

Decriminalisation of sex work in England and Wales: A step towards normalising sex work.

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Abstract

This thesis explores the issue of normalisation of sex work in England and Wales and, after in-depth research, suggests decriminalisation of sex work. Throughout this thesis, Foucault's theory on power is used to explain that power shapes social ideologies and can be viewed positively or negatively according to its enforcement and its use. Furthermore, it will use comparative methods to analyse, evaluate and criticise, the law and viewpoints of various academics. The first chapter explains topics fundamental to the discussion. It explains that, due to the domination of male superiority and male logic, it deems the role of feminists crucial in the discussion. The second chapter discusses the historical development of sex work in England and Wales by analysing and criticising the law from Victorian times to date. It explains how "history is repeating itself". The third chapter compares the criminalisation of the sex buyers model (Nordic model), the legalisation model and the decriminalisation model to suggest the best way forward for England and Wales. The fourth chapter suggests and recommends the following policies: involvement of sex workers and feminists in the law-making process, the introduction of new terminology, understanding exploitation and choice when re-examining the law and treating sex workers as workers to safeguard them. This thesis concludes by explaining how to introduce change using Lewin's change model.

CHAPTER 1 – Establishing the Foundation

This chapter will establish the foundation for this thesis. It will use a comparative approach to analyse, compare and evaluate three legal models: the Nordic model, legalisation model and decriminalisation model, to suggest reforms to the law on sex work in England and Wales. First, it will propose a move away from the terms prostitute and prostitution, introducing the first step towards eradicating the stigma attached to the profession of sex work. Further, it will analyse and evaluate the importance of feminists discussion to discontinue the oppression of women by the law due to ‘male logic’ by discussing feminists theories on sex work. Furthermore, it will propose an approach that aims to diminish power inequalities and promote in-depth discussion to reform the current law. This thesis will mitigate the limitations by maintaining the research objective and understanding the similarities and differences between the jurisdictions¹ used, by providing context to the research through background and social ideologies.

Sex work/ Sex workers or Prostitution/Prostitutes

The first step to introduce ‘normality’ is to establish new terminology. Leigh first coined the term sex work², a linguistic move away from the stigma and victimising status attached to the traditional vocabulary, prostitute and prostitution. Leigh believed that this linguistic move would tolerate women working in the sex industry, inside and outside the women’s movement³. Moreover, Troung states that humans work to fulfil their basic needs, mentally or manually. She argues that the sexual element of the body is a basic need, which allows men and women to procreate and feel bodily pleasure. This sexual element desires sexual activities that sex

¹ Partial criminalisation model - England and Wales,
Nordic model– Sweden,
Legalisation model – Netherlands and Nevada,
Decriminalisation model – New Zealand.

² Carol Leigh - member of Call Off Your Old Tired Ethics, a group working towards sex workers’ rights

³ J Nagle, *Whores and Other Feminists* (Carol Leigh – inventing sex work) (1st edn, Routledge 1997) chapter 24

workers fulfil. Therefore, sex work must be considered work, similar to other forms of labour that allows humans to meet basic needs. Troung introduced the concept of ‘sexual labour’ to highlight the sexual elements and the productive life force⁴. The terms ‘sex work’ and ‘sex workers’ allow an amalgam of both the above ideologies. The change permits a step away from the stigma and victimised status associated with the profession. It also establishes groundwork to view the profession as an occupation that fulfils basic needs and not reduces sex workers and their identity to their profession. Therefore, this thesis will use the term ‘sex worker’ instead of ‘prostitute’ and ‘sex work’ instead of ‘prostitution’.

Sex Work and the Sex Industry

The sex industry in 2009 was worth around £5.3 billion of the national GDP, making it a significant market⁵. The sex work in this market is categorised into direct sexual services and indirect sexual services. Direct sexual services include physical contact of genitalia to experience pleasure in exchange for monetary gains. The workers usually provide these services in brothels or on the streets. Indoor sex workers perform elaborated services like domination, bondage and the traditional form of sex - vaginal intercourse and ‘girlfriend experience’⁶. The outdoor sex workers are usually cheaper than indoor sex workers, allowing lesser time for each client⁷, commonly providing services like fellatio⁸. Sanders states that sex workers have ‘bodily exclusion zones’⁹ during their commercial sexual transactions with their clients. A sex worker decides which part of their body will not be a part of the sexual services

⁴ T Truong, ‘Southeast Asia -- Sex, Money and Morality: Prostitution and Tourism in Southeast Asia’ *The Journal of Asian Studies*; Ann Arbor Vol. 50, Iss. 2, (May 1991)

⁵ S O’Connor, ‘Drugs and prostitution add £10bn to UK economy’ (*Financial Times*, 2014) < <https://www.ft.com/content/65704ba0-e730-11e3-88be-00144feabdc0> > accessed 28 November 2020

⁶ For instance – cuddling, kissing, intimacy.

⁷ T Sanders and other, *Prostitution: Sex Work, Policy and Politics* (1st edn, Sage 2011) 18

⁸ M Monto, ‘Prostitution and fellatio’ (2001) 38 *The Journal of Sex Research* 140 -145

⁹ For instance, kissing can be considered ‘off limits’ by one sex worker and oral sex by another.

she offers¹⁰. This creates a distinction between body, a part of employment or trade, and self, reserved for the family, partner and oneself¹¹. Indirect sexual service includes lap dancing, stripping and activities sexual in nature that do not primarily involve physical contact with genitalia.

The profession is associated with sexually transmitted diseases, drugs, child prostitution, trafficking, and organised crimes since the beginning of its existence. The Home Office due to these links has recently published consultation papers, namely, 'Paying the Price'¹², 'The Coordinated strategy'¹³ and 'Safeguarding Children in Prostitution'¹⁴. These papers expressly referred to these links¹⁵, pointing out the need to eradicate them by abolishing sex work. Though the exchange of sex for monetary gains is legal in England and Wales, almost all the activities surrounding this exchange are illegal¹⁶ due to the partial criminalisation of sex work. This thesis will focus on direct sexual services provided indoors and outdoors when evaluating the law. It will also analyse the three legal models¹⁷ to suggest reforms to the current law on sex work.

Feminists and female sex workers

¹⁰ T Sanders, 'It's Just Acting: Sex Workers' Strategies for Capitalizing on Sexuality' (2005) 12 *Gender, Work & Organization* Blackwell Publishing Ltd, Issue 4, 326

¹¹ M O'Neill, *Prostitution and Feminism – Towards A Politics of Feeling* (1st edn, Polity 2001)

¹² Home Office, 'Paying the Price: A Consultation Paper on Prostitution' (*Home Office*, 2004) < https://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/documents/paying_the_price.pdf?view=Binary > accessed 4 February 2021

¹³ Home Office, 'A Coordinated Prostitution Strategy and A Summary Of Responses To Paying The Price' (*Home office*, 2006) < <https://equation.org.uk/wp-content/uploads/2012/12/A-Coordinated-Prostitution-Strategy-and-a-summary-of-responses-to-paying-the-price.pdf> > accessed 4 February 2021

¹⁴ Home Office, 'Safeguarding Children Who May Have Been Trafficked' (*Home Office*, 2011) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/177033/DFE-00084-2011.pdf > accessed 4 February 2021

¹⁵ Sexually transmitted diseases, drugs, child prostitution, trafficking and organised crimes

¹⁶ Sexual Offences Act 2003, s51A – s53A

¹⁷ Partial criminalisation model - England and Wales,
Nordic model – Sweden,
Legalisation model – Netherlands and Nevada,
Decriminalisation model – New Zealand.

In 2016 there were an estimated 80,000 sex workers in England and Wales; the majority were female¹⁸. Therefore, though diverse, this thesis will focus on females in the profession. Mill observes that the law has played a crucial role in the subjection and the oppression of women that continues to date¹⁹. Moreover, Mossman argues that 'male' logic' dominates the teachings of the law. It denies any alternate constructs and allows only an objective view²⁰. MacKinnon explains that the power which suggests "who does what to whom and gets away with it" belongs to men²¹. Hence, this thesis considers the role of feminists as crucial in discussing the decriminalisation of sex work. It will allow alternate constructs of opinions and ideologies, balance the power inequalities²² and initiate the eradication of oppression and subjection of women by the law²³. Though critics would argue that the idea of eradication of oppression and subjection of women is implausible, the proposal made by this thesis is a first step towards achieving that objective. It suggests that this discussion is beneficial to eradicate the stigma attached to the profession through decriminalisation of sex work. It is also a step towards establishing the concept of equality before the law. This can potentially lead to the country treating the sex workers as 'normal' workers allowing parliament to legislate and further regulate the sex industry.

Over the years, the views of feminists on sex work have divided them into stop feminism and pro-sex feminism²⁴. Bell has argued that the sex industry is a patriarchal institution that treats the sex worker's body as an object by 'othering'. The sex workers' bodies are used to draw a

¹⁸ Home Affairs Committee, 'Prostitution' (*House of Common*, June 2016) < <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/26/26.pdf> > accessed 7 March 2021

¹⁹ J Mill, S Okin, *The Subjection of Women* (1st edn, Hackett 1988)

²⁰ M Mossman, 'Feminism and Legal Method: The Difference It Makes' (1986) 3 *Australian Journal of Law and Society* 30 -52

²¹ A Albert, 'The Use of MacKinnon's Dominance Feminism to Evaluate and Effectuate the Advancement of Women Lawyers as Leaders Within Large Law Firms' (2006) 35 *Hofstra Law Review* Iss. 1, Article 10

²² As discussed by MacKinnon

²³ As discussed by Mill

²⁴ M O'Neill, *Prostitution and Feminism – Towards A Politics of Feeling* (1st edn, Polity 2001) 21

contrast between evil whores and good wives²⁵. Mackinnon suggests, that men have the power to decide what is permissible and what is not²⁶. Bell confirms this, when she defines sex work as a patriarchal institution. Upon analysing Mill's argument, Bell, similar to Mackinnon, recognises that the power possessed by men is one of the reasons the law continues to oppress women. On the other hand, Pateman argues that sex work is like a contract between an employer and a wage labourer. However, even though women are capable of negotiating a good contract, the institution (sex industry) demands the subjection of women which does not allow women to negotiate a good contract²⁷. Therefore, the eradication of oppression of women is unfeasible²⁸. These views accept the power domination and the social constructs that differentiate sex workers from other women, which leads to reducing sex workers to their sexual acts. They also link the profession to slavery and exploitation as the sex workers body is used as a commodity that can be purchased to fulfil men's sexual desires²⁹. These arguments also portray the lack of free will. However, Chapkis proposes to step away from the simple concept of free will. She explains that some sex workers make a 'rational choice' by considering the economic, social and materialistic factors³⁰. They might not face the opportunity of free will, full of prospects, but just like anyone evaluates their choices and takes up employment, a sex worker makes an informed 'rational choice'³¹. Chapkis emphasises the harsh reality by considering economic and social factors. The informed rational choice argument allows parallels to be drawn between sex work and other occupations by pointing out the practical choices. Bindman compliments Chapkis' argument by stating that sex work should

²⁵ S Bell, *Reading, Writing, and Rewriting the Prostitute Body* (1st edn, Indiana University Press 1994)

²⁶ A Albert, 'The Use of MacKinnon's Dominance Feminism to Evaluate and Effectuate the Advancement of Women Lawyers as Leaders Within Large Law Firms' (2006) 35 Hofstra Law Review Iss. 1, Article 10

²⁷ Good Contract, here – an agreement where the woman/sex worker involved in the transaction is treated as a worker and a human being and the client understands that the woman/sex work is doing a service/a job.

²⁸ C Pateman, *The Social Contract* (1st edn, Stanford University Press 1988)

²⁹ K Barry, *The Prostitution of Sexuality* (1st edn, New York University Press 1995) 1-2

³⁰ T Sanders and other, *Prostitution: Sex Work, Policy and Politics* (1st edn, Sage 2011) 10

³¹ K Kesler, 'Is a Feminist Stance in Support of Prostitution Possible? An Exploration of Current Trends' (2002) 5 Sage Journals, Issue 2, 219–23

be viewed as an occupation which entails performing commercial sexual services for monetary gains³². This thesis emphasises on Bindman's and Chapkis' arguments as they exhibit rationality by treating sex workers as human beings and not an outcast group. Moreover, this perspective on sex work will allow this thesis to recommend reforms to protect the rights of sex workers.

Methodology and Limitations of the study

This thesis will use a combination of comparative methods to analyse and evaluate the law regulating the three models. Firstly, it will use the functional method to compare the subjects, leading to similar results. This method takes effects into account, not the rules and doctrine. Therefore, the diverging roads will provide a solution to a practical problem. In Michaels words, 'objects must be understood in the light of their functional relation to society'³³. This thesis will use the functional method to explore the function of a sex worker in this society and recommend solutions to practical problems faced by the sex worker and the community.

Secondly, this thesis will analyse terms and the legal models by using the analytical method. This approach will highlight minor differences and similarities between the terms in question³⁴. For instance, this thesis will replace prostitute with sex worker after analysing the effects of the linguistic move. It will compare the Prostitution Reform Act 2003 from New Zealand, with the Sexual Offences Act 2003 from England and Wales to highlight, and discuss the stigma

³² Jo Bindman, 'Redefining Prostitution as Sex Work on the International Agenda' (*Anti-Slavery International With the participation of Jo Doezema Network of Sex Work Projects*, 1997) < https://cdn.atria.nl/epublications/1997/Redefining_Prostitution.pdf > accessed 8 December 2020

³³ R Michaels, 'The Functional Method of Comparative Law' – (Edited by Mathias Reimann and Reinhard Zimmermann, *The Oxford Handbook of Comparative Law* (2nd edn, Oxford 2019) < <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780198810230.001.0001/oxfordhb-9780198810230-e-11> > accessed 11 March 2021

³⁴ M Hoecke, 'Methodology of Comparative Legal Research' (Researchgate, 2015) < https://www.researchgate.net/publication/291373684_Methodology_of_Comparative_Legal_Research > accessed 10 December 2020

possessed by the latter terminology. Further, this thesis will analyse and compare three legal models to the law on sex work in England and Wales. It will also point out the need to decriminalise sex work and suggest policy reforms.

Moreover, this thesis will evaluate and analyse only three legal models across six jurisdictions to compare the law on sex work; as the word count limits the scope for more discussion. To clarify, Sweden was the first country to criminalise sex buyers³⁵, topics like gender inequalities and morality were debated when passing the laws on sex work. Therefore, the Swedish jurisdiction will be used to analyse the Nordic Model. Similarly, the Netherlands is the first country to legalise sex work³⁶; even though gender inequalities and morality were debated, the Netherlands linked and analyse these topics differently. Moreover, Nevada has legalised sex work only in brothels only since 1970³⁷; it has introduced safety mechanisms different from the Netherlands. Therefore, this thesis will use the Netherlands' and Nevada's jurisdictions for deeper analysis and evaluation of the legalisation model. Finally, New Zealand was the first country to decriminalise sex work³⁸ with the help of New Zealand Prostitutes' Collective, an outreach group. It has also discussed topics like gender inequalities, morality and choice. Therefore, New Zealand's jurisdiction will be used to analyse and compare the decriminalisation model.

Though the comparative method will help analyse and evaluate the subjects at hand; it has limitations. A detailed discussion of these limitations is wider than this thesis' scope. Therefore,

³⁵ Sex Purchase Act 1999
(Sexköpslagen in Swedish)

³⁶ J Outshoorn, 'Policy Change in Prostitution in the Netherlands: from Legalization to Strict Control' (2012) 9
Sex Res Soc Policy, 233–243

³⁷ NRS 201.295 to NRS 201.440

Chapter 201 - Crimes Against Public Decency and Good Morals

³⁸ Prostitution Reform Act 2003

it will evaluate two limitations of the comparative method. Firstly, the units compared and implications drawn from the comparison are critical and tricky. When comparing two terms or the laws of different countries, the author can have a goal in mind³⁹. This can lead to favouritism of one idea over another. To mitigate this, reasoning and academics' viewpoints will be attached to each argument. For instance, even though this thesis regards the role of feminists important in this discussion, it discusses other authors' viewpoints.

Secondly, the cross-cultural comparison needs a degree of understanding of the similarities and differences, in the part the institutions play in their respective societies. This relatively simple task, is time – consuming and requires demanding research⁴⁰. This thesis will use the functional method; the discussion in the later chapters will allow a practical solution by discussing the laws, the norms and self–regulation of society. Moreover, the attitudes and the changes in the culture will be considered through academics and feminists' viewpoints, and Home Office reports. This thesis will use the attitudes that shaped the law and the law to sculpt a discussion that will mitigating the problems that arise due to cross-cultural comparison.

Conclusion

To conclude, this thesis will replace the words prostitute with sex worker and prostitution with sex work, signifying the first step in the eradication of the stigma attached to the profession. It will focus on female sex workers providing direct sexual services for monetary gains. This thesis will use comparative methods to analyse and evaluate the discussion, understand the similarities and differences, and use various viewpoints to mitigate the limitations. It has regarded the role of feminists in the discussion as necessary due to the domination of ‘male

³⁹ R Azarian, 'Potentials and Limitations of Comparative Method in Social Science' (2011) 1 International Journal of Humanities and Social Science Stockholm University 120 -121

⁴⁰ Ibid 122

logic'. This chapter has, therefore, established the foundation for this thesis. The second chapter will evaluate and discuss the development of the law on sex work in England and Wales, by discussing the social ideologies and norms.

CHAPTER 2 – Mapping the Regulation of Sex Work in England and Wales

The first chapter has established the essential facts and social ideologies; therefore, the second chapter of this thesis will evaluate the law and reasoning behind re-examinations. It will focus on issues regarding sex work the authorities wanted to tackle. Hence, the second chapter is divided into three subtopics: the problem of disease, the problem of visibility and aiming for the abolition of sex work. The first subtopic will criticise and evaluate the law during Victorian times. The second subtopic will highlight the changes introduced due to the influence of Wolfenden Report. The third subtopic will focus on the development of the current law. Overall, this chapter will analyse the notion, ‘history is repeating itself’, by highlighting the power used to neglect women/sex workers who made an informed rational choice to enter the sex industry throughout the history of England and Wales.

The Problem of diseases

Power has played a crucial role in defining the construct of ideologies and opinions that shape the law. According to Foucault, this power has impacted aspects of social life, creating ideologies and institutions⁴¹. Social institutions like prisons adopt structures that highlight the importance of ritualisation and normalisation of social influence. These practices create submissive and controllable bodies capable of self-regulation, self – surveillance, and incarceration⁴². In the eighteenth and nineteenth centuries, sex work was associated with crimes, disorder and infectious diseases⁴³. Power was viewed negatively. However, Foucault states that power can also be viewed positively⁴⁴. He explains that power is not intentional. Though individual intentions may fail to attain the intended outcome, it is a part of a broader

⁴¹ M Foucault, *A History of Sexuality: An Introduction* (1st edn, Random House 1990)

⁴² M Foucault, *Discipline and Punish: The Birth of the Prison* (1st edn, Vintage 1997)

⁴³ J Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (1st edn, University of Chicago Press 1992)

⁴⁴ M Foucault, *Discipline and Punish: The Birth of the Prison* (1st edn, Vintage 1997)

successful strategy. For instance, prisons do not prevent crime but make society less threatening⁴⁵.

Sex work then, was 'The Great Social Evil'⁴⁶. This concept regarded sex work as a sin that introduced chaos into the society by extinguishing social order⁴⁷. The Victorians took a significant interest in sex workers from the 1850s to 1860s. This period marked the enactments of The Contagious Acts⁴⁸, which enabled the police, medical professionals and the judiciary to regulate the sex industry. They gave the police officers powers to submit a 'common prostitute'⁴⁹ for a fortnightly checking. If found to be contagious, women were detained for nine months. Those women who did not follow the given orders were summoned and trialled by the magistrates⁵⁰. If they did not adhere to the orders, they were imprisoned for up to three months with hard labour.

Moreover, women (common prostitutes) were detained if unfit for examination, i.e., menstruating⁵¹. The urgency of the enactments was justified by military concern for soldiers who developed venereal diseases. Therefore, the acts were not debated. The bachelor soldiers would avail themselves of the services of sex workers as marriage was restricted, and living conditions were appalling⁵². Instead of granting leave for marriage, as suggested by many⁵³, the 'nation – state' criminalised women by detaining them in 'Lock hospitals'⁵⁴.

⁴⁵ *ibid*

⁴⁶ F Newman, *The Cure of The Great Social Evil, With Special Reference to Recent Laws Delusively Called Contagious Diseases' Acts* (1st edn, Sagwan Press 1869)

⁴⁷ J Fraser, 'Prostitution and the Nineteenth Century: In Search of the 'Great Social Evil' (2008) 1 Reinvention: A Journal of Undergraduate Research, Issue 1

⁴⁸ Contagious Acts 1864, 1866 and 1869

⁴⁹ Vagrancy Act 1824 s3

⁵⁰ Justice of the Peace

⁵¹ P McHugh, *Prostitution and Victorian Social Reform* (1st edn, Croom Helm London 1980)

⁵² E Sigsworth and T.J. Wyke, 'A Study of Victorian Prostitution and Venereal Disease' (1974) 1 Feminist studies 73 -106

⁵³ P McHugh, *Prostitution and Victorian Social Reform* (1st edn, Croom Helm London 1980)

⁵⁴ *ibid*

According to Walkowitz, though the Contagious Acts were a sanitary measure, their surveillance extended to women's neighbourhoods. They clarified the relationship between respectable and unrespectable,⁵⁵ by distinguishing between a good wife and a whore⁵⁶. Drawing upon Foucault, these acts scrutinised the medical and social position of women who did not adhere to social norms. Moreover, technologies of power⁵⁷ were used to re-introduce social norms in their lives⁵⁸. Women that searched for temporary or casual employment as sex workers due to poverty, low wages, and migration patterns were labelled as 'just prostitutes'⁵⁹. This situation allowed little to no chances to integrate with the society creating outcasts⁶⁰. Corbin points out that authorities in the past have regulated sex work in accords with three significant social needs; protection of morality and male prosperity, and protection from sexually transmitted diseases⁶¹. Though his work commented on France's policies, parallels can be drawn given the historical background, social ideologies and legislative changes⁶² in the law of sex work in Victorian England.

To summarise, the laws introduced during Victorian times emphasised that sex work was indeed 'the great social evil' creating an outcast group. The policies and reforms introduced in the law on sex work during this period resulted in humiliation, stigmatisation, and exploitation of sex workers. The law aimed to protect morality, male prosperity, and the nation (army) from

⁵⁵ J Walkowitz, 'Response' (1997) 2 *Journal of Victorian Culture*, Issue 2, 326–331

⁵⁶ Chapter 1

⁵⁷ Technologies of Power, here – The law, prisons

⁵⁸ M Foucault, *A History of Sexuality: An Introduction* (1st edn, Random House 1990)

⁵⁹ J Walkowitz, 'Response' (1997) 2 *Journal of Victorian Culture*, Issue 2, 326–331

⁶⁰ *ibid*

⁶¹ A Corbin, *Women for Hire: Prostitution and Sexuality in France after 1850* (1st edn, Harvard University Press 1996)

⁶² Contagious Diseases Act 1864, 1866 and 1869
Defence of the Realm Act 1914

sexually transmitted diseases by scrutinising women's position and subjecting them to degrading and inhuman treatment.

The Problem of Visibility

The post-war period from 1945 marked the promotion of attitudes supporting domestic constructs, suggesting that women were homemakers⁶³. The government implemented policies that emphasised keeping social morality⁶⁴. Sir David Maxwell Fyfe had concerns about the impression of British immorality that London streets gave to the foreign visitors. Therefore, a committee chaired by John Wolfenden was established, which published a report on Homosexual Offences and Prostitution, commonly known as the Wolfenden Report⁶⁵; the committee adopted the 'abolitionism approach'⁶⁶. This report aimed to promote public decency and protect citizens from exploitation and corruption. It distinguished between matters of morality, private to a person, and public indecency and nuisance, a matter of state intervention. The report clarified that the law is not concerned with interfering in people's private lives. Therefore, it recommended focusing on street sex workers, and suggested allowing two cautions before being charged and increasing the punishment's severity, beginning from a fine to three months of imprisonment⁶⁸.

⁶³ H Self, *The Fallen Daughters of Eve*, (1st edn, Frank Cass 2003)

⁶⁴ V Caroline Victoria Lang, 'Towards a Harm-Minimising Approach to Sex Work: A Call for Decriminalisation in England and Wales' (*Durham University*, 2015) < <http://etheses.dur.ac.uk/11278/> > accessed 31 January 2020

⁶⁵ The National Archives, 'Committee on Homosexual Offences and Prostitution' 1954-1957 < <https://discovery.nationalarchives.gov.uk/details/r/C1386377> > accessed 28 February 2021 (must be downloaded for reference)

⁶⁶ The term 'abolitionism' was used in the nineteenth-century movement for three reasons; to persuade the state not to interfere in women's lives, treat men and women equally, and not regulate and profit from immorality.

⁶⁷ S Day, 'Wolfenden 50: Revisiting State Policy and the Politics of Sex Work in the UK' (V Munro, M Giusta (eds), *Demanding Sex: Critical Reflections on the Regulation of Prostitution* (1st edn, Ashgate 2008)

⁶⁸ The National Archives, 'Committee on Homosexual Offences and Prostitution' 1954-1957 < <https://discovery.nationalarchives.gov.uk/details/r/C1386377> > accessed 28 February 2021 (must be downloaded for reference)

Sex work was regulated by using the visibility virtue of sex work, creating a discriminatory system. It formed a unique group of offenders within the profession – street sex workers. The women selling sexual services indoors were less likely to be convicted than women in street sex work, because of the visible manifestations⁶⁹. This allowed the activities in sex work that are not visible to go unregulated⁷⁰. Therefore, the Wolfenden recommendation did not regulate sex work, but its visibility⁷¹. Furthermore, women entered the sex industry due to poverty and socio-economic needs⁷². According to Phoenix, the penalties, which included fining women for sex-work related offences, failed to extinguish poverty, sinking them into the profession. Sex workers usually did not pay the fines issued, which intensified their situation, putting them in an unfortunate position of being imprisoned⁷³. The report influenced a series of statutes. The Street Offences Act 1959 criminalised loitering and soliciting⁷⁴, the Sexual Offences Act 1956 criminalised inflicting and causing sex work for gain⁷⁵, highlighting the regulation of visibility of sex work. Although legislation criminalised indoor sex work by criminalising living off its proceeds⁷⁶, the government primarily focused on outdoor sex work. Anyone that was known to cause anti-social behaviour was served with an injunction that could turn into a criminal sanction⁷⁷. Sagar highlights that the legislative Acts did not improve the individual's or the community's condition⁷⁸ but promptly criminalised sex workers.

However, the focus and attitudes of the general population slightly shifted in the 1990s slightly shifted. Beck stated that when metaphors that define social life are questioned, risks and

⁶⁹ G Letherby and others, *Sex as Crime?* (1st edn, Routledge 2008)

⁷⁰ J Phoenix, *Making sense of prostitution* (1st edn, Palgrave 2001)

⁷¹ *ibid*

⁷² E McLeod, *Women Working: Prostitution Now* (1st edn, Law Book Co of Australasia 1982)

⁷³ J Phoenix, *Making sense of prostitution* (1st edn, Palgrave 2001)

⁷⁴ Street Offences Act 1959 s1

⁷⁵ Sexual Offences Act 1956 s22

⁷⁶ *ibid* s30

⁷⁷ Crime and Disorder Act 1998 s1 – original enacted

⁷⁸ T Sanders and other, *Prostitution: Sex Work, Policy and Politics* (1st edn, Sage 2011)

negotiations become structuring principles⁷⁹. Drawing on Beck's notion of structuring principles⁸⁰, sex workers, by engaging in sex work, unknowingly questioned morality, and redefined power, the ideas that define social norms. Therefore, outreach programmes⁸¹ that aiming to protect sex workers and citizens from sexually transmitted diseases were introduced; the risks and the negotiation steps taken differed depended on the outreach group creating new structuring principles. The image of sex workers, drug-addicted carriers of sexually transmitted diseases, was repositioned to the lifestyle of sex workers, which leads to the transmission of sexually transmitted infections⁸². Though the programmes are not formally legislated to regulate sex work, the adoption of the harm minimisation approach and collaboration with the local officers significantly decreased arrests and convictions. This helped in the development and success of outreach programmes⁸³. Moreover, in 2008, the UK Network of Sex Work Projects, issued guidance to encouraging good practice and helping outreach programmes to become a success⁸⁴. However, these outreach projects primarily collaborated with the Home Office to enforce strategies. They helped victims in the sex industry exit sex work but mostly ignored the women who had made a rational choice to enter the sex industry. These outreach programmes will be analysed further in this thesis.

To summarise, the law post-war created an outcast group among the sex workers – street sex workers, by regulating the visibility which exhibited immorality. It also introduced fines which

⁷⁹ U Beck, *Risk Society: Towards a New Modernity* (1st edn, SAGE 1992)

⁸⁰ U Beck, *Risk Society: Towards a New Modernity* (1st edn, SAGE 1992)

⁸¹ For example: SAFE, Sex Worker Outreach Project - Nelson Trust, The Red project.

⁸² J Phoenix, *Making sense of prostitution* (1st edn, Palgrave 2001)

⁸³ Ministry of Justice, 'Criminal Justice Statistics quarterly, England and Wales, July 2019 to June 2020' (*Ministry of Justice*, 2020) <

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/934391/criminal-justice-statistics-quarterly-june-2020.pdf > accessed on 4 February 2021

⁸⁴ UK Network of Sex Work Projects 'Working with Sex Workers: Outreach' (2008) <

https://eurotox.org/wp/wp-content/uploads/UK_Working-with-Sex-Workers-Outreach-2008.pdf > accessed 30 January 2020

failed to diminish poverty as many women entered the profession due to economic problems. Finally, the outreach programmes helped create structuring principles, however, they mostly neglected the women that made a rational choice to be a sex worker.

Aiming for the Abolition of Sex work

In the latter ten years, there was a shift in policing strategy, from enforcement to the welfare of society. In 2003, the Sexual Offences Act introduced offences that focused on preventing the exploitation of young people and deemed sex work related offences as gender neutral⁸⁵. The recent changes in the law were geared towards abolishing sex work and deterring punters. The law distinguished between women in sex work into vulnerable victims, and those who voluntarily chose sex work. This prevailing idea that almost all women in the sex industry are victims was reinforced by consultation papers⁸⁶⁸⁷ issued by the Home Office. They stated that the problems that needed tackling were, the exploitation of women and children, the link between prostitution, organised and serious crimes and trafficking of individuals, and the trap of debt and drugs that ties sex workers to the profession. Due to the criminal sanctions, the victims are forced to seek help, and the ones working voluntarily faced punishments imposed by the authorities. Its hostile approach strengthened the prevention of child exploitation and authorised expanding court diversion and developed local action on trafficking⁸⁸⁸⁹. However,

⁸⁵ Sexual Offences 2003

⁸⁶ Home Office 'A Coordinated Prostitution Strategy and a summary of responses to Paying the Price' (*Home office*, 2006) < <https://equation.org.uk/wp-content/uploads/2012/12/A-Coordinated-Prostitution-Strategy-and-a-summary-of-responses-to-paying-the-price.pdf> > accessed 4 February 2021

⁸⁷ Home Office 'Paying the Price: a consultation paper on prostitution' (*Home Office*, 2004) < https://webarchive.nationalarchives.gov.uk/http://www.homeoffice.gov.uk/documents/paying_the_price.pdf?view=Binary > accessed 4 February 2021

⁸⁸ *ibid*

⁸⁹ Home Office 'Paying the Price: a consultation paper on prostitution' (*Home Office*, 2004) < https://webarchive.nationalarchives.gov.uk/http://www.homeoffice.gov.uk/documents/paying_the_price.pdf?view=Binary > accessed 4 February 2021

organised crimes⁹⁰, illegal drugs⁹¹ and exploitation⁹² still occur under the current law on sex work. The strategies used, to tackle exploitation and the link between the profession and the crimes have not eradicated the problem. On the contrary, these strategies have forced the profession, crime, and exploitation, underground. Moreover, it has become more challenging to obtain accurate information and statistics, as power possessed by the government is viewed negatively due to the partial criminalisation of sex work.

Critics have argued and suggested adverse outcomes for the strategy. Firstly, a woman's choice to become a sex worker is undermined, as words like organised, pimps, dealers, and sexual abuser, focus on the corrosive individuals in the industry⁹³. Stereotyping women sex workers as victims undermines the complexity of sex work⁹⁴. Moreover, the law enforcement strategies focus on creating a situation for women to give up sex work. It makes women responsible for making an 'anti-social' choice, believing that the 'responsible' option is to rehabilitate them using criminal sanctions. The current approach makes a woman responsible for her poverty, unfortunate socio-economic situation, and her poor choices, unless she is controlled by a 'pimp'^{95,96}.

⁹⁰ National Crime Agency, 'Organised immigration crime' < <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/organised-immigration-crime?highlight=WyJvcmdhbmlzZSIsIm9yZ2FuaXNlZCIsIm9yZ2FuaXNhdGlvbilsIm9yZ2FuaXNhdGlvbnMiLCJvcmdhbmlzYXRpb25hbCIsIm9yZ2FuaXNpbmciLCJvcmdhbmlzZXJzIiwib3JnYW5pc2VyIiwiaY3JpbWVzIiwiaY3JpbWUiLCJjcmltZSciLCJicmltZScuIl0=> > accessed 17 June 2021

⁹¹ National Crime Agency, 'Frankfurt or Amsterdam? Sheffield cocaine smuggler 'forgot' where he had been' < <https://www.nationalcrimeagency.gov.uk/news/frankfurt-or-amsterdam-sheffield-cocaine-smuggler-forgot-where-he-had-been> > accessed 17 June 2021

⁹² National Crime Agency, 'Sadistic blackmailer and paedophile admits 158 charges: Abdul Elahi pretended to be stockbroker and targeted nearly 2,000 people worldwide to commit sickening online sexual offences' < <https://www.nationalcrimeagency.gov.uk/news/sadistic-blackmailer-and-paedophile-admits-158-charges-abdul-elahi-pretended-to-be-stockbroker-and-targeted-nearly-2-000-people-worldwide-to-commit-sickening-online-sexual-offences> > accessed 17 June 2021

⁹³ G Letherby and others, *Sex as Crime?* (1st edn, Routledge 2008) 40

⁹⁴ P Boynton, L Cusick, 'Sex workers to pay the price' (2006) 332 *BMJ* 190 -191 < <https://www.bmj.com/content/bmj/332/7535/190.full.pdf> > accessed 4 February 2021

⁹⁵ a controlling man

⁹⁶ *ibid*

The new coordinated strategy regulated sex worker's work status, housing, personal relationships, and health to abolish sex work. When sex workers self-refer to an outreach project or civil order⁹⁷, it is used against them by subjecting them to compelling⁹⁸ drug testing and other treatments. Drawing on Self's notion of history repeating itself⁹⁹, parallels can be drawn between the current law, and the regulations enforced by Victorians which controlled various aspects of sex workers'¹⁰⁰ lives. Secondly, the strategy focuses on an exit plan for women who are compelled to sell sex. It suggests that women do not 'voluntarily' consent to sex; they are forced and compelled, leading to their exploitation¹⁰¹. According to the policy, the idea of 'free will' is, to choose to exit the profession¹⁰². However, it side-lines the concept of a rational choice¹⁰³. It criminalises women who make a rational choice by evaluating their socio-economic factors realistically. Women may not have fair conditions of their choosing; however, they make a rational choice, just like anyone who evaluates the opportunities at hand and makes a choice¹⁰⁴. The strategy fails to understand that some women do not need to be saved; they are there by choice. Moreover, once a woman enters the sex industry, unknowingly she closes the door on other opportunities. Employers in England and Wales are reluctant to employ sex offenders, and some sex workers do not have the education to exit the profession¹⁰⁵, therefore trapping them deeper inside the industry.

⁹⁷ Anti-Social Behaviour orders and Intervention Order

⁹⁸ Breach of orders constitute to a prison sentence of up to five years

⁹⁹ H Self, *History Repeating Itself: The Regulation of Prostitution and Trafficking* (2004) <<http://lawcrimehistory.org/fcrn/documents/paper001.pdf>> accessed 4 February 2021

¹⁰⁰ Contagious Diseases Act 1864, 1866 and 1869

¹⁰¹ G Letherby and others, *Sex as Crime?* (1st edn, Routledge 2008) 42

¹⁰² *ibid*

¹⁰³ T Sanders and other, *Prostitution: Sex Work, Policy and Politics* (1st edn, Sage 2011)

¹⁰⁴ K Kesler, 'Is a Feminist Stance in Support of Prostitution Possible? An Exploration of Current Trends' (2002) Vol 5(2) Sage Publications 219–23

¹⁰⁵ J Phoenix, *Making sense of prostitution* (1st edn, Palgrave 2001)

Concluding Remarks

To conclude, throughout the developments of the law on sex work, ‘history repeats itself’. The legislators throughout the history have used morality to give minimal regard to women in sex work. Furthermore, these laws successfully created outcast groups, within the society – sex worker, and within the sex industry – street sex workers. Moreover, power is viewed negatively due to the criminalisation of almost all the activities around sex work. A woman’s choice to enter the profession is not considered which undermines the concept of ‘rational choice’. This needs to be changed; therefore, the next chapter will use diverse discussion to compare different legal models. This will be used in the final chapter to explain the best way forward for both the sex industry and the country.

CHAPTER 3 – Comparative Analysis of Other Models on Sex Work

This chapter will analyse and compare three legal models across four jurisdictions¹⁰⁶. Firstly, the Swedish legal system will be used to analyse the Nordic model as it criminalises the sex buyers. Secondly, Netherlands, the first country to legalise sex work, and Nevada, the first state to legalise sex work in U.S, will be used to discuss the legalisation model. Finally, New Zealand will be used to analyse the decriminalisation model as it was the first country to decriminalise sex work. This thesis will analyse and evaluate the legal position of sex workers, the role of power and outreach programmes, and the sex industry, under different models to suggest reforms to the current law on sex work in England and Wales.

Nordic Model - Sweden

The Swedish government introduced the Nordic model as part of the Women's Peace Bill¹⁰⁷. The Sex Purchase Act 1999,¹⁰⁸ imposes criminal liability on anyone who buys¹⁰⁹, procures and promotes sexual activities¹¹⁰; it provides for one year of imprisonment for the former¹¹¹, and a maximum of ten years of imprisonment for the latter two¹¹². Buying sexual services is also considered as an aggravating factor by the courts¹¹³. However, the sale of sex by the sex worker is not criminalised. Through this Nordic Model, the Swedish government aims to change attitudes towards the purchase of sex, by combating the demand for sex, as it considers sex

¹⁰⁶ Nordic model – Sweden,
Legalisation model – Netherlands and Nevada,
Decriminalisation model – New Zealand.

¹⁰⁷ Government of Sweden, Bill 1997/98:55 Kvinnofrid [Women's peace] (Fritzes 1998) 105

¹⁰⁸ Sex Purchase Act 1999
(Sexköpslagen in Swedish)

¹⁰⁹ Criminal Code (1962: 700) Chapter 6 section 11 Sweden
BrB 6:11

¹¹⁰ Criminal Code (1962: 700) Chapter 6 section 12A Sweden
BrB 6:12A

¹¹¹ Criminal Code (1962: 700) Chapter 6 section 11 Sweden
BrB 6:11

¹¹² Criminal Code (1962: 700) Chapter 6 section 12A Sweden
BrB 6:12A

¹¹³ RH 2008: 59 NJA 2001 pp. 527

work harmful to the individual involved and society. It also aims to reduce human trafficking for sexual purposes¹¹⁴.

Scrutinising the Nordic Model

Kulick stated that the law aimed to ‘send a message’ to the world that Sweden does not accept attitudes promoting sex work¹¹⁵. Moreover, Winberg has stated that the Swedish government will not allow anyone to look at women’s bodies as a merchandise that can be bought¹¹⁶. However, Sweden allows modelling as a part of fashion week, where women’s bodies are used to display clothing in return for monetary gains¹¹⁷. Models, alike sex workers, provide a service using their bodies. Critics may argue that similarities cannot be drawn between sex workers and models, as sex workers provide sexual services. However, this thesis argues that the type of services workers provide is a part of their job descriptions. It is for the women to evaluate her options and make a rational choice of deciding whether she wants to use her body for modelling or sex work. However, following Kulick and Winberg – subjects of power, do not view sex work as work, and accept the dominant social construct of sex work, which results in ‘othering’¹¹⁸¹¹⁹. This reduces the sex workers’ being to his/her sexual act, further linking the profession to slavery and exploitation¹²⁰. Moreover, this ideology leads to the generalisation of sex workers, as unstable, traumatised, exploited and passive¹²¹. As Phoenix explains, “*they are not all victims waiting to be saved ... Many are just poor struggling to survive.*”¹²² Therefore,

¹¹⁴ Government of Sweden, Bill 1997/98:55 Kvinnofrid [Women’s peace] (Fritzes 1998)

¹¹⁵ D Kulick, ‘Sex in The New Europe: The Criminalization of Clients and Swedish Fear of Penetration’ (2003) 3 (2) Anthropological Theory 204

¹¹⁶ Jo Phoenix, *Regulating Sex for Sale* (1st edn, The Policy Press 2009)

¹¹⁷ Swedish Fashion Council, ‘Stockholm Fashion Week’ < <https://www.swedishfashioncouncil.se/stockholm-fashion-week-en> > accessed 16 March 2021

¹¹⁸ Othering- drawing a contrast between good and bad, respectable and unrespectable. Sex worker here is used to describe a bad and unrespectable person.

¹¹⁹ S Bell, *Reading, Writing, and Rewriting the Prostitute Body* (1st edn, Indiana University Press 1994) Chapter 1

¹²⁰ K Barry, *The Prostitution of Sexuality* (1st edn, New York University Press 1995) 1-2

¹²¹ M Farley, ‘Bad for the Body, Bad for the Heart: Prostitution Harms Women Even if Legalized or Decriminalized’ (2004) 10 Violence Against Women, 1087-1125

¹²² G Letherby and others, *Sex as Crime?* (1st edn, Routledge 2008) 41

the idea of ‘othering’ is corrosive, as it undermines a woman’s choice of occupation to be a sex worker, violating her freedom to choose an occupation¹²³.

Sex work is understood to be a problem of gender inequality,¹²⁴ and is deemed to be exploitive; a masculine man exploits and harms a feminine sex worker during the commercial transaction of sexual services¹²⁵. The Social Workers Association stated that, criminalising the buyer will improve gender equality and prevent exploitation of deprived women¹²⁶. Furthermore, MacKinnon stated that equality can be achieved by addressing the discrepancies and the unequal power domination between men and women¹²⁷. Counterarguing, Levy states that visible sex workers are displaced and endangered by deeming sex work as a form of violence¹²⁸. Moreover, sex work is a survival strategy and an occupation for many women¹²⁹. The Swedish government’s ideology that criminalises the consumers of the occupation broadens inequalities, as the law upholds social constructs of good/bad¹³⁰. This then places a sex worker in a position to accept the contract the client provides, without negotiations¹³¹. Further

¹²³ European Union, ‘Charter of Fundamental Rights of The European Union’ < <https://eurlex.europa.eu/legalcontent/EN/TXT/?uri=uriserv%3AOJ.C.2007.303.01.0001.01.ENG&toc=OJ%3AC%3A2007%3A303%3ATOC> > accessed 16 March 2021

¹²⁴ Y Svanström, ‘Criminalising the John – A Swedish Gender Model?’ - edited by - J Outshoorn, *The Politics of Prostitution - Women’s Movements, Democratic States and the Globalisation of Sex Commerce* (Cambridge University Press, 2004)

¹²⁵ J Levy, ‘Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers’ (2014) 14 (5) *Criminology and Criminal Justice* 598

¹²⁶ Ministry of Justice, ‘Criminal Justice Statistics quarterly, England and On Certain Measures Against Prostitution - Pro 1981/82: 187 < <https://data.riksdagen.se/fil/84799262-5EF7-4A44-9804-98845B9D8BE4> > (translated when reading)

¹²⁷ C Mackinnon, *Are Women Human? And Other International Dialogues* (1st edn, Harvard University Press 2006)

¹²⁸ J Levy, ‘Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers’ (2014) 14 (5) *Criminology and Criminal Justice* 598

¹²⁹ J Raymond, ‘Ten Reasons for Not Legalizing Prostitution and A Legal Response to the Demand for Prostitution’ 2:3-4 *Journal of Trauma Practice*, 315-332

¹³⁰ S Bell, *Reading, Writing, and Rewriting the Prostitute Body* (1st edn, Indiana University Press 1994)

¹³¹ C Pateman, *The Social Contract* (1st edn, Stanford University Press 1988)

analysing Foucault, as seen in England and Wales, power is viewed negatively by the sex worker¹³². However, the law perceives itself as a protective guardian when it is not.

Gould explains that the idea of sex work, a legitimate form of labour, resulting in diverse experiences for the clients and the sex workers, were side-lined completely¹³³. Moreover, sex workers and the organisation that represented sex workers, were not involved in the decision-making process¹³⁴. This suppressed the sex workers' experiences and opinions, encouraging the dominant prevailing ideologies¹³⁵ introduced by subjects possessing power¹³⁶. Excluding opposing opinions did not allow proper evaluation of the implemented law¹³⁷; this breaches the core values of democracy and infringes freedom of expression. Moreover, some individuals in Sweden have use the power possessed by them to create dominant social influence which has in turn created dominant social opinions. After evaluating the law on sex work in Sweden, Levy concludes that though Sweden perceives itself as a progressive nation, it endangers displaced sex workers¹³⁸.

The Success of the Legislation

The success of the Nordic model in Sweden is highlighted by relying on statistics of decreased street sex workers and increased convictions of men who buy sex, rather than reduced violence and exploitation. Ekberg exhibited her support by stating that the legislation has decreased sex workers in Sweden, from thirty per cent to fifty per cent, explaining that there were fewer

¹³² M Foucault, *Discipline and Punish: The Birth of the Prison* (1st edn, Vintage 1997)

¹³³ G Arthur, 'The Criminalisation of Buying Sex: The Politics of Prostitution in Sweden' (2001) 30 *Journal of Social Policy* 437

¹³⁴ S Dodillet and P Östergren, 'The Swedish Sex Purchase Act: Claimed Success and Documented Effects' Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, March 3 and 4, 2011

¹³⁵ The prevailing ideology is that sex work promotes exploitations and gender inequalities.

¹³⁶ Law making authorities.

¹³⁷ J Levy, 'Sweden's Abolitionist Discourse and Law: Effects on The Dynamics of Swedish Sex Work and on he Lives of Sweden's Sex Workers' (2014) 14 (5) *Criminology and Criminal Justice* 598

¹³⁸ *ibid*

women in street sex work¹³⁹. She stated that there was no evidence of displacement of sex workers from the streets to indoors or the internet, and that the number of women using the internet to provide sexual services was stable¹⁴⁰. Gould contradicted Ekberg by pointing out that though the national figures have remained stable, they have not decreased¹⁴¹. Moreover, it is easier to observe changes in street sex work than in indoor sex work¹⁴², allowing an assumption that the given is an indication of overall sex work¹⁴³. Levy emphasised that the statistics are unreliable, as the law has impacted the group's visibility by stigmatising and criminalising it, compelling them to move underground¹⁴⁴. The absence of an increase in sex work, does not mean that there is a decrease in sex work, as Swedish law claims¹⁴⁵. This thesis aligns its arguments with the critics. It rationalises that criminalising sex work will naturally displace clients underground, and since the sex workers want monetary gains and work, they will follow their clients. Just because sex workers are not to be seen, it does not mean that sex work has disappeared.

Similarities can be drawn between England and Wales', and Sweden's law on sex work. England and Wales aimed to eradicate the demand for sex work by criminalising 'Kerb-Crawlers', the consumers of the profession,¹⁴⁶ and Sweden introduced the Nordic model which criminalised the sex buyers¹⁴⁷. Critics, however, argued that the sex buyers law failed to

¹³⁹ G Ekberg, 'The Swedish Law That Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking Human Beings' (2004) 10 *Violence against women*

¹⁴⁰ *ibid*

¹⁴¹ Gould Arthur, "The Criminalisation of Buying Sex: The Politics of Prostitution in Sweden" (2001) 30 *Journal of Social Policy* 437

¹⁴² Hubbard P, Matthews R and Scouler J, 'Regulating the Spaces of Sex Work in the EU: Regulation of Sex Work in Sweden' (2007a) Loughborough: University of Loughborough

¹⁴³ Hubbard P, *Sex and the City* (1st edn, Aldershot 1999)

¹⁴⁴ J Levy, 'Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers' (2014) 14 (5) *Criminology and Criminal Justice* 598

¹⁴⁵ D Danna, 'Client-Only Criminalization in the City of Stockholm: A Local Research on the Application of the "Swedish Model" of Prostitution Policy' (2011) 9 (1) *Sexuality Research and Social Policy*

¹⁴⁶ Criminal Justice and Police Act 2001

¹⁴⁷ Sex Purchase Act 1999

(Sexköpslagen in Swedish)

differentiate between consensual sex and non-consensual sex between sex workers and clients. Moreover, Lee explains that there is a risk of deterring a person who had no intention of committing a crime¹⁴⁸. Furthermore, though the Nordic model aims to decrease non-consensual sex - rape¹⁴⁹, trafficking¹⁵⁰, violence¹⁵¹ and exploitation, the existing Sexual Offences Act deals these offences.

To encapsulate, Sweden is against sex work as it believes that women's bodies are not merchandise that can be bought. However, it allows modelling where women's bodies are used as a tool to provide services. This perspective eliminates the view that sex workers are competent women, capable to make a rational choice. It also negates the idea that sex work is a form of labour. Moreover, Sweden deems sex work as exploitive which leads to gender inequalities. However, criminalising sex buyers displace sex worker underground which endangers women further, broadening gender inequalities. Furthermore, during the political debate, Sweden excluded opinions which opposed the Nordic model. This created a dominant social influence which resulted in extreme dominant social ideology that sex work prompts 'othering'.

Legalisation Model – The Netherlands and Nevada

The Netherlands criminalised pimps and those who lived off the gains of sex work and prohibited brothels by implementing the Morality Act 1911; however, sex workers were not criminalised¹⁵². The Morality Act was not effective in practice, as the Local Authorities would

¹⁴⁸ House of Commons, Home Affairs Committee, 'Prostitution' (*House of Commons*, 2016) < <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/26/26.pdf> > accessed 14 February 2021

¹⁴⁹ Sexual Offences Act 2003 s1

¹⁵⁰ Sexual Offences Act 2003 s57 – s59A

¹⁵¹ Sexual Offences Act 2003 s2 and s3

¹⁵² J Boutellier, 'Prostitution, Criminal Law and Morality in the Netherlands' (1991) 15 *Journal Crime, Law and Social Change* Issue 3 201-211

allow sex workers to offer sexual services in specific areas unless there was disruption to public order¹⁵³. Similarities can be drawn between the Wolfenden reforms in England and Wales and the Netherlands' Morality Act, as the authorities in practice targeted the profession's visibility¹⁵⁴. During the re-examination of the law on sex work, the traditional Christian party argued that sex work is a social evil, deeming women in sex work as psychiatrically disturbed victims who need redemption¹⁵⁵. Counterarguing, the secular party distinguished between forced and voluntary prostitution, accepting a pro-sex work position¹⁵⁶. The New Prostitution Act 2000 was legislated to clean up the sex industry, by introducing licensing of brothels, legalising voluntary sex work, and criminalising anyone who forced a person into sex work¹⁵⁷.

Nevada, similarly, follows a legalisation model, however, soliciting is illegal and laws are designed to protect children¹⁵⁸ and women who are forced into sex work¹⁵⁹. Brothel owners employ between one to fifty independent contracted sex workers, who possess the power to negotiate their contracts like any other workers. Moreover, the state makes a profit of approximately \$50 million annually as sex workers pay taxes¹⁶⁰. Further, the law similar to New Zealand has replaced 'prostitute' with sex worker to combat the stigma attached to the profession¹⁶¹. Furthermore, women who wish to take up sex work as a profession must undergo

¹⁵³ J Outshoorn, 'Policy Change in Prostitution in the Netherlands: from Legalization to Strict Control' (2012) 9 Sex Res Soc Policy 233–243

¹⁵⁴ *ibid*

¹⁵⁵ P De Vries, 'Kuisheid Voor Mannen. Vrijheid Voor Vrouwen. De Reglementering En Bestrijding Van Prostitutie in Nederland' 1850–1911. Verloren: Hilversum (translated before reading)

¹⁵⁶ J Outshoorn, 'Policy Change in Prostitution in the Netherlands: From Legalization to Strict Control' (2012) 9 Sex Res Soc Policy 233–243)

¹⁵⁷ *ibid*

¹⁵⁸ NRS 200.508

¹⁵⁹ Trafficking Victims Protection Act 2000

Forrey C, 'America's "Disneyland Of Sex": Exploring the Problem of Sex Trafficking in Las Vegas And Nevada's Response' (2014) 14 Nevada Law Journal 970 - 999

¹⁶⁰ Heineman J, MacFarlane R, Brents B, 'Sex Industry and Sex Workers in Nevada' (2012) Social Health of Nevada 1-26.

¹⁶¹ NAC 441A.777 to NAC441A.815

mandatory health checks to attain the license¹⁶². Similarities can be drawn between the authorities submitting a 'common prostitute' for weekly checking and Nevada's law imposing mandatory health checks to obtain a license. However, Nevada recognises the choices made by sex workers to pursue 'erotic labour' as a profession, unlike in England and Wales that would force any woman deemed to be a 'common prostitute' to undergo health checks against their wishes, during Victorian times. This thesis will use the jurisdictions of the Netherlands and Nevada to critic the legalisation model. This will allow further analysis of the legalisation model and evaluate the safety mechanisms introduced due to the legalisation of sex work.

Scrutinising the legalisation model

Oppression or elimination of oppression?

Over the years, the effect and impact of legalisation have been debated by academics and researchers. Patman argued that a commercial sexual transaction is a contract between a sex worker and her client. However, the prevailing oppression and the lack of suspension of oppression creates poor conditions for women to negotiate the contract¹⁶³. Outshoorn stated that the legalisation model allowed considerable autonomy for the sex workers¹⁶⁴. The prevailing ideology, that sex industry is a patriarchal institution which requires oppression and subjection of women, does not allow a woman to negotiate a 'good' contract. Therefore, legalisation of sex work can be considered as parliament's move to eliminate oppression by providing autonomy for women to negotiate a good contract. Counterarguing, Raymond stated that women resort to street prostitution as they do not want to be controlled by exploitive pimps¹⁶⁵; a well-known instance is the 'Sneep Case'¹⁶⁶. Further, Schelzig stated that women

¹⁶² NRS 441A.150 to NAC 441A.225

¹⁶³ C Pateman, *The Social Contract* (1st edn, Stanford University Press 1988)

¹⁶⁴ J Raymond, 'Ten Reasons for Not Legalizing Prostitution and A Legal Response to the Demand for Prostitution' 2:3-4 *Journal of Trauma Practice*, 315-332

¹⁶⁵ Ibid

¹⁶⁶ The SNEEP case

go for street sex work, because they fear registering with the government due to the stigma attached to the profession, where sex work is legalised¹⁶⁷. Though the government aims to eradicate oppression, it fails to address the complexities of societal pressure and stigma, re-enforcing oppression. Moreover, the legalisation model disregards sex workers' fears of being 'othered', and of being controlled by exploitive pimps. Daley notes that the Netherlands' parliament regrets its decision to legalise the profession as the current policies reinforce the oppression of women through third parties¹⁶⁸.

Rational choice or survival strategy?

Some sex workers view themselves as workers who are merely doing a job¹⁶⁹. Hoffman¹⁷⁰ highlights that 'free choice' is a privilege, possessed by a few sex workers, and that women make a 'rational choice' to work as sex workers¹⁷¹. Workers of any profession make a 'rational choice' to undertake work after evaluating their socio-economic position, alike sex workers. Hubbard explains that the New Prostitution Act 2000¹⁷² improved the working condition of sex workers¹⁷³. Nonetheless, Lim states that sex work is an alienated job and that women in the profession do it with a 'heavy heart'¹⁷⁴. Phoenix explains that a woman's entry into the sex industry can signify both, the opening and closing of opportunities¹⁷⁵. Raymond furthers this argument by replacing 'rational choices' with 'survival strategies'; women who choose sex

LJN: BD6972, Almelo District Court, 08/963001-07 < https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the_sneep_case_en_1.pdf > accessed 18 February 2021

¹⁶⁷ E Schelzig, *German Prostitutes Ponder Salaried Work* (International Herald Tribune 2002)

¹⁶⁸ Suzanne Daley, 'New Rights for Dutch Prostitutes, but No Gain' (New York Times, 2002) < <https://www.nytimes.com/2001/08/12/world/new-rights-for-dutch-prostitutes-but-no-gain.html> > accessed on 7 March 2021

¹⁶⁹ J Phoenix, *Making Sense of Prostitution* (1st edn, Palgrave 2001) 128

¹⁷⁰ The director of the Dutch Foundation Against Trafficking in Women.

¹⁷¹ M O'Neill, *Prostitution and Feminism – Towards A Politics of feeling* (1st edn, Polity 2001) 21

¹⁷² introduced legalisation model in the Netherlands.

¹⁷³ J Raymond, 'Ten Reasons for Not Legalizing Prostitution and A Legal Response to the Demand for Prostitution' 2:3-4 *Journal of Trauma Practice*, 315-332

¹⁷⁴ L Lim, *The Sex Sector* (1st edn, International Labour Office (ILO) Geneva Switzerland 1998)

¹⁷⁵ J Phoenix, *Making Sense of Prostitution* (1st edn, Palgrave 2001)

work as a profession do so due to no real options and to make ends meet¹⁷⁶. This thesis argues that any worker makes a ‘rational choice’ to get a job or uses a job as a ‘survival strategy’, but society draws a distinction between sex work and any other job due to the ideology of morality. This must not affect the law as the concept of morality differs for each person. Raymond also draws an analysis between people consenting to be a sex worker and people consenting to be a drug user, distinguishing the societal attitudes towards the situations¹⁷⁷. However, this thesis highlights the difference by stressing that sex work is an occupation and drug dependency, is an addiction.

Safe or harmed?

Brents and Hausbeck noted that the working condition of sex workers have improved due to the legalisation in Nevada¹⁷⁸. They stated that Nevada has a licencing system to ensure the safety of sex workers in the form of fire safety, security cameras and hygiene. Moreover, brothels have common safety mechanisms like panic buttons, STI checks and control over customer’s behaviour¹⁷⁹. However, brothel owners, who portray themselves as law-abiding people, limit the sex worker’s freedom. They assign days suggesting when the sex workers could go to the store or run an errand. Furthermore, brothel owners are interested in peaceful transactions of services and not in the elimination of harm towards sex workers¹⁸⁰. Sex workers, even in the presence of bouncers, work in fear of being abused by clients, the brothel owner, and his/her colleagues. Similarly, the Netherlands’ parliament noticed the shift of a sex worker’s identity in recent years from an independent worker to someone who was abused.

¹⁷⁶ J Raymond, ‘Ten Reasons for Not Legalizing Prostitution and A Legal Response to the Demand for Prostitution’ 2:3-4 *Journal of Trauma Practice*, 315-332

¹⁷⁷ J Raymond, ‘Ten Reasons for Not Legalizing Prostitution and A Legal Response to the Demand for Prostitution’ 2:3-4 *Journal of Trauma Practice*, 315-332

¹⁷⁸ B Brents, K Hausbeck, ‘State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels’ (2001) 44 (3) *Sociological Perspectives* 326

¹⁷⁹ *Ibid*

¹⁸⁰ *Ibid*

Therefore, the Netherlands' parliament introduced a Regulation of Prostitution Bill¹⁸¹ in 2009, which implemented a mandatory uniform system of licensing, and increased the minimum age to enter the profession to 21 years. Outshoorn points out that this bill aims to protect young people from the risks and to eradicate harm in the profession¹⁸². Sex workers are not considered workers in the first instance by their consumers due to the societal attitudes towards the profession, which leads to 'othering'. Giving third parties excessive control makes it worse as, for a businessman, the customer comes first¹⁸³. Though eradicating the stigma attached to the profession may take years, this thesis takes the first step by suggesting recommendations in chapter four.

To summarise, the above section analysed and evaluated the legalisation model across two jurisdictions, the Netherlands¹⁸⁴ and Nevada¹⁸⁵. Firstly, it analysed whether legalisation model eliminated oppression of women. Though parliament by legalising sex work provides autonomy to women in the sex industry¹⁸⁶, it failed to address fear, of being 'othered' due to the stigma¹⁸⁷, and of being controlled by exploited pimps¹⁸⁸. Secondly it evaluated whether women make a rational choice when entering the sex industry. Though the legalisation model took into account women's choice of becoming a sex worker, and improved working condition¹⁸⁹, it closes other opportunities¹⁹⁰. This makes sex work, a woman's survival strategy

¹⁸¹ Kamerstukken II 2009/10, 32,211, 1–2

¹⁸² J Raymond, 'Ten Reasons for Not Legalizing Prostitution and A Legal Response to the Demand for Prostitution' 2:3-4 *Journal of Trauma Practice*, 315-332

¹⁸³ J Phoenix, *Making sense of prostitution* (1st edn, Palgrave 2001)

¹⁸⁴ The New Prostitution Act 2000

¹⁸⁵ NAC 441A.777 to NAC441A.815

¹⁸⁶ J Raymond, 'Ten Reasons for Not Legalizing Prostitution and A Legal Response to the Demand for Prostitution' 2:3-4 *Journal of Trauma Practice*, 315-332

¹⁸⁷ E Schelzig, *German Prostitutes Ponder Salaried Work* (International Herald Tribune 2002)

¹⁸⁸ J Raymond, 'Ten Reasons for Not Legalizing Prostitution and A Legal Response to the Demand for Prostitution' 2:3-4 *Journal of Trauma Practice*, 315-332

¹⁸⁹ *ibid*

¹⁹⁰ J Phoenix, *Making Sense of Prostitution* (1st edn, Palgrave 2001)

to make ends meet¹⁹¹. However, this thesis argued that due to the morality aspect of sex work, distinction is drawn between sex work and other occupations. Moreover, it rationalised that any worker can face abuse at workplace, however, steps must be taken to ensure safety. Thirdly, it analysed whether sex workers are safe or harmed under legalisation model. The licencing system and safety mechanisms introduced by the legalisation model enhanced safety¹⁹², however, sex workers are seen as commodities and not workers in the first instance leading to ‘othering’ and abuse.

Decriminalisation Model – New Zealand

New Zealand decriminalised sex work by introducing the Prostitution Reform Act 2003¹⁹³. This reform aimed to protect sex workers, their human rights, children from exploitation concerning sex work, promote welfare and occupational safety and health of sex workers, and promote public health¹⁹⁴. However, this reform was supported by a very small majority as the MPs were concern about the immorality the laws would potentially allow. New Zealand had a similar approach to sex work as England and Wales, the profession itself was not illegal, but the activities around it were. For instance, it was an offence to accept money in exchange for sex in a public space¹⁹⁵, brothel-keeping was criminalised¹⁹⁶, living off sex work¹⁹⁷, and procuring any person for sexual intercourse were criminal offences¹⁹⁸. However, the laws before the reform created double standards as they criminalised the seller and not the buyer.¹⁹⁹

¹⁹¹ J Raymond, ‘Ten Reasons for Not Legalizing Prostitution and A Legal Response to the Demand for Prostitution’ 2:3-4 Journal of Trauma Practice, 315-332

¹⁹² B Brents, K Hausbeck, ‘State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels’ (2001) 44 (3) Sociological Perspectives 326

¹⁹³ Prostitution Reform Act 2003

¹⁹⁴ Prostitution Reform Bill 2000 (Justice and Electoral Committee), pp.1-2.

¹⁹⁵ Summary Offences Act 1991 s 26

¹⁹⁶ Crimes Act 1961 s147

¹⁹⁷ Crimes Act 1961 s148

¹⁹⁸ Crimes Act 1961 s149

¹⁹⁹ A Gillianm, L Fitzgerald And C Brunton, ‘The Impact of Decriminalisation on The Number of Sex Workers in New Zealand’ (2009) 38 Journal of Social Policy 515

Moreover, the brothel keepers were convicted under section 147²⁰⁰ by using condoms and safe-sex literature as evidence²⁰¹. This could have potentially compromised the safety of sex workers as brothel owners could have discontinued safe sex and using of condoms due to the convictions. However, this has been amended by the Prostitution Reform Act 2003, which states that sex workers and clients must adopt safe sex practices during intercourse²⁰². Under the former criminalisation model, brothel owners advanced their enterprises legally under the banner of ‘massage parlours’²⁰³, putting sex workers in a vulnerable position, which led to exploitation²⁰⁴. This is amended by the Prostitution Reform Act 2003, which requires brothel operators to obtain a certificate from the Registrar of the District Court²⁰⁵. Furthermore, since sex workers have rights as independent contractors or employees, sex workers have taken the brothel operators to the dispute tribunal for work-related issues²⁰⁶. For instance, in 2020, a sex worker was awarded damages by the court of New Zealand since she was sexually harassed by the brothel owner. The particular details of the case including the name are confidential, however, the case advanced sex workers’ rights in a practical scenario²⁰⁷. This reflects the stance taken by the law to reduce exploitation and harm towards women and marginalised workers.

The Debates

²⁰⁰ Crimes Act 1961 s147

²⁰¹ *ibid*

²⁰² Prostitution Reform Act 2003 s9

²⁰³ Massage Parlours Act 1978

²⁰⁴ A Gillian, L Fitzgerald and C Brunton, ‘The Impact of Decriminalisation on the Number of Sex Workers in New Zealand’ (2009) 38 *Journal of Social Policy* 515

²⁰⁵ Prostitution Reform Act 2003 s34 – s41

²⁰⁶ A Gillian, ‘A decade of decriminalization: Sex work ‘down under’ but not underground’ (2014) 14 *Criminology and Criminal Justice* 580-592

²⁰⁷ BBC News, ‘New Zealand sex worker given six-figure sum in sexual harassment case’ (BBC, 2020) < <https://www.bbc.co.uk/news/world-asia-55298303> > accessed 15 April 2021

One of the hurdles during the re-examination of the law on sex work in New Zealand was morality. The Christian fundamentalists argued that the exchange of sex for money was wrong, and it went against biblical teaching²⁰⁸. Parliament itself stated that it is not in the ‘business of legislating morals’²⁰⁹ and private life of individuals; a similar argument was seen in the Wolfenden report in England and Wales when visibility of the sex worker became a problem²¹⁰. The radical feminists argued that decriminalisation would lead to ‘gender inequality’²¹¹, proposing the Nordic model. The Swedish Nordic model deems women as exploited victims²¹², and side-lines women that make a ‘rational choice’²¹³. Moreover, trafficking and sex work (prostitution) have become interchangeable words. Wagenaar and Altink proposes that the concept of trafficking and forced prostitution should be framed as exploitation. This allows parallels to be drawn between sex work and other occupations, as any worker can be subjected to exploitation and harm at work²¹⁴. Wagenaar and Altink highlights two aspects of sex work, a legitimate form of labour, and forced labour, which is criminal in nature as it violates human rights²¹⁵. This allows similarities to be drawn between any profession and sex work, as if a worker does something against their choice and forcefully, it is exploitation and slavery.

²⁰⁸ T Barnett, C Healy, A Reed and C Bennachie, ‘Lobbying for Decriminalisation’ – In A Gillianm, L Fitzgerald and C Brunton with Taylor A (eds), *Taking the Crime Out of Sex Work: New Zealand Sex Workers Fight for Decriminalisation* (1st edn, Policy Press 2010) 75–84

²⁰⁹ A Gillian, ‘A Decade of Decriminalization: Sex Work 'Down Under' But Not Underground’ (2014) 14 *Criminology and Criminal Justice* 580-592

²¹⁰ The National Archives, ‘Committee on Homosexual Offences and Prostitution’ 1954-1957 < <https://discovery.nationalarchives.gov.uk/details/r/C1386377> > accessed 28 February 2021 (must be downloaded for reference)

²¹¹ T Barnett, C Healy, A Reed and C Bennachie, ‘Lobbying for Decriminalisation’ – In A Gillianm, L Fitzgerald and C Brunton with Taylor A (eds), *Taking the Crime Out of Sex Work: New Zealand Sex Workers Fight for Decriminalisation* (1st edn, Policy Press 2010) 75–84

²¹² Ministry of Justice, ‘Criminal Justice Statistics quarterly, England and On Certain Measures Against Prostitution - Pro 1981/82: 187 < <https://data.riksdagen.se/fil/84799262-5EF7-4A44-9804-98845B9D8BE4> > (translated when reading)

²¹³ G Letherby and others, *Sex as Crime?* (1st edn, Routledge 2008) 41

²¹⁴ H Wagenaar, S Altink, ‘Prostitution as Morality Politics or Why It Is Exceedingly Difficult to Design and Sustain Effective Prostitution Policy’ (2012) 9 *Sexuality research & social policy* 279–292

²¹⁵ Council of Europe, ‘European Convention of Human Rights’ (Council of Europe) < https://www.echr.coe.int/documents/convention_eng.pdf > accessed 15 April 2021

Article 3 – Prohibition from torture and inhuman or degrading treatment.

Article 4 – Prohibition of slavery and forced labour

Moreover, the issue of exploitation in a criminalised environment was also viewed as a human rights issue during the debates in New Zealand²¹⁶. Furthermore, Wagenaar and Altink emphasised the concept of 'rational choice' by allowing the sex worker to decide whether she wants to become a sex worker or not. This links to the core argument put forth by this thesis, that is, a women must have the right to choose her profession.

The Shift in How Power is perceived

The New Zealand Prostitutes' Collectives has widely influenced the decriminalisation of the law on sex work in New Zealand by lobbying and drafting the original bill²¹⁷. It was initially founded in 1987 to support sex workers' rights, educate them on safe sex, and reduce risk in their profession. The New Zealand Prostitutes' Collectives has been funded since 1988 by the New Zealand Ministry of Health²¹⁸. Foucault stated that power is everywhere, and it comes from everywhere. He pointed out that subjects are indirectly formed through power,²¹⁹ and urged his audience to view power positively. He emphasised that power produces reality, domains of objects and rituals of truths²²⁰. In the instant, the New Zealand Prostitutes' Collectives was the subject, and the knowledge possessed by the Collectives, that is the sex workers' experiences and conditions, was the power. This knowledge was used to establish the realities of sex work in parliament when the law of sex work was re-examined in New Zealand. Due to the power possessed by the New Zealand Prostitutes' Collectives in the form of knowledge, the construct of dominant ideologies and opinions in law were altered.

²¹⁶ A Gillian, 'A Decade of Decriminalization: Sex Work 'Down Under' But Not Underground' (2014) 14 *Criminology and Criminal Justice* 580-592

²¹⁷ C Healey, A Wi-Hongi and C Hatl, 'Reflections from The Field, It's Work, It's Working: The Integration of Sex Workers and Sex Work in Aotearoa/New Zealand' (2017) 31 *Women's Studies Journal* 50

²¹⁸ J Raymond, 'Gatekeeping Decriminalized Prostitution: The Influence of The New Zealand Prostitutes' Collective' (2018) 3 *Dignity: A Journal of Sexual Exploitation and Violence* Issue 2, Article 6

²¹⁹ M Foucault, *A History of Sexuality: An Introduction* (1st edn, Random House 1990) 93

²²⁰ M Foucault, *Discipline and Punish: The Birth of the Prison* (1st edn, Vintage 1997) 194

Critics however criticise the New Zealand Prostitutes' Collectives for a lack of transparency. There is no express membership and no detailed record of the expenditure of the funding given to the Collective. Raymond states that the funding provided in 2008 was used for lobbying, in the name of "expressing opinions and developing submission"²²¹.

Power leads to defining the construct of ideologies and opinions in law²²². There is a shift in how these sex workers perceive power possessed by the subjects, the police officers. The Prostitution Reform Act 2003 gives police officers and occupational safety and health inspectors (the subjects) powers to enter the brothels²²³. This is not viewed negatively by the sex worker, on the contrary, the officers are welcomed as they enhance the safety of the sex worker's work environment²²⁴. Sex workers also use the courts if any injustice occurs at their workplace due to easier access to justice. Furthermore, they work with the law to report crimes and take subjects of power (brothels owners and police officers) to court if they are wronged. For instance, a police officer who abused his powers to get free sex in 2010²²⁵, and another who accepted free sex in return to overlook a driving offence in 2012²²⁶ were convicted, and received jail time and charged for bribery, respectively. Unlike in England and Wales, power in New Zealand was used to reveal the realities of the sex work; it was used positively to protect

²²¹ *ibid*

²²² M Foucault, *A History of Sexuality: An Introduction* (1st edn, Random House 1990) Chapter 2

²²³ Prostitution Reform Act 2003 s24 – s33

²²⁴ A Gillian, 'A Decade of Decriminalization: Sex Work 'Down Under' But Not Underground' (2014) 14 *Criminology and Criminal Justice* 580-592

²²⁵ Anon, 'Court reject ex-cop's sex case appeal' (2010) < <http://www.stuff.co.nz/national/crime/3586899/Court-reject-ex-cops-sex-case-appeal> > accessed 27 February 2021

(Note: Stuff is a new media website used in New Zealand)

²²⁶ Humphreys L, 'Cop accused of sexual favour bribery' (2012) < <http://www.stuff.co.nz/national/crime/8033582/Cop-accused-of-sexual-favour-bribery> > accessed 27 February 2021

(Note: Stuff is a new media website used in New Zealand)

the workers in the profession and grant them basic human rights. Therefore, it is evident that there can be a shift in how power is perceived.

The Success of Prostitution Reform Act 2003

In a survey, a quarter of sex workers reported that they felt confident as they were not doing anything against the law and, therefore, saw the occupation as a profession they can choose²²⁷. Drawing upon Patman's view on sex work,²²⁸ New Zealand views sex work as a contract between the sex worker and the client. Moreover, the Prostitution Reform Act²²⁹ allows women to negotiate their contract and works to eradicate the stigma and oppression of women in the sex industry. The survey also reported that the New Zealand Prostitutes' Collective informed the women who were entering the profession of the risks and ways to keep themselves safe. They were provided with condoms to ensure that the sex workers practised safe sex practices²³⁰. Linking this with Chapkis' argument on rational choice²³¹, this thesis argues that the New Zealand Prostitutes' Collective helps sex workers make an informed rational choice by providing them with information to keep themselves safe and decide for themselves. Furthermore, the current law imposes a fine of NZ\$2000 if a client or a sex worker fails to use protection to prevent STD and have safe sex²³². This protects the health of sex workers, clients, and the public.

Conclusion

²²⁷ *ibid*

²²⁸ C Pateman, *The Social Contract* (1st edn, Stanford University Press 1988)

²²⁹ Prostitution Reform Act 2003

²³⁰ Prostitution Reform Act 2003 s9

²³¹ T Sanders and other, *Prostitution: Sex Work, Policy and Politics* (1st edn, Sage 2011) 10

²³² A Gillian, 'A Decade of Decriminalization: Sex Work 'Down Under' But Not Underground' (2014) 14 *Criminology and Criminal Justice* 580-592

To conclude, all three legal models were debated using a range of ideas. Firstly, the Swedish model has implemented robust policies to eradicate sex work. However, the Swedish government disregards the idea that some sex workers make a rational choice. The legalisation model of the Netherlands and Nevada treats sex workers as workers. However, it fails to ensure the safety of sex workers in the licenced brothels and overlooks the complexities attached to the profession. The decriminalisation model of New Zealand promotes the safety and rights of sex workers. Moreover, it protects the health of sex workers and the general public. The next chapter will use these three models to compare and analyse the current law on sex work in England and Wales and suggest reforms.

CHAPTER 4 – Suggesting Reforms While Shaping Modern Ideologies in England and Wales

This chapter, with the help of previous discussions, will suggest reforms for normalising sex work and eradicating the stigma and oppression faced by sex workers. It will indicate that decriminalisation of sex work is the best way forward for developed and modernised England and Wales. It will primarily use New Zealand's legal framework for most suggested reforms. Firstly, it will recommend the involvement of sex workers in the decision-making process. Secondly, it will suggest introducing new terminology. Thirdly, it will urge the law-making authorities to comprehend the difference between choice and exploitation. Fourthly, it will suggest treating sex workers as workers, and finally, it recommends safeguarding sex workers. This thesis will conclude by explaining Lewin's model of change and how it can be implemented to initial changes as suggested by this thesis.

The Need for Reforms

Throughout history, the law on sex work in England and Wales has tried to protect morality, promote public decency and public health, and allow consistent male superiority²³³. The Wolfenden Report expressly mentioned that morality is not governed by law²³⁴. However, the law still governed morality on the streets in the name of 'public indecency'²³⁵. The work done by street sex workers or their mere visibility was seen as a public nuisance, as they were doing something immoral on the streets and not behind closed doors²³⁶. Moreover, the government

²³³ A Corbin, *Women for Hire: Prostitution and Sexuality in France After 1850* (1st edn, Harvard University Press 1996)

²³⁴ The National Archives, 'Committee on Homosexual Offences and Prostitution' 1954-1957 < <https://discovery.nationalarchives.gov.uk/details/r/C1386377> > accessed 5 March 2021 (must be downloaded for reference)

²³⁵ Street Offences Act 1959

Sexual Offences Act 1956

²³⁶ The National Archives, 'Committee on Homosexual Offences and Prostitution' 1954-1957 < <https://discovery.nationalarchives.gov.uk/details/r/C1386377> > accessed 5 March 2021 (must be downloaded for reference)

partially criminalised third parties and clients by criminalising ‘kerb crawling’ and brothel-keeping²³⁷, which further pushed the sex workers underground. This has widened the gender inequalities between sex workers and the society, and has successfully defined sex workers, as an outcast group²³⁸. Therefore, after careful analysis and evaluation of social, economic, and cultural factors, this thesis suggests decriminalisation of sex work in England and Wales to make the sex workers a part of the ‘normal’ society. In proposing decriminalisation, it aims to focus on the health and safety of sex workers and the safety of citizens, the protection of human rights and the welfare of the country as established in the New Zealand framework²³⁹.

Recommending Reforms and Policy Changes

1. Involvement of sex works and feminists in the law-making process.

Firstly, this thesis suggests that a fundamental change can occur if parliament includes sex workers, organisations representing sex workers, and feminists, in the law reform process when reviewing the law on sex work. A similar pattern was practically implemented in New Zealand during the decriminalisation process. The New Zealand Prostitutes’ Collective expressed, sex workers’ and the organisations’ opinions, by lobbying and further drafting the original bill²⁴⁰. Furthermore, the organisation provided insight and information about working conditions and general issues faced by sex workers due to objective research done in the past²⁴¹. If adopted by parliament of England and Wales, this approach will expressly allow the sex workers to be a part of society instead of being an outcast. Moreover, considering a wide range of opinions will

As Interpreted by this thesis - The Wolfenden Report stated that the law was not concern if a citizen acted immorally behind closed doors but if that same immorality was showcased on the streets then the law will regard it as ‘public indecency’

²³⁷ Sexual Offences Act 2003 s51A -s56

²³⁸ P McHugh, *Prostitution and Victorian Social Reform* (1st edn, Croom Helm London 1980)

²³⁹ Prostitution Reform Act 2003 s3

²⁴⁰ J Raymond, ‘Gatekeeping Decriminalized Prostitution: The Influence of The New Zealand Prostitutes’ Collective, (2018) 3 Dignity: A Journal of Sexual Exploitation and Violence, Issue 2, Article 6

²⁴¹ *ibid*

minimise the consistency of male superiority and male logic²⁴². It will also allow deep research and discussion in understanding the complexity of sex work, as accomplished by New Zealand's Parliament. Feminists will be able to discuss the information provided, which will striking a balance between public opinions, male logic, and feminists views. The sex workers will be directly involved in reforming a law that will affect them directly by providing subjective experiences. This will help minimise and later eradicate the stigma attached to the profession.

2. Introduction of new terminology.

This thesis' second recommendation is that the law must eliminate the term 'prostitute' and 'prostitution' from the legal framework and replace it with 'sex worker' and 'sex work', respectively. This will be a step to eradicate the stigma faced by sex workers. Since 1824 under the Vagrancy Act, England and Wales termed sex worker as 'common prostitute'²⁴³. This terminology was replaced by the word 'prostitute' by the introduction of the Sexual Offences Act 2003²⁴⁴. Moreover, it can be evidenced by the recent changes in policies, due to the consultation papers published²⁴⁵²⁴⁶, that the government and the law at present stereotype women in the profession as victims. Due to the impact of these strategies, the law distinguishes women in sex work as either victims, who need redemption from the clutches of third-party exploiters²⁴⁷, and 'prostitutes', who need rehabilitation in the form of criminal sanctions for

²⁴² Chapter 1

²⁴³ Vagrancy Act 1824 s3

²⁴⁴ Sexual Offences Act 2003 s54

²⁴⁵ Home Office 'Paying the Price: A Consultation Paper on Prostitution' (Home Office, 2004) < https://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/documents/paying_the_price.pdf?view=Binary > accessed 5 March 2021

²⁴⁶ Home Office 'A Coordinated Prostitution Strategy and A Summary of Responses To Paying The Price' (Home office, 2006) < <https://equation.org.uk/wp-content/uploads/2012/12/A-Coordinated-Prostitution-Strategy-and-a-summary-of-responses-to-paying-the-price.pdf> > accessed 5 March 2021

²⁴⁷ G Letherby and others, *Sex as Crime?* (1st edn, Routledge 2008) 40

making an ‘anti-social’ choice²⁴⁸. Like Leigh, this thesis suggests a reform in the current framework through a linguistic move away from this terminology, to work towards eradicating the attached stigma and victimised status²⁴⁹. This linguistic change can also be evidenced in the Prostitution Reform Act 2003²⁵⁰, legislated by New Zealand. Furthermore, in doing so, the legal system will actively help to integrate sex workers back into society and show signs of awareness.

3. Understanding exploitation and choice.

This thesis’ third recommendation for policy reform is to expressly understand the difference between exploitation and forced prostitution, and the rational choice made by sex workers. Sex work has been seen as a sin creating confusion in society since the 1800s²⁵¹. The laws around sex work were governed by morality and eradication of exploitation of sex by helping them exit the profession²⁵². Moreover, the debate in Sweden formulated an argument about prevention of exploitation of women by criminalising sex buyers²⁵³. Currently, the law in England and Wales differentiates sex workers as victims and sex workers who have made an

²⁴⁸ P Boynton, L Cusick, ‘Sex Workers to Pay the Price’ (2006) 332 BMJ (7535) 190-1 < https://www.researchgate.net/publication/7335020_Sex_workers_to_pay_the_price > accessed 5 March 2021

²⁴⁹ J Nagle, *Whores and Other Feminists* (Carol Leigh – inventing sex work) (1st edn, Routledge 1997) chp 24

²⁵⁰ Prostitution Reform Act 2003 s4(1)(b)

‘sex worker means a person who provides commercial sexual services’

²⁵¹ F Newman, *the cure of the great social evil, with special reference to recent laws delusively called contagious diseases’ acts* (1st edn, Sagwan Press 1869)

²⁵² Street Offences Act 1959

Sexual Offences Act 1956

²⁵³ Ministry of Justice, ‘Criminal Justice Statistics quarterly, England and On Certain Measures Against Prostitution - Pro 1981/82: 187 < <https://data.riksdagen.se/fil/84799262-5EF7-4A44-9804-98845B9D8BE4> > (translated when reading)

‘anti-social’ choice²⁵⁴. Furthermore, the consultation papers²⁵⁵²⁵⁶ link the profession to crimes and exploitation, stating that women do not consent to sexual intercourse as a sex worker. However, many women make an informed rational choice of becoming a sex worker by evaluating their options. Wagenaar and Altink argues that trafficking and forcing women to enter the sex industry is exploitation²⁵⁷. They draw similarities between a worker at any job and a sex worker who works in the sex industry. They state that any person working in any occupation is subjected to exploitation. McLeod explains that women evaluate their choices and enter the sex industry for economic and social reasons²⁵⁸. However, the law fails to distinguish between sex work, as legitimate form of labour, and sex work, that infringes human rights which leads to exploitation²⁵⁹. It infringes a sex workers’ basic right to choose a profession and the right to engage in work²⁶⁰ by criminalising sex work, a legitimate form of labour. As evidenced in New Zealand, the government funds the New Zealand Prostitutes’ Collective to educate sex workers on safe sex, and to reduce risks in the sex worker’s profession²⁶¹. The government of England and Wales currently collaborate with outreach programmes that help or force sex workers to exit the profession. It makes a choice for sex workers to leave sex work without taking their opinions into consideration. This thesis

²⁵⁴ P Boynton, L Cusick, ‘Sex workers to pay the price’ (2006) 332 BMJ (7535):190-1 < https://www.researchgate.net/publication/7335020_Sex_workers_to_pay_the_price > accessed 5 March 2021

²⁵⁵ Home Office, ‘Paying the Price: A Consultation Paper on Prostitution’ (Home Office, 2004) < https://webarchive.nationalarchives.gov.uk/http://www.homeoffice.gov.uk/documents/paying_the_price.pdf?view=Binary > accessed 5 March 2021

²⁵⁶ Home Office, ‘A Coordinated Prostitution Strategy and A Summary Of Responses To Paying The Price’ (Home office, 2006) < <https://equation.org.uk/wp-content/uploads/2012/12/A-Coordinated-Prostitution-Strategy-and-a-summary-of-responses-to-paying-the-price.pdf> > accessed 5 March 2021

²⁵⁷ H Wagenaar and S Altink, ‘Prostitution as Morality Politics or Why It Is Exceedingly Difficult to Design and Sustain Effective Prostitution Policy’ (2012) 9 Sexuality Research & Social Policy 279–292

²⁵⁸ Eileen McLeod, *Women Working: Prostitution Now* (1st edn, Law Book Co of Australasia 1982)

²⁵⁹ H Wagenaar and S Altink, ‘Prostitution as Morality Politics or Why It Is Exceedingly Difficult to Design and Sustain Effective Prostitution Policy’ (2012) 9 Sexuality Research & Social Policy 279–292

²⁶⁰ UK Government, ‘Charter of Fundamental Rights of the EU Right by Right Analysis’ (2017) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/664891/05122017_Charter_Analysis_FINAL_VERSION.pdf > accessed on 5 March 2021

²⁶¹ J Raymond, ‘Gatekeeping Decriminalized Prostitution: The Influence of The New Zealand Prostitutes’ Collective’ (2018) 3 Dignity: A Journal of Sexual Exploitation and Violence Issue 2, Article 6

recommends that the government should use its powers to collaborate with outreach programmes to ensure that sex workers make an ‘informed choice’. This can be done by funding outreach programmes that can providing information about the sex industry, safe sex methods and ways to keep themselves safe. The government can also help women who want to exit the profession by collaborating with outreach programmes to help them leave the profession. However, the government must not make a choice for sex workers.

4. Treating sex workers as workers.

This thesis’ fourth recommendation for policy reform is to treat sex workers as workers. Almost all activities around sex work are criminalised; therefore, it is difficult for sex workers in England and Wales to work without having criminal sanctions on their record²⁶². Troung argues that the desire to engage in sexual activities is a basic human need. Therefore, the profession that helps a person fulfil this need must not be criminalised²⁶³. Sex workers, if viewed as workers, are professionals that provide erotic services that fulfil a basic human need. Like any other workers, sex workers evaluate their socio-economic situations and provide for themselves and their families by working as sex workers.

However, Devlin argues that the law should regulate conducts of citizens that directly affect identifiable individuals and protect the societal ideologies and values²⁶⁴. Hart counterargues by interpreting Devlin’s argument as Legal Moralism, dividing it into – the moderate thesis, where society enforces morality to prevent itself from falling apart, and the extreme thesis, where society enforces morality to preserve communal values and ways of lives. Hart argues that the former lack substantial empirical evidence as they are implied facts, and the latter minimizes

²⁶² Sexual Offences Act 2003 s51A -s56

²⁶³ T Troung, ‘Southeast Asia - Sex, Money and Morality: Prostitution and Tourism in Southeast Asia’ (1991) 50 *The Journal of Asian Studies*; Ann Arbor Iss 2

²⁶⁴ P Devlin, *The Enforcement of Morals* (Oxford University Press, 1965)

the development of the society by enforcing norms and values acceptable by a wide group of people, which is unjustifiable²⁶⁵. He based his opinion on Mill's 'harm principle' – "The only purpose for which power can rightfully be exercised over any member of a civilized community against his will is to prevent harm to others"²⁶⁶. This thesis agrees with Hart and Mill, as in the case of sex work the law must not legislate morals, as morality is subjective, and it does not violate other citizens' rights. Society has connected sex with care, emotions, and romance, however there is no rational reason to regard sex as only belonging to emotional relations²⁶⁷. This thesis further argues that sex is also a commercial service provided by sex workers in return for monetary gains. It is a transaction between consenting adults that have consented to the exchange prior to the beginning of the exchange. Moreover, sex work that infringes rights of a sex worker or the citizens is a crime. Therefore, this thesis, in line with its third policy recommendation suggests that the law must view sex work as an occupation.

5. Safeguarding sex workers.

This thesis' final recommendation for policy reform is that the law must safeguard the sex workers and their rights. Sex workers if treated like any other worker will have rights. Therefore, they will not be treated as criminals but as employees. They will be able to take employers to the Employment Tribunal if wronged; they will also be able to access justice if assaulted or exploited in their workplace like any other occupation. They will be able to consent to crime reports,²⁶⁸ and report potential crimes possibly preventing cases like the "Suffolk

²⁶⁵ H Hart, *Law, Liberty and Morality* (Oxford University Press, 1963)

²⁶⁶ J Mill, *On Liberty* (John W. Parker and Son, 1859)

²⁶⁷ L.O. Ericsson, 'Charges Against Prostitution: An Attempt at a Philosophical Assessment' (1980) 90(3) *Ethics* 335-366

²⁶⁸ L Connelly, D Kamerade, and T Sanders, 'Violent And Non-Violent Crimes Against Sex Workers: The Influence Of The Sex Market On Reporting Practices In The United Kingdom' (University of Salford Manchester, 2018) 12 <

[https://usir.salford.ac.uk/id/eprint/46973/3/Journal%20of%20Interpersonal%20Violence,%20Connelly,%20Kamerade,%20Sanders%20\(accepted\).pdf](https://usir.salford.ac.uk/id/eprint/46973/3/Journal%20of%20Interpersonal%20Violence,%20Connelly,%20Kamerade,%20Sanders%20(accepted).pdf) > accessed 7 March 2021

Ripper”,²⁶⁹ who brutally murdered five sex workers, and “Yorkshire Ripper”,²⁷⁰ who murdered thirteen women, out of which seven were sex workers. Sex worker will not have to choose between preventing a potential crime and earning a living to support themselves and/or their family. If she must choose between one of the two choices, then this thesis argues that in reality, she does not have a viable alternative. The result of this suggested reform can be evidenced in New Zealand cases, where two sex workers sued two police officers for bribery²⁷¹ and abusing powers²⁷². Furthermore, brothels must be regulated to ensure workplace safety for sex workers. Security must be always present, and safety equipment, like fire safety, security cameras and panic buttons, must be used to ensure further protection. This has not worked in Nevada as the sex workers are not independent and are controlled by the brothel owners²⁷³. However, if the sex workers are independent workers, working in a small number in a rented brothel as evidenced in New Zealand²⁷⁴, the security and the security equipment could be seen as a positive step in keeping the sex workers safe. Fines must be used as a medium of protection by imposing them on clients and sex workers who do not perform safe sex, as done in New Zealand²⁷⁵.

Introducing Change

²⁶⁹ J Grey, *The Suffolk Strangler* (1st edn, CreateSpace Independent Publishing Platform 2016)

²⁷⁰ L Wattis, ‘Revisiting the Yorkshire Ripper Murders: Interrogating Gender Violence, Sex Work, and Justice’ (2017) 12 (1) *Feminist Criminology* 3–21

²⁷¹ L Humphreys, ‘Cop Accused of Sexual Favour Bribery’ (2012) <

<http://www.stuff.co.nz/national/crime/8033582/Cop-accused-of-sexual-favour-bribery> > accessed 27 February 2021

²⁷² Anon, ‘Court Reject Ex-Cop’s Sex Case Appeal’ (2010) <

<http://www.stuff.co.nz/national/crime/3586899/Court-reject-ex-cops-sex-case-appeal> > accessed on 27 February 2021

²⁷³ B Brents and K Hausbeck, ‘State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels’ (2001) 44 (3) *Sociological Perspectives* 326

²⁷⁴ Prostitution Reform Act 2003 s1(a-b)

small owner-operated brothel means a brothel—

(a) at which not more than 4 sex workers work; and

(b) where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel

²⁷⁵ Prostitution Reform Act 2003 s9

Analysing Foucault's theory for a final time, power can be perceived as positive²⁷⁶. However, the perception depends on implementing the policies and change in this instance. The reforms previously suggested by this thesis will assist with integrating sex workers into society. The concept of rational choice and willingness to work as a sex worker will be comprehended by society with the help of power possessed by the government and the outreach programmes. Women will not be murdered at their workplace when working as sex workers²⁷⁷. A well-established method must be followed to implement this change. This thesis suggests Lewin's model for change management²⁷⁸. Lewin states that if an ice cube needs a change in its shape, one must unfreeze, change and refreeze it. 'Unfreezing' consists of preparing the institution or organisation for change, explaining that change is essential. This will usually create uncertainties. However, uncertainties are an essential part of the changing process as the organisation seeks new ways of striking balance. Not everyone will appreciate the initiated 'change', as many will benefit from their current position in society. However, the organisation must foresee situations to create reasonable solutions. Finally, when people start accepting the change, the organisation must 'refreeze' to make sure the transition is incorporated into everyday life and culture.²⁷⁹ The organisation in this instance is the parliament of England and Wales. To implement this change effectively, it must have a motive²⁸⁰. Parliament will have to ease the general public into the change by creating awareness of the change and reason; the first step towards change – 'unfreezing'. Secondly, it must introduce reforms geared towards promoting occupational safety and rights of the sex workers and the health and safety of the

²⁷⁶ M Foucault, *Discipline and Punish: The Birth of the Prison* (1st edn, Vintage 1997)

²⁷⁷ J Grey, *The Suffolk Strangler* (1st edn, CreateSpace Independent Publishing Platform 2016)

L Wattis, 'Revisiting the Yorkshire Ripper Murders: Interrogating Gender Violence, Sex Work, and Justice' (2017) 12 (1) *Feminist Criminology* 3–21

²⁷⁸ B Sarayreh, H Khudair, E Barakat, 'Comparative Study: The Kurt Lewin of Change Management' (2013) 4 *International Journal of Computer and Information Technology* Issue 4 (ISSN: 2279 – 0764)

²⁷⁹ *ibid*

²⁸⁰ Chapter 4 - The reforms aim to focus on the health and safety of the sex workers and the safety of citizens, the protection of human rights and the welfare of the country as established in the New Zealand framework

sex workers and citizens; the second step towards change – ‘change’. Finally, parliament must enforce the reforms made ‘freezing’ the change.

Concluding Remarks

To conclude, this thesis argued that decriminalisation is the best option to ensure the safety of sex workers and the citizens after careful analysis of three different legislative models. It used New Zealand’s framework primarily to suggest reforms. Firstly, it suggested that sex workers, organisations representing sex workers, and feminists must be involved in the law reform process. Secondly, it recommended replacing the term ‘prostitute’ with ‘sex worker’, and ‘prostitution’ with ‘sex work’ from the legal framework, as it will be the first step towards eradicating the stigma. Thirdly, it suggested a distinction between exploitation and rational choice, to understand the complexities of the work and respect the choice of occupation, made by sex workers. Fourthly, it recommended treating sex workers as workers because they fulfil basic needs. It argued that sex work is a question of morality over which the law should not legislate if it does not infringe rights. Finally, it suggested that safeguarding sex workers and their rights. Furthermore, it argued that, as seen in New Zealand, the proposed reforms and strategic implementation of change could result in power being viewed positively by sex workers in England and Wales²⁸¹.

²⁸¹ Chapter 3 – Decriminalisation Model – New Zealand

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