medical intervention, and denial of health care, housing, and legal protection. In recent years, the purported relationship between sex work and the sexual aspect of human trafficking has been very divisive in policy and social issues as the line between “consensual” sex work and forced sex work became blurred. Of late, the United Nations, Amnesty International, and other prominent organizations have taken the bold step of endorsing the decriminalization of sex work as a human rights issue. This paper will explore the moral and ethical arguments for decriminalization; and the inherent harm criminalization imposes on not only adult consensual commercial sex work, but forced and trafficked sex work for adults and minors, as well.

As one of the most marginalized populations in the world, sex workers are subjected to a multitude of violations against their bodies and their human rights. They routinely face physical and sexual violence, arrest and incarceration, extortion and harassment (frequently by police and other members of law enforcement), as well as forced HIV testing and medical intervention, and denial of health care, housing, and legal protection (Murphy, 2015; UNAIDS Technical Update (UNAIDS TU), 2002; UNAIDS Joint United Nations Programme on HIV/AIDS (UNAIDS JUNPHIV/AIDS), 2012). In recent years, the purported relationship between sex work and the sexual aspect of human trafficking has been very divisive in policy and social issues as the line between “consensual” sex work and forced sex work became blurred. Tandon and colleagues distinguish the two views on sex work as: (1) a cause or consequence of trafficking, exploitation, and violence; (2) consensual sex between adults for monetary gain (Tandon, Armas-Cardona, & Grover, 2014, para. 1). Neither side argues the abhorrence of forced sex work, but a large part of the debate surrounds the issue of agency (personal choice) in adult “consensual” commercial sex worker, as well as the denial of human rights of *all* sex workers.

Many were surprised when Amnesty International recently joined the World Health Organization (WHO), UNAIDS, Human Rights Watch, and other well-known organizations¹ in calling for the decriminalization of sex work (as opposed to the alternative positions of criminalization and legalization²). This was not a precipitous decision, but one reached after two years of evidence gathering, first-hand research, and consulting “a wide array of individuals and groups, including but not limited to: sex workers, survivor and abolitionist groups, HIV agencies,

¹ Other organizations include International Labour Organization, the Global Alliance Against Trafficking in Women, the Global Network of Sex Work Projects, the Global Commission on HIV and the Law, The Open Society Foundation, and Anti-Slavery International (Amnesty International, 2015).

² Criminalization laws usually result in the arrest of sex workers while clients and pimps are not prosecuted. However, the Swedish Model prosecutes clients and pimps, but not the sex worker. Under legalization the state regulates sex work, whereas decriminalization removes all laws pertaining to sex work (Amnesty International Q&A, n.d.)

women's and LGBTI rights activists, indigenous women's groups, anti-trafficking groups and leading academics" (Murphy, 2015, para. 6). The result was the organization's refocus on the human rights aspect of sex work and laws that sustain the inhumane treatment of sex workers. As this paper will explain, taking the position of decriminalization in no way condones human trafficking or any form of forced sex work, but takes a stand against laws and practices that deny sex workers their human rights (Murphy, 2015).

Evolution of Sex Work

Often cited as the oldest profession in the world, prostitution is highly stigmatized as shameful and immoral. As a result, the women, and men, who perform sex work³ face discrimination and abuse. The marginalization associated with prostitution, and reasons for decriminalization, are best understood by examining the history of sex work. References to cultic sexual services are found as early as the Neolithic age, but Lerner (1986) dates the roots of commercialized prostitution to the third millennium B.C. when slave owners rented out enslaved women captured during military conquest, and to debt slavery, which arose from the practice of bartering female family members as payment for debt pledges. By the second millennium B.C., prostitution was well established as a likely occupation for daughters of poor families. Consequently, as the moral character of prostitutes was maligned, the virtue of virgin daughters became a financial asset for families.

Moral judgments against sex workers were reinforced by the Babylonian Codex Hammurabi (1792-1750 B.C.), the first known set of laws to establish a clear distinction between respectable and non-respectable women (Lerner, 1986). Anderson (2010) asserts the practice of isolating sex workers from the rest of society dates back as far as the beginning of civilization

³ The term "sex work" is more widely used than "prostitution" because it implies consent and sex workers' capacity to exercise agency or consent voluntarily. Further, "prostitute" and "prostitution" have negative connotations that support stigmatization of sex workers.

when men took over the early city states, and the laws written to protect sex workers from exploitation and abuse predominantly privileged their clients (Anderson, 2010).

From a Biblical perspective, the source of most Western values, there are numerous references that expound the sinful nature of prostitutes, most notably Rahab and Mary Magdalene; but the story of Tamar and Judah (approximately 1898 B.C.) is the first historical reference to prostitution in the Bible: “When Judah saw her, he thought her to be an harlot...” (Genesis 38:15 King James Version). Judah’s assessment of Tamar as a harlot suggests prostitution was well established by this time, and not looked upon favorably.

Another factor that contributed to the moral judgment of sex workers was fear of the spread of venereal disease, “recruitment” of young women into prostitution in European countries, either by force or deceit, and the public nuisance of sex work. During the late nineteenth and early twentieth centuries, laws and acts to regulate and contain sex work were passed in response to this public evil that included saving, rescuing, and rehabilitating sex workers. It was also during this period that prostitution and trafficking became intertwined as the fear of “white slavery” intensified (Tandon, Armas-Cardona, & Grover, 2014; Moore, 1993).

Whether prostitution is the oldest profession, or not, the commercial use of women’s bodies is a long established institution; and, at the least, the moral character of sex workers has been vilified since the third millennium B.C., much as it is today. Fear, fanned by moral judgment, has contributed to arguments for criminalization, whether doing so is in the best interest of sex workers. While the position – criminalization, legalization, or decriminalization – of sex workers in historical times is unknown, many sex workers and their advocates assert that both criminalizing and legalizing sex work does not benefit sex workers, but creates dangerous conditions and opportunities for violence and abuse against them (Abrol, 2014).

There are a multitude of circumstances that may contribute to individuals' entry into sex work that include, but are not limited to, poverty, gender inequality, lack of education, limited or no employment opportunities, drug dependency, emergency and post conflict situations, and direct coercion or deceit (UNAIDS TU, 2002). Recognizing the multitude of reasons for entry into sex work, and that the laws and policies in many countries sustain the discriminatory practices that drive sex work underground, which result in inadequate access to health care and abuse by law enforcement, the United Nations (UN) took the position that human rights are universal, and, therefore, apply to all people – especially vulnerable populations, which includes sex workers (UNAIDS TU, 2002). Moreover, it is the obligation of all states to ensure the human rights of every citizen (Tandon, Armas-Cardona, & Grover, 2014), not just select populations.

Moral Judgment

As one of the most marginalized groups in the world, sex workers face not only discrimination, but the constant risk of violence and abuse at the hands of clients, pimps, and law enforcement (the group charged with protecting the rights of all people); and denial of legal, health, and public services (UNAIDS JUNPHIV/AIDS, 2012). From a moralistic perspective sex work is considered an attack on the dignity of people who sell their bodies. Chateauvert (2013) asserts moral judgment is an instrument that “embolden people to throw stones and insults” (p. 2), from politicians focused on punishment and abolition to the police that crackdown on sex work and sex workers. Many consider these moral judgments the source of oppression and violence against sex workers, rather than a safeguard, which has led sex workers to fight for the recognition of these attitudes and actions as human rights violations, as well as demand a voice in the political process of defining sex work laws and rights (Chateauvert, 2013). Anti-

prostitution advocates characterize sex work as a violation of women's human rights; whereas the sex workers' rights movement considers state repression of sex workers a violation of human rights (Alexander, 2010).

So, what is judgment, and why should judgments on the moral character of sex workers be reconsidered? Simply stated, judgment is a multifaceted ideal comprised of perception, knowledge, and action that is part of one's efforts to make meaning of life (Pardales, 2002), and the evaluation of socially acceptable behavior (Sawaoka, Newheiser, & Dovidio, 2014). Yet, the information we draw on to weigh moral matters can be ambiguous (Pardales, 2002), as well as unjustly applied. Because people are evaluated on the behavior they engage in, members of stigmatized groups frequently face negative moral judgments, including being branded as immoral and contributing to the deterioration of society. Furthermore, stereotyped groups labeled as immoral are generally held to higher moral standards because the people judging them are seeking validation of their beliefs (Sawaoka, Newheiser, & Dovidio, 2014). Inevitably, moral judgments about sex work have manifested in laws and policies, discriminatory practices, and the social attitudes that have driven sex work underground and sex workers into the shadows.

Sex Work Laws and Harm Reduction

New Zealand and New South Wales, Australia are considered to have the most progressive positions by decriminalizing sex work. Instead of a criminal code, 'provincial [labour] standards; legislation; occupational, health, and safety codes; and zoning regulations' (as cited by Abrol, 2014, pp. 5) regulate sex work. However, these governments did not totally relinquish all control of sex work. As an alternative, brothels are regulated and monitored through the issuance of permits and licenses. Health inspections are also conducted to ensure that government standards for brothels are maintained, and sex workers are protected. Many believe

the decriminalization model has proven to be the most effective in reducing the infringement and victimization associated with police targeting sex workers, and diminishing the role of the “protector” pimp. Sex workers operate with no government interference, are able to choose their work environment, and have more control over their safety and welfare. Additionally, by classifying brothels as legitimate businesses they became subject to labor and employment laws, making their employees eligible for civil liberties previously denied (Abrol, 2014).

Legalization, another alternative to criminalization, has found less support than decriminalization. Arguments against this approach maintain that while an improvement over criminalization, this model continues to marginalize and put demands on sex workers not required of employees in other professions: (1) Sex work would still be policed through criminal law, which experience has shown is harmful to sex workers; (2) Governments’ control of work environments (locations, indoor/outdoor), advertisement, and numerous limitations on bawdy houses and street procurement ultimately favors more upscale brothels; (3) Licensing, taxation, and other legal codes seriously restrict sex workers’ liberties; (4) Legalization laws usually contain morality terms that appear to protect sex workers, when in reality they promote the health and safety of clients; and (5) Sex workers may be required to submit to health checks, while clients are not. In essence, legalization becomes another means of controlling women’s bodies, and the state takes the role of the pimp. Contrary to the claims of legalization advocates, this approach does not improve the conditions for sex workers, but creates another underground market for sex work (Abrol, 2014).

Other issues surrounding sex work are public health and quality of life (Anderson, 2002). The harm reduction approach of distributing condoms, initially adopted as an effort to counter illicit IV drug use and its connection to the spread of HIV/AIDS, was later adapted to deal with

the link between sex work and the spread of HIV/AIDS. The controversy to this approach is twofold. First, providing condoms to sex workers may be perceived as an endorsement of sex work and its related harms; as opposed to a rescue and restore approach which seeks to abolish sex work. Secondly, Fry et al. assert that harm reduction lacks an explicit moral framework and ethical underpinnings. Conversely, Cusick suggest that the harms related to sex work are linked to vulnerability, not sex work itself. Therefore, eliminating the vulnerability in sex work holds promise for removing harms related to sex work (as cited by Barrows, 2008, pp. 160-161).

A person's conduct is reduced to thinking about the consequences of their actions. The teleological theory of morality, which focus on duty and moral obligations, ask questions about right and wrong by focusing on whether a person's conduct will produce desirable consequences. By answering "What is right?" results become the determinant of conduct because they establish the goodness or badness of behavior. Further, the approaches to decision-making assess consequences include ethical egoism (acting to create the greatest good for the person) and utilitarianism (actions that create the greatest good for the greatest number). Both may be applicable to decriminalization, but the utilitarian approach is the most applicable since decriminalization considers all sex workers and how their behavior affects their clients and community (Northouse, 2012, pp. 425).

To no surprise, proponents of each model (criminalization, legalization, and decriminalization) are confident theirs alone promotes the greatest good for the most people, and is therefore ethically justified. Realizing it is impossible for all three to be correct, the question then becomes: How is "good" defined? For example, from a harm reduction perspective, distributing condoms is a small intervention to reduce the harm of spreading HIV/AIDS as opposed to a larger attempt to remove all of the harm by eliminating sex work. Utilitarianism

would only be able to rationalize the harm reduction from distributing condoms if the good produced was greater than the good achieved through a rescue and restore approach, which has the potential to completely remove all of the harms of prostitution (Barrows, 2008).

Thus, it would appear that utilitarianism would consider the complete removal and permanence of the rescue and restore approach as providing the most good. Yet, sex workers who contend they entered sex work as a personal choice, and therefore are not exploited, would not see the rescue and restore approach as reducing harm. In other words, determining the greatest good depends on one's underlying belief about the inherent harm of sex work. If consensual commercial sex work is not considered harmful, any approach to eliminate it is counter to utilitarian philosophy. Additionally, excluding some people from the protection enjoyed by the majority sets them apart, and in doing so reinforces the harms they suffer (Anderson, 2002).

Conclusion

The UN's position on decriminalization was initially grounded in the effort to reduce the spread of HIV/AIDS by sex workers (UNAIDS TU, 2002), but later expanded to address human rights violations against all sex workers – consensual and forced/trafficked (UNAIDS JUNPHIV/AIDS, 2012). Amnesty International, the UN, and other organization's human rights principles support the right of all people to make informed decisions, including the personal choice of consensual commercial sex worker. Decriminalization, as previously stated, does not promote sex work or refute the existence of forced sex work, but maintains some sex work is by personal choice. Admittedly decriminalization is not an easy task and cannot be lightly undertaken. However, the objective should be on reducing harm to sex workers, not shaming and marginalizing them.

The UN, Amnesty International, and sex work advocates support policies and programs for sex workers who want to leave the industry “to acquire the skills, education, and employment opportunities that will assist them to exercise free choice, consistent with the full enjoyment of their human rights” (UNAIDS JUNPHIV/AIDS, 2012, pp. 8). This involves creating a position at the table for sex work advocates, who are typically excluded in the process of naming the harms faced by the sex work community. Only by considering their experiences and perspectives can an effective and rights-informed approach be developed. Including sex workers and advocates in the decision-making process has proven to improve the health and safety of sex workers by reducing HIV/AIDS and sexually transmitted diseases, and increased condom use. Finally, the focus on trafficking cannot be allowed to overshadow the need to protect sex workers’ human rights citizen (Tandon, Armas-Cardona, & Grover, 2014).

In comparison to other types of judgment, moral judgments based on social impressions are more strongly held, and more resistant to change. Moral character judgments are susceptible to substantial consequences in the criminal justice system (Sawaoka, Newheiser, & Dovidio, 2014). Even in this era of pro-sex, lessons of morality, instilled from childhood, have imposed moral judgments on sexual relations that still include casual sex, but particularly sex exchanged for monetary gain. Individuals who participate in casual sex and sex work are considered irresponsible and reckless, and sexual double standards reinforce this for women (Beres & Farvid, 2010).

Sex workers should be recognized as autonomous individuals and respected as ends in themselves. Attempts oriented towards getting women out of sex work must thoughtfully deliberate the validity of consensual commercial sex. To do otherwise produces more harm than good. Considering the harm associated with criminalization and legalization, arguments for

decriminalization make sense; particularly when supported by programs that address gender inequality, provide skills and education, employment and other opportunities that extend free choice to marginalized populations. If, as the UN, Amnesty International, and other organization assert, it is the duty of governments, the private sector, civil societies, and sex worker organizations to ensure access to these resource to deter entry into sex work for those not entering it as survival sex, but also as an exit strategy for those ensconced in the sex industry.

Decriminalization removes obstacles to health care that preclude sex workers from receiving information about prevention and treatment, but also protects clients, and their partners, by reducing the spread of HIV/AIDS. Additionally, a human rights approach can reduce violence towards sex workers by educating police, law enforcement and judiciary agencies, health services, and others agencies. However, if the objective is to rescue and restore, programs should also be available to address consequences related to sex work, including drug dependence, rejection by family and community, mental health and legal problems.

Just as there is no solid evidence decriminalization promotes trafficking and forced sex work, claims that ending demand and supply actually reduce sex work, transmission of HIV/AIDS, or improve sex workers' quality of live are unsubstantiated. Additionally, reducing sex workers' control of their lives exposes them to greater violence and exploitation. More importantly, sex work advocates can play a significant role in addressing trafficking and the sexual exploitation of children. Their knowledge of the sex work setting puts them in an ideal position to recognize and gain the trust of exploited sex workers, as well as provide assistance and support without increasing theirs or other sex workers' vulnerability (UNAIDS JUNPHIV/AIDS, 2012). From a human rights and moral perspective, the most ethical approach to the sex work debate is decriminalization.

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