

Chapter 7

Criminalised Interactions with Law Enforcement and Impacts on Health and Safety in the Context of Different Legislative Frameworks Governing Sex Work Globally



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Background

Sex workers are a highly diverse group who solicit and service clients in a variety of settings, including on the internet, through escort agencies, in third-party owned spaces such as brothels or massage parlours, or in public space. Globally, sex work is highly stigmatised, and the dominant policy approach has been criminalisation and police enforcement. Intersecting regimes of criminalisation and stigmatisation perpetuate poor labour conditions that render sex workers at increased risk for violence and poor health, denying sex workers the ability to fully realise their human rights, including access to occupational health and safety, police protection, and legal recourse.

There is now a well-established body of epidemiological and social science research showing that criminalisation of sex work negatively impacts sex workers' human rights, increases experiences of violence, and exacerbates health risks, including vulnerability to HIV and STI infections among sex workers [1–10]. Yet the criminalisation of some or all aspects of sex work remains the dominant legislative approach [1, 9]. Various models of criminalisation persist, in stark contrast to the significant body of empirical evidence and clear international guidelines by a variety of policy and human rights bodies including the World Health Organization, NSWP, UNAIDS, UNDP, UNFPA, and Amnesty International calling for the full decriminalisation of sex work as necessary to promote the health and human rights

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S. M. Goldenberg et al. (eds.), *Sex Work, Health, and Human Rights*,

https://doi.org/10.1007/978-3-030-64171-9_7

of sex workers. Indeed, an ever growing body of research suggests that much of what has been identified as harmful in sex work is not an inherent characteristic of the work, but rather of the social and structural factors that shape the working conditions of sex workers. Prohibitive sex work legislation, punitive policing, stigma, poverty, restrictive immigration policies, and gender inequity [1, 2, 11, 12] all constrain and negatively shape the circumstances surrounding them and the options that people have when trading sex—meaning that sex workers have fewer options to work under conditions which would provide more safety and autonomy, as well as fewer avenues for redress when they face violence and victimisation. Ironically, the conflation of sex work and these experiences of victimisation, including sexual exploitation, remain a significant barrier to reforming punitive laws and creating safer work environments for sex workers, including migrant sex workers [13].

Regimes of Regulating Sex Work

The judicial regulation of sex work globally can be broadly categorised in three different approaches: (1) Criminalisation, including End-Demand Criminalisation, (2) Legalisation, and (3) Decriminalisation. In this chapter, we review three dominant legislative approaches to the regulation of sex work and provide country spotlights to show how different legislative frameworks and law enforcement approaches shape sex workers' lived experiences of occupational health, safety, and human rights in different places globally.

Full and Partial Criminalisation

Full and partial criminalisation of sex work includes environments where some or all aspects of selling sex, buying sex, and organising for the aforementioned objectives are criminalised; this includes end-demand criminalisation, a form of partial criminalisation that we will discuss in more detail below [14]. Full and partial criminalisation of sex work is the dominant policy response to sex work globally and has been combined into one category because of the similar impacts and outcomes. Full criminalisation exists as the dominant legal regime in many settings including in most of the USA (except parts of Nevada),¹ South Africa, Sri Lanka, Cameroon, and Uganda. Partial criminalisation models are those in which neither the selling nor buying of sex is illegal per se, but most aspects surrounding sex work, such as solicitation and brothel keeping, remain illegal. This exists in various jurisdictions, including India and the United Kingdom (UK). Increasingly, end-demand crimi-

¹ Recently, legislation to decriminalize sex work has been introduced in several US States, including Washington, DC, New York, Maine, and Massachusetts.

nalisation where the purchase of sex is criminalised while the selling of sex is legal has been implemented in various settings, including in Sweden, Norway, Canada, and France. A growing body of research has demonstrated that prohibition of sex work in policy and law is not effective in culling sex work [15]. Prohibitory approaches to sex work reflect how moralistic attitudes discriminating against and stigmatising sex workers are manifested in law [15, 16]. In criminalised settings, policing strategies can include surveillance, crackdowns, arrests, or threats of arrest, intimidation, and sexual and physical violence by police. These acts of violence can be frequent and largely go unreported to law enforcement [6, 17–20].

Links Between Client Violence, Criminalisation, and Policing

Criminalisation and repressive policing strategies have consistently been linked to an elevated risk of violence and a reduced ability on the part of sex workers to negotiate safer sex work transactions [6–9, 21]. The risk of violence by clients and from law enforcement is amplified for the most marginalised and visible sex workers, specifically those soliciting clients primarily in street-based settings, those living in poverty, racialised sex workers, sex workers who use illicit drugs, and sex workers of gender minorities [20, 22, 23]. In an effort to avoid police, to meet and service clients, sex workers often move to secluded areas where there are few to no protections from violence and abuse—such as peer networks or even something as simple as good lighting—circumstances which can lead to reduced ability to refuse unwanted clients or services, including client demands for sex without a condom; also, due to the fact that help is not readily available, violent perpetrators can assault sex workers with impunity [17, 20, 24–26]. Criminalisation and policing force sex workers—in order to avoid police detection—to rush or forgo screening prospective clients or negotiating the terms of sexual transactions before engaging with clients or entering a vehicle, placing sex workers at increased risk of physical or sexual violence [17, 27, 28]. Because criminalisation also targets the people around sex workers and clients, broadly written and applied laws against “pimping,” “pandering,” and “promoting” also create a barrier for sex workers to working with others or employing other protection [29–31]. The impact of criminalisation also stretches beyond the experience of arrest and incarceration itself. Evidence from the UK and India indicate that sex workers who have been arrested or imprisoned at one point in their lives were more likely to have experienced client violence [27, 32].

Criminalisation also causes increased vulnerability to negative health outcomes, as sex workers are less likely to disclose victimisation and must take on risks with clients to mitigate the risk of arrest. Physical and sexual violence against sex workers is linked to the transmission of sexually transmitted infections (STIs) and HIV through coercive unprotected sex and a reduced capacity to negotiate sexual risk reduction with clients [6–9, 21, 28, 33]. There is also evidence that, more broadly, legislation criminalising sex work constitutes a significant barrier to accessing health services, including primary care, HIV treatment and prevention, and sexual health services [25, 34–36].

Violence by Police

In criminalised settings, interactions with police perpetuate both direct and indirect harms on sex workers and their safety. Direct violence perpetrated by police, as well as the fear caused by police presence and the resulting need to operate clandestinely without access to help in case of violence, cement the institutional violence of sex work criminalisation [14, 37]. In criminalised settings, interactions between sex workers and police are frequent and can be violent [6, 18, 38–40]. In Nairobi, Kenya, for example, a change in policing policy in 2017 banned the conduct of sex work in the Central Business District, forcing sex workers to increasingly resort to bribery in that lucrative area to avoid arrest by police [41].

In India, police violence and coercion, including sexual assault, confiscation of condoms, raiding of workplaces, and arrest, were associated with increased experiences of physical or sexual violence by clients [42]. Among sex workers who experienced sexual violence in the past year in India, 6.6% reported that the main perpetrators were the police [43]. In Russia, sex workers in street-based settings were more likely to experience sexual violence by police than from clients [38]. Similarly, in Serbia, sex workers perceived police violence as a more serious threat than client-perpetrated physical violence, as they felt more able to manage their clients' behaviours. The police were routinely feared for abuse of their powers and for causing physical harm, for stealing, and for acts of public humiliation [8]. Moreover, criminalisation was also identified as undermining sex workers' human rights, including the right to police protection and legal recourse [16, 29]. Sex workers in criminalised settings are fearful of reporting violence to the police as they may face criminal prosecution or other ramifications, such as negative consequences regarding their im/migration status, or risk increased police surveillance and harassment after disclosing that they trade sex [16, 29]. This highlights the indirect consequences of criminalisation on the violence experienced by sex workers in an environment of impunity for the violent perpetrators targeting sex workers.

Intersections of Criminalisation

The negative effects of the criminalisation of sex work are amplified for sex workers who are racialised, im/migrants, live in poverty, use illicit drugs, work in outdoor venues, or identify as a sexual or gender minority [44–46]. Multiple layers of criminalisation intersect with racism and cis/hetero normativity and are engrained in policy and law—worsening the health and safety of many sex workers with various racialised and gendered identities. Furthermore, poverty, marginal housing, and homelessness undermine health equity and safety among sex workers [47].

Communities and people who are already marginalised based on their identities experience higher levels of violence, even in the context of violence against sex workers. Racialised sex workers experience the most brutal and relentless police violence and as a result have worsened health outcomes [6, 48]. Activists and researchers have highlighted the centrality of race in the organisation of sex industry

labour, with non-racialised workers often holding better paying jobs in safer working environments with reduced risk of police detection and criminal sanctions, and racialised sex workers experiencing more vulnerability to violence by police and clients [49]. In Canada, Indigenous women are disproportionately targeted by police and have a reduced capacity to negotiate sexual risk, which is linked to their elevated rates of violence and HIV [50]. Furthermore, im/migrant sex workers also experience increased risk of violence and reduced access to sexual and reproductive health services. Research conducted among migrant Latin American women highlights the ties between im/migrant status and negative health outcomes and health-care access [51]. Broadly, negative health outcomes are especially evident for racialised and im/migrant sex workers who experience language barriers, restrictive immigration policies, unstable housing, racism, xenophobia, and barriers to accessing employment within and outside the sex industry.

Criminalisation and enforcement also disproportionately target sex workers who solicit clients in outdoor settings and those experiencing insecurity regarding housing, due to their increased visibility and reduced cultural, social, and economic capital [20, 22, 23, 52]. Sex workers who live in poverty are more visible as they are more likely to work in street-based settings, making them more likely to be subjected to police intervention [19, 47]. A growing body of literature has delineated the impact of different venues where sex workers engage clients on sexual health, violence, and policing [53–56].

Many of the sex workers engaged in the lowest paying street-based sex work settings have a history of illicit drug use and thus are not only criminalised due to their income-generating activities, but also on charges related to their drug use, such as drug and paraphernalia possession. A high concentration of harms, including increased risk of violence and ill health, have consistently been documented in settings where street-based sex work and illicit drug markets co-exist [18, 20, 22, 57–60]. The intersecting negative effects of criminalising both sex work and illicit drug use compound sex workers' ability to negotiate transactions and their ability to report violence to police [20, 61, 62]. Research from Russia has identified binge illicit drug use as increasing the risk of sexual violence by clients and police [38].

Sex workers with greater income security are more likely to have the resources to use safety measures, including the time required to screen new clients, more control and discernment over their physical location, and the ability to hire drivers or security personnel, and security cameras. These harm reduction techniques are meant to not only protect sex workers from client violence, but also from police detection [39, 63].

Research that focuses on the experiences of trans sex workers with sex work criminalisation is somewhat limited [33, 64, 65]. However, it is clear that trans, two spirit, and gender non-binary (T2SGNB) sex workers face additional risks in their interactions with police in the context of criminalisation [64, 66]. Globally, T2SGNB peoples face economic and social exclusion that both limit the breadth of work opportunities and exacerbate violence and discrimination within those settings, including sex work [64, 67–69]. Stigma against trans people compounds the stigma placed on sex workers and further exacerbates the negative effects of criminalisation

[64]. Much of the existing research related to trans sex workers in criminalised settings highlights a disproportionate burden of violence perpetrated by police, including rape and other forms of physical violence [65, 70]. In Vancouver, Canada, for example, moving to new locations in order to avoid police contributed to trans workers facing increased experiences of violence perpetrated by clients. Spaces where sex workers solicit clients are often segregated by gender identity, even within the same city. As trans sex workers were pushed into other locations where clients traditionally only found cisgender sex workers, clients who were unaware of a workers' gender identity sometimes exhibited transphobic violence [64]. Similarly, in Serbia, coercive policing practices were associated with reduced condom use among trans sex workers, due to their reduced capacity to negotiate sexual safety in order to avoid police detection [6].

There is a lack of understanding of how evolving sex work legislation and policing practices shape the occupational health, safety, and labour rights among cis and trans men and gender non-binary sex workers [71–73]. Men sex workers have been largely erased from the public discourse about sex work laws. Historically, laws that frame sex work have not been the primary mechanism relied upon to regulate men sex workers, due to the close connection between the criminalisation of homosexuality and men who sell sex [74]. As a result of gendered assumptions on the part of law enforcement, men sex workers are often viewed, treated, and ultimately charged differently than women and femme presenting workers. Findings from Canada and elsewhere highlight a shift among men sex workers from primarily street-based work to online solicitation, linked in part to efforts to avoid police detection and harassment [72, 75]. Given the targeted criminalisation of third parties in many settings, including punitive approaches to control the advertising of sexual services, men sex workers are also directly affected by criminalisation that limits sex workers' access to their clients via the internet. There is a critical need to explore the lived experiences of cis and trans men who engage in sex work, including how various regimes of criminalisation—including the ongoing criminalisation of homosexuality in some settings—shape their health and safety in street settings and elsewhere.

Box 7.1 Country Spotlight Full Criminalisation: Cameroon

Over 60% of sex workers in Cameroon report experiencing physical or sexual violence in their lifetime [36]. Selling sex is illegal, with a punishment of jail time ranging from 6 months to 5 years and a fine of approximately 34–85 USD [76]. Also outlawed are third parties, brothel keeping, and solicitation in public spaces [77]. In qualitative interviews in collaboration with a local sex worker organisation, workers not only pointed to criminalisation as encouraging harm and violence against the community, but also the stigma that manifests around the sex trade. As a member of a local sex worker organisation described, “sex workers are constantly subject to corrective rapes, refusals of care in health facilities, insults after the sexual act from their clients who do not want to pay” [76].

(continued)

Box 7.1 (continued)*The police brutalise us out there*

Sex workers highlighted that policing is a major source of harm, even when it doesn't lead to an arrest. In addition to laws which criminalise sex work, sex workers are often unfairly detained for not having an identification card and are forced to bribe the officers for release [78]. Sex workers frequently experience sexual and physical violence enacted by police. One sex worker described, "You take them like all the rest of your clients but when a uniformed man takes you, they are always brutal. He doesn't want to do you in a way that should be done. He wants to assault you as if he is saying 'ah here's a woman from the street. I should destroy her this one time'" [79]. Even when sex workers report violence to the police, they may be brushed off or not taken seriously. "[W]hen we have problems here, you will go complain maybe if you go to complain they won't take your problems into consideration because we are prostitutes!" one worker noted. "The police don't intervene on our behalf when we have problems because we are waka [pidgin English word meaning 'prostitute']!" [36]. Worse, these encounters may lead to even more acts of violence. For example, a young woman who was a member of a sex worker organisation had been physically assaulted by a client after he demanded she give the money back. However, encounters with law enforcement only compounded the harm done. "When the police arrived at the scene on the alert of the entourage, they brought [her] and her client to the police station to hear them. Once at the station, the community member was taken to an office by 3 policemen who forced her to have sex with them in exchange for her freedom. Having no choice, she gave way". [76].

Beyond direct criminalisation, sex workers in Cameroon pointed to "stigma, discrimination and social rejection" [76] as major barriers to accessing services, including health services. This stigma both promotes policing and state violence, while also being reinforced by it, making it harder for sex workers to access healthcare services for information and the tools to prevent HIV/STIs. Additionally, financial penalties of criminalisation and arrest such as court fines and fees also contribute to the inability to access the full range of healthcare services. Beyond bribery, a conviction for sex work can also have long-lasting financial consequences: "Many sex workers are students who are asked to do this activity in order to finance their studies", notes a member of a local sex worker organisation. "When they are convicted because of sex work, their criminal records [exclude them] from the opportunity to ... gain access to certain jobs". [76]

When asked what would change the situation for sex workers in Cameroon, sex workers provided varied answers, including police accountability, decriminalisation, increases in social services and a safe place where they could connect with other sex workers [36].

End-Demand Criminalisation

Over the past decade, in a growing number of places there has been increased interest in attempting to eradicate sex work through end-demand criminalisation, a form of prohibition that criminalises the purchase, but not the selling, of sexual services under some circumstances. Sweden, Norway, Iceland, and more recently France, Canada, and Northern Ireland, among other countries, have opted for end-demand criminalisation, despite the lack of evidence that this legal framework succeeds in either eradicating or reducing sex work or sexual exploitation. End-demand criminalisation was first implemented in Sweden in 1999, and it is often referred to as the Nordic model, despite the fact that the countries involved differ slightly from each other in its implementation. The primary objective of this approach is to eradicate sex work by eliminating demand through criminal sanctions targeting sex buyers and third parties, such as receptionists, venue owners/managers, drivers, and peers working collectively. Many countries that have adopted this model have layered the criminalisation of clients onto the continued criminalisation of sex workers and third parties, and thus continue to criminalise many sex workers, including immigrant sex workers and street-based sex workers [80]. Recent evidence from Canada, Sweden, and France indicates that end-demand criminalisation is unsuccessful in meeting its objective of eradicating sex work and has resulted in continued violations of sex workers' human rights and limited their access to safe working conditions [30, 31, 81–84].

In some circumstances, moving away from criminalising sex workers themselves marks a conceptual shift from seeing sex workers as exclusively “risky” and as criminals—the view that underlies prohibitionist approaches to the regulation of sex work. Instead, this shift characterises sex workers as “at risk” of exploitation and sexual violence thus in need of intervention and state control for their protection, and the sex trade as inherently comprising spaces of harm [11, 37]. Although the “end demand” rhetoric in some settings claims to prioritise women sex workers' safety, its main goal remains the eradication of sex work through criminal sanctions.

Increasing epidemiological and social science evidence from Sweden, France, and Canada indicates that criminalisation and policing strategies targeting clients and third parties—such as receptionists, security personnel, and drivers—effectively reproduce the harms created by other forms of criminalisation of sex workers outlined above. In particular, this approach heightens risks for violence and abuse and contributes to the precarity of sexual labour and human rights abuses [30, 31, 82, 84, 85].

Box 7.2 Country Spotlight End-Demand Criminalisation: Canada

In 2013, the Canadian Supreme Court struck down the laws criminalising sex work as unconstitutional, citing the country's Charter of Rights and Freedoms which protects the security of the person. After several years of fierce deliberation, Canada passed the Protection of Communities and Exploited Persons Act (PCEPA), which implemented an "End-Demand" style of criminalisation where buying sexual services is illegal but the selling of sexual services is not criminalised, unless it takes place in the proximity of schools, daycare centres, or playgrounds. Additionally, PCEPA also criminalises third parties who gain material benefits, such as receptionists, managers, drivers, spotters, and advertisers and continues to criminalise im/migrant sex workers [79, 86].

In the 5 years since the law's enactment, research from various parts of Canada has reported harms in sex workers' relationships with law enforcement and in their safety as being similar to what was previously experienced under prohibitive sex work legislation [30, 82, 85, 87, 88]. One cisgender woman sex worker who predominantly solicited clients in street-based settings said: "Harassing the clients is exactly the same as harassing the women. You harass the clients and you are in exactly the same spot you were before. I'm staying on the streets and I am in jeopardy of getting raped, hurt" [29]. Similarly, research with sex workers from Eastern Canada indicated that law enforcement continued to enact violence, engage in intimidation and threats, conduct illegal searches, commit extortion and "out" individuals to community and family members [87]. Even if the criminal penalty for selling sex under some circumstances has been removed, ultimately, the legal reform has not improved sex workers' occupational conditions. A study from Vancouver, BC, found that 72% of "respondents said the [law] didn't improve their working conditions, while over a quarter reported negative changes" [82]. These findings underscore that end-demand legislation did not advance sex workers' occupational health and safety. Im/migrant workers in formal indoor work settings (e.g. massage parlours) as well as sex workers who already face high rates of criminalisation (e.g. due to illicit drug use) were most likely to report negative changes after the implementation of the PCEPA [82]. These findings highlight that the implementation of end-demand legislation in Canada has resulted in further marginalising the most precarious groups of sex workers. Many sex workers interviewed in Vancouver have indicated that these laws merely reproduce the harms of other forms of criminalisation [29].

Most at risk of policing and abuse were racialised and immigrant sex workers [82, 87]. As one sex worker described, "Indigenous sex workers or Black, African-Caribbean sex workers are most targeted within the work they do; they're most visible, and even when sex workers are not working" [87]. Migrant workers on open work permits still face criminalisation for selling sex, and immigration infractions could lead to eventual deportation. Asian sex workers are regularly profiled and targeted by police. As one immigration law

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Box 7.2 (continued)

advocate explained, “If I’m a white American up here without status doing sex work, I’ll be fine. If I’m an Asian woman working at a massage parlour and I have a work permit that says I shouldn’t do sex work, I’m in grave danger”. [87]

Despite the claims of some PECPA’s supporters that it would reduce the abuse and criminalisation of sex workers, this has not been the case. Sex workers still experience harm and are forced to adapt their behaviour to the detriment of their safety and health. Sex workers report a variety of ways they structure their work to avoid interacting with police, including employing screening techniques, avoiding visibility by staying in more isolated locales, adopting irregular hours and work schedules, moving to secluded locations or working alone. All of these behaviours can also contribute to vulnerability to interpersonal violence with potential clients. As rational decision-makers, sex workers are prioritising avoiding arrest over avoiding risk of assault. One sex worker described, “I find it’s almost equal avoiding cops versus avoiding aggressors; it almost takes from keeping an eye on tricks when you’ve got to watch for police now, who might be trying to set you up” [87]. Sex workers are also forced to adapt their behaviours in order to address their clients’ fear of law enforcement, and many of these techniques carry with them new layers of vulnerability to violence. “A lot of the johns that I’m talking to now are so nervous and it seems almost like it’s dangerous”, one sex worker noted, “they want to meet you in dark alleyways, because they’re scared of the cops now, because it’s only them that get in trouble” [87].

The criminalisation of third parties, a central aspect of end-demand legislation, harms sex workers. Research has demonstrated that it is inaccurate to generalise that all third parties are exploitative male “pimps”. The majority of third-party workers in indoor sex work environments were actually found to be either current or former women sex workers. Sex workers reported that these “third parties” provided client screening, security, and sexual health resources to sex workers; yet criminalisation under end-demand models restricted the availability of condoms and constrained access to police protections in case of violence or fraud, thereby undermining sex workers’ health, safety, and human rights [88]. These findings showed that the criminalisation of third parties reproduced the unsafe working conditions experienced under other forms of sex work criminalisation [88]. Under end-demand legislation, the threat of police raids and inspections continued to deter condom availability in indoor sex work venues due to fears that condoms may be used as evidence to confirm that sex work takes place in a particular locale [46, 89]. The physical absence of condoms onsite, issues concerning sex workers’ immigration status (e.g. fear of arrest or deportation), limited English proficiency, gendered power imbalance, and poverty, have all been found to interact to reduce women’s ability to negotiate transactions and negotiate their health and safety in massage parlours [46, 89, 90].

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Box 7.2 (continued)

Additionally, end-demand legislation continues to constitute one of the main reasons sex workers are targeted for abuse. It is still apparent that sex workers remain unlikely to contact law enforcement if they are victimised. Elene Lam, an organiser of Chinese migrant sex workers, explained how the consequences of immigration status make sex workers less likely to reach out for law enforcement assistance, and this reality is yet another factor increasing their vulnerability. “We see people in other cities who target sex workers, especially migrant sex workers, because they know that they will not report to the police, and then they are organising to get money, or rob or rape. Some sex workers were robbed four times a week by a group of people” [87]. Despite all of this, sex workers across Canada are continuing to organise and advocate. Finding strength and survival in their communities and networks, they continue to push for renewed law reform that decriminalises sex work.

Legalisation

Legalisation is a regulatory model wherein sex work as well as sex workers are offered limited legal status based on various structural identities, including immigration status, age, work environment, and geographic location [91]. This model of regulating sex work takes a different form compared to other prohibitionist regimes, but is predicated on similar moralistic principals treating sex work as distinct from the mainstream service industry, and continues to undermine sex workers’ human rights and health [91].

Regulatory models to govern sex work have been implemented in diverse settings including in the Netherlands, Germany, Guatemala, Switzerland, parts of Australia, Mexico, and Senegal [14, 92, 93]. These legalised settings have been lauded by some for being in contrast to purely prohibition-based approaches. But the legalisation of sex work in these settings is predicated on the ability and willingness of workers to adhere to exceptional and moralistic assumptions about the sex industry. It generally regulates government-mandated health and HIV/STI testing and compliance, curfews, and public registration [91]. Some of these requirements, including mandatory testing among sex workers, are based on public health regulations that aim to protect “the public” by treating sex workers as vectors for disease [94]. In these settings, these controlling health regulations prioritise certain citizens while undermining the health and safety of sex workers [95].

Legalisation restricts the occupational autonomy of sex workers, including where and when they can work. In a survey conducted among sex workers working in Amsterdam, only 2% of sex workers supported changes to work environments proposed in the city’s primary sex work settings. Under legalisation, sex workers have little control or agency in negotiating the specifics of their work environments [96]. Legalisation in the Netherlands in recent years has shown to be a tool for the gradual encroachment on the rights and autonomy of sex workers, through legislative reform

and decentralised legal authority that controls the regulation of sex work in municipalities [92]. Regional differences in the way sex work is regulated can create confusion and may leave sex workers vulnerable to judiciary action or fines. Evidence from the Netherlands has demonstrated that legalisation has not been sufficient in eliminating the structural violence experienced by those working in this industry and is insufficient in conferring full citizenship rights for sex workers [97]. Recent amendments to sex work laws in this setting have failed to address stigma or remedy a lack of social rights, and migrant workers remained barred from this industry in part due to the conflation of sex work and trafficking for the purpose of sexual exploitation [97].

Evidence from Senegal has demonstrated that models of legalisation may create new vulnerabilities for sex workers by legalising some aspects of sex work while failing to address stigmatising attitudes towards this form of labour [98]. In Senegal, sex workers must register and carry a copy of their registration with them, as well as attend compulsory sexual health testing. Fears of stigma and social isolation are cited as the primary barriers, causing over 80% of sex workers in Senegal to avoid registration, thereby forfeiting the associated legal protections [98]. Moreover, legalisation status contributes to the growing inequity between sex workers who have access to legal protection and those who do not. In the Netherlands, for example, foreign workers who are not eligible for legal protection in an otherwise legal setting experience exaggerated forms of structural violence by employers and clients, including blackmail [97].

The regulation of sex work under a legalisation paradigm includes, in many settings, mandatory STI and HIV testing for workers. This practice is clearly flagged as a human rights violation by sex workers' rights organisations as well as global policy bodies such as WHO and UNAIDS. Research in various settings has demonstrated that forced HIV/STI testing undermines more successful voluntary prevention methods [99, 100]. It also exacerbates stigma, interferes with relationships between healthcare providers and sex workers, and may contribute to criminalisation of sex workers who test positive [100]. In this way, mandatory testing creates new opportunities to criminalise and control sex workers within supposedly legal settings [91].

Box 7.3 Country Spotlight Legalised Model: Australia (Except New South Wales and the Northern Territory)

In Australia, each state or territory has its own system of regulation and criminalisation of sex work using legalised models; however, in contrast to other states and territories, New South Wales and the Northern Territory have decriminalised sex work entirely. One worker (who asked that her organisation and location not be disclosed) described how, in states with regulation in the context of a legalised model, there remains a significant fear of criminalisation among sex workers. *“Our main problem is coercion for fear of being reported for breaking one of the myriad impossible laws around sex work in our state. It is difficult to screen, difficult to negotiate and nearly impossible to report assault when you are scared of being charged for offering illegal*

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Box 7.3 (continued)

services... State law prohibits private workers from working with anyone else in any capacity. No doubles, no phone message taker, no driver, no security, no sharing of spaces. They do police this law and it is a criminal offence (anti-pimping law...). This leaves workers incredibly open to violence from clients. I have worked under many different legislative models and this kind of regulation is the one I find the most difficult". [101]

Research conducted in Australia, where some states have implemented mandatory STI and HIV testing for sex workers, demonstrates that mandatory testing devalues effective prevention methods already in use among sex workers, unnecessarily overburdens the healthcare system and contributes to stigmatising conceptions of sex workers as unable or unwilling to take effective control over their health [99].

Decriminalisation

Decriminalisation is a model wherein sex work is regulated under existing labour laws and processes rather than through exceptional measures, as is the case with legalised models. Decriminalised sex work environments contribute to the wellbeing, health, and safety of sex workers. Significantly, various global human rights and policy bodies such as the World Health Organization, UNAIDS, UNDP, UNFPA, NSWP, and Amnesty International consistently reinforce the need to decriminalise sex work as a best practice to promote the health and human rights of sex workers. Estimates suggest that the decriminalisation of sex work is among the most substantive actions that can be taken to address the global burden of HIV, averting an estimated 33–46% of HIV infections in the next decade [102]. Yet decades of advocacy and campaigning by sex workers have resulted in dramatically few decriminalised environments, with New Zealand, and New South Wales and the Northern Territory in Australia being rare exceptions to the more common restrictive approaches, including end-demand criminalisation and legalisation observed globally [103].

Box 7.4 Country Highlight Decriminalisation: New Zealand

In New Zealand, where sex work has been decriminalised since 2003, workplace health and safety standards have been established in consultation with sex workers, and sex workers can bring employment complaints to governing bodies [81]. The New Zealand Prostitution Reform Act treats sex workers as full citizens with rights and occupational responsibilities. Sex work is regulated in the same manner as any other business by regulating its commercial practice through standard employment Health and Safety regulations; regulating the location of commercial sex establishments through zoning by-laws; and specifying the health and safety obligations of managers and workers. Regulating sex work as any

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Box 7.4 (continued)

other business in the service industry has significantly reduced the structural stigma of sex work in New Zealand [11]. Despite these gains, migrant sex workers in New Zealand remain criminalised, and still suffer many of the harms perpetuated in criminalised settings [104]. Although decriminalisation of sex work is by no means a panacea, in New Zealand it has created improved working conditions for sex workers overall, including increased ability to report violence to police and recourse in case of workplace regulation violations [15].

Decriminalisation has positive impacts on the health, safety, and human rights of sex workers [103]. In many settings, sex workers, especially women sex workers, are a key population in addressing the global burden of STIs and HIV [102]. Evidence from decriminalised settings has firmly indicated that these settings support access to better working conditions and increased occupational health and safety among sex workers [105].

Conclusion

Intersecting regimes of criminalisation, policing, and stigmatisation shape sex workers' occupational health and safety and experiences of violence and victimisation. A wealth of evidence demonstrates a growing consensus among sex workers and academics towards the need for decriminalisation as the only option for protecting the health and human rights of sex workers [21, 30, 37, 102, 106–108]. There is a critical need to include the expertise of sex workers from all segments of the sex industry, including those who are most marginalised due to racialisation, im/migration status, and illicit substance use, in evidence-based policy making [109]. Globally, the failures of sex work law stem from failure of governments and law makers to take seriously strong evidence produced by sex workers, human rights advocates and academics. The evidence shows that existing laws are creating and exacerbating devastating harms to the safety, health, and human rights of sex workers, including violence and poor health. Indeed, an ever growing body of research suggests that much of what has been identified as harmful in sex work is a product, not of the inherently dangerous or violent character of sex work, but rather of the social and structural factors that shape the working conditions of sex workers, such as criminalisation and punitive policing, stigma, poverty, and gender inequity [1, 2, 11, 12].

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