

## Decriminalization of Prostitution: A Comparative Study

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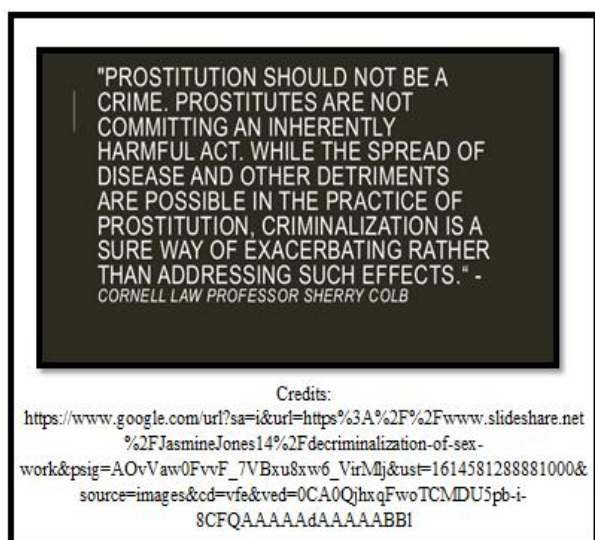
### Abstract

Prostitution is considered a social stigma from ancient times. The legal institutions and frameworks of different nations are not aloof from its influence. This paper aims to study the different aspects associated with decriminalization of prostitution. The paper begins the arguments which contractarians in support of decriminalization and legalization of sex commerce give against the feminists' theorists. The author analyzes the propositions laid down by Lars Ericsson. Then a comparative study is incorporated where different alternatives to its decriminalization is presented. It includes the European practice of licensing and its criticism, English and West Germany solution of regulating time, place, method and its limitations, and the concept of prevalence of laissez faire sex commerce and its harsh effects on the social balance. An analysis of decreasing rape rate based on the study of Cunningham and Shah is also presented. At the end, the possible consequences of legalizing prostitution have been described.

**Keywords:** Prostitution, decriminalization, contract, government, regulation.

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### INTRODUCTION



The word 'decriminalization' is different from legalization or regulation. In legal arena, decriminalization means repealing or amending certain provisions of a statute that previously made certain actions criminal. The objective behind decriminalization is to formally state that such acts no

longer are subject to be prosecuted [1]. Prostitution is one such action which the society has from time immemorial considered to be sinful. The sexual intercourse between two individuals for exchange of money is prostitution. In the modern age, as the legislatures and judiciary were established, this social deviance was declared forbidden by most of the nations in the world.

Decriminalization of prostitution is one of the most controversial topics in the entire world. Even where the government has stringent repercussions on its practice, the red light areas do exist and have frequent visitors as well [2]. The irresistible sexual needs of men and women are biological as well as psychoanalytical in nature.

<sup>1</sup> Gerald & Hill, K. (2002). The People's Law Dictionary, Hill Publisher Fine Communications

<sup>2</sup> <https://www.oyster.com/articles/the-worlds-10-most-notorious-red-light-districts/>



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<https://www.google.com/url?sa=i&url=https%3A%2F%2Fwww.change.org%2Fp%2Fwashington-state-house-legalize-prostitution-in-washington-state&psig=AOvVaw3PwfuSzQGdWAUIUzu-2zew&ust=1614582149312000&source=images&cd=vfe&ved=0CA0QjhxqFwoTCJDK3K-BiORCFQAAAAAdAAAAABAN>

Few supporters of its decriminalization believe that it is better to allow prostitution in a market which provides protection to the individual rather than continuing operation along with drug use, trafficking, exploitation and violence in the black market [3]. One of the main reasons in the rape incidents is this sexual drive of human beings.

The Netherlands was the first country to adopt measures for reform prostitution in 1983. It was legalized fully in the year 2000. The purpose of the law was to legalize voluntary prostitution, and prohibit and punish involuntary prostitution to prevent exploitation [4]. Several countries have followed the line but it also leads to emergence of range of potential problems which in turn makes world leaders to take action in this direction.

### AIMS OF THE STUDY

The present review addresses the following objectives:

- To analyze the viewpoint of theorists in favor of decriminalization of prostitution
- To understand the different forms in which prostitution can be decriminalized
- To evaluate the effect of its decriminalization on rape rate of the region
- To point out the challenges of legalization and decriminalization and possible consequences

### METHODOLOGY

This paper is based on qualitative research from secondary data collected by websites, journals, newspapers and books.

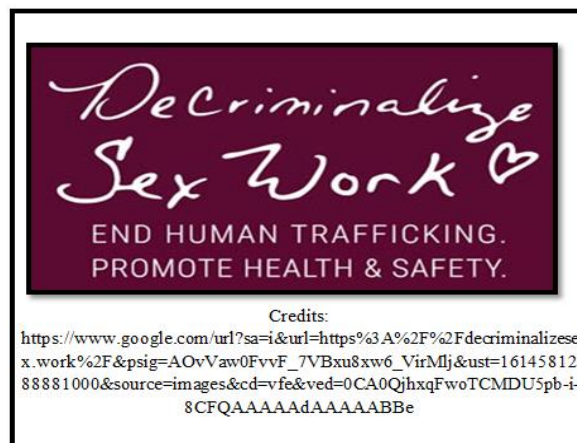
<sup>3</sup><https://graphitepublications.com/the-dutch-model-why-prostitution-should-be-legalized/>

<sup>4</sup> Kilvington, J., Day, S., & Ward, H. (2001). Prostitution Policy in Europe: A Time of Change?, Sex Work Reassessed, 77-93

## LITERATURE REVIEW

### Contractarians' Argument for Decriminalization of Prostitution: Ericsson's viewpoint

The analysis of contractarian is based on the assumption of nature of human sexuality as the sole cause of prostitution. They argue in favor of decriminalization, though not absolute, as it is considered to be a contract similar to any other contract breaking and entering in the marketplace<sup>5</sup>.



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Lars Ericsson, a contractarian has made most significant contribution in this regard. He proposed to legalize prostitution with certain restrictionszz what he termed as 'sound prostitution'. He refutes from the moralists' argument that prostitutes are a threat to the family as Ericsson presents that it is purely economic activity between two adults in private which neither poses threat to anybody or institution nor there is something intrinsically wrong in it. Moralists' propositions and judgment on this matter is solely based on individual bias and social norm being followed for generation without any rational discussion [6]. The major problem, that Ericsson argues, is the prejudice, hypocrisy, and punitive attitudes that surround it [7].

In the eight segment of his article 'Charges against Prostitution: An Attempt at a Philosophical Assessment', Ericsson argues that most emotional problems that prostitutes face is due to the social stigma which they are labeled with for the rest of their lives. He also points that 'compulsive behavior apart, the sex drive is no more of an insatiable appetite than hunger' [8].

<sup>5</sup> <https://socialchangenyu.com/review/contractarians-and-feminists-debate-prostitution/>

<sup>6</sup>Ericsson, L.O. (1980). Charges against Prostitution: An Attempt at a Philosophical Assessment, Ethics, Apr., 90(3), 337-339

<sup>7</sup>Pateman, C. (1983). Defending Prostitution: Charges against Ericsson, 93(3), 561

<sup>8</sup> Ericsson, L.O. (1980). Charges against Prostitution: An Attempt at a Philosophical Assessment, Ethics, Apr., 90(3), 356-357

## Beyond Decriminalization: Different Available Alternatives

The criminalization of sexual contract in exchange of money is illegitimate imposition of unjust social hatred. A much less enclosing stand of legal treatment can be taken by considering three alternatives [<sup>9</sup>].

### 1. Licensing

The procedure of licensing involves securing permit from the State to engage in commercial purposes, registering name in a public record, and regulations of price and place of business. This was a widespread practice in Europe until 20<sup>th</sup> Century [<sup>10</sup>]. However, this practice was severely attacked by the then contemporary feminists, who argued that this degrading nature of licensing made difficult for women to leave profession. Along with it, they also emphasized the demeaning inspections instead to protecting the right to human dignity, infringed it [<sup>11</sup>].

### 2. Regulations of Place, Time, and Method

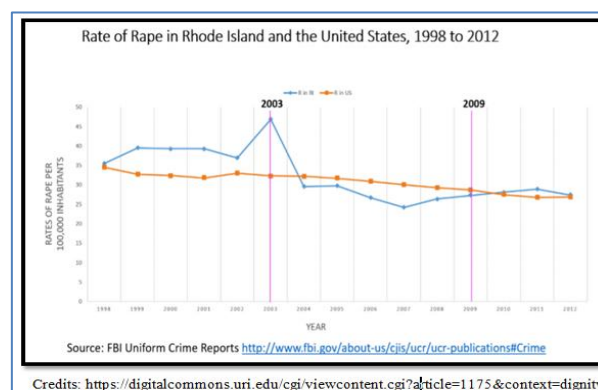
In England, street solicitation was completely prohibited but it used to take place through ambiguous advertisements in different locations or paper outlets. The English solution was to end all types of solicitation to avoid it from well-known theatres and shopping complexes. In West Germany, measures were taken by the authorities to confine it in single building complex [<sup>12</sup>]. It is argued that taking the above mentioned measures does not regulate the ill effects of decriminalization nor does it takes effort to guarantee certain entitlements and reasonable restrictions for the prostitutes.

### 3. Regime of Laissez- Faire

It is thought that after complete decriminalization or at some place legalization of prostitution, the above two measures will leave the scene and only a few criminal laws will exist against fraud and force, However, contrary to this argument, even the first country to take measures in this direction, the Netherlands has adopted several measures time and again, repealed and amended old methods, imposed

restrictions, and even in the COVID 19 pandemic [<sup>13</sup>]. The government intervention is needed to check the malpractices in the industry so the laissez faire argument is severely criticized.

## Does decriminalization of prostitution control Rape rates?



Scott Cunningham and Manisha Shah had presented their study ‘Decriminalized indoor prostitution: Surprising implications for sexual violence and public health’ on the effects of decriminalization of prostitution in Rhode Island. One of their major findings included how it leads to reduction of the incidences of rape [<sup>14</sup>].

They have used the year 2003 as the initiation of decriminalization of prostitution. An unusual increase in rape cases was noted in the year 2003. From 39.3 and 36.9 rapes per 100000 people in 2001 and 2002 respectively, extremely high number of cases 49.9 per 100000 people was noted in 2003. However, after decriminalization reforms in the same year, 2004 marked drastic reduction in the cases with 29.9 per 100000 people. The subsequent years show consistent yearly variability in rape rates more or less below the national average [<sup>15</sup>].

This research work gives a very strong way of reducing the rate of this heinous crime in our country India as well.

<sup>9</sup>Richards, D.A.J. (1979). Beyond Decriminalization, Commercial Sex and the Rights of the Person: A Moral Argument For the Decriminalization of Prostitution, University of Pennsylvania Law Review, Formerly American Law Register, 126, 5, 1279-1282

<sup>10</sup>Ibid.

<sup>11</sup>Iyer, K.P. (1998). Prostitution: A Feminist Ethical Analysis, Journal of Feminist Studies in Religion, 14(2), 19- 44

<sup>12</sup> Richards, D.A.J. (1979). Beyond Decriminalization, Commercial Sex and the Rights of the Person: A Moral Argument For the Decriminalization of Prostitution, University of Pennsylvania Law Review, Formerly American Law Register, 126, (5), 1282-1284

<sup>13</sup>Post, C., Brouwer, J.G., Vols, M. (2018). Regulation of Prostitution in the Netherlands: Liberal Dream or Growing Repression?, European Journal on Criminal Policy and Research, 99-118

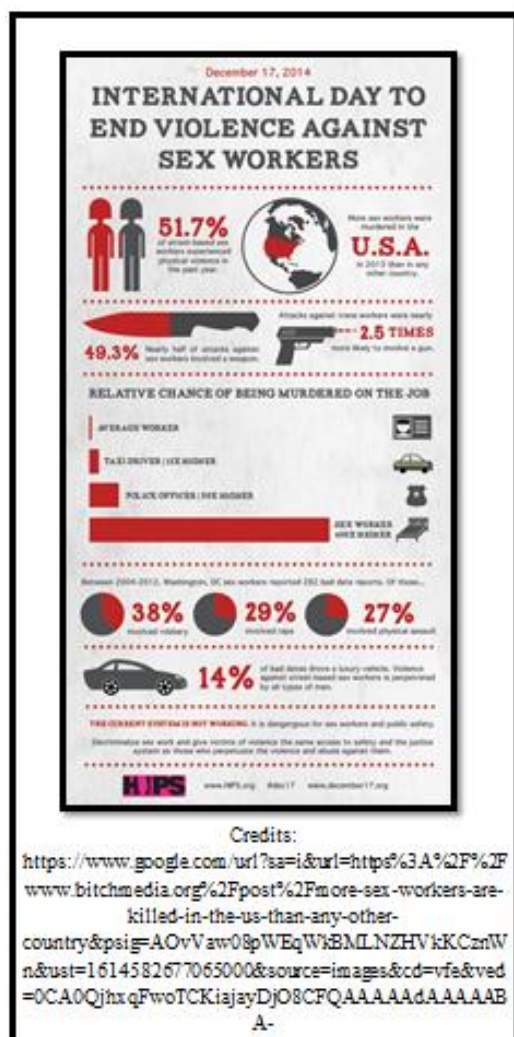
<sup>14</sup> Lachpelle, L., Schneider, C. & Shapiro, M. (2019). Does the Decriminalization of Prostitution reduce Rape and Sexually Transmitted Disease? A Review of Cunningham and Shah Findings, Dignity: A journal on Sexual Exploitation and Violence, 4(3), 6, 3-4

<sup>15</sup> Ibid. pp. 5-6



## Consequences of Decriminalizing Sexual Commerce: Anderson's Analysis

The following are the manifest consequences decriminalizing prostitution:



- The contract to satisfy inevitable desire of the men and women in exchange of money gets the status of not being criminal, hence, it is method of coming up from stereotypes of society.
- Prostitutes will be entitled to provisions and benefits similar to other workers in different occupation.
- Prostitutes will get a fair option of bargaining to their clients which was denied to them when this service was criminalized.
- Prostitutes can approach courts when the basic human rights are infringed or if they undergo any kind of violence, discrimination or exploitation.

Along with it, Scott A. Anderson has contributed significantly in analyzing the benefits and positive as well as consequences of decriminalization of prostitution. His commentary at 2009 Pacific Meeting of the American Philosophical Association is his major work in this segment.

Anderson claims that if prostitution is decriminalized in nations, no matter, the human rights of several prostitutes will be upheld, inevitable desires will be satisfied but the effects of treating it similar to other forms of commerce may lead to the three major results:

- People could draft contracts enforceable in the Court of Law including sexual services.
- The government will get entitled to inspect the health of sex workers. It might prohibit behaviors which are risky outside the work.
- Corporations might unfairly, market and advertise uncompromisingly to change prejudices and vices which the society attaches about buying sex [16].

In the larger picture, it suggests that total decriminalization will take the society as well as the prostitutes to a disadvantageous position. An advance payment of such commerce, may force a sex worker to engage in such acts even when he/she is unwilling to perform it. Therefore, government intervention, prostitutes' representation in the mainstream media and reforms are needed from time to time.

## FINDINGS

- The social stigma associated with prostitution is the major cause of mental agony which sex workers undergo.
- Contractarians who believe prostitution is similar to any another contract happening in the marketplace, argue to legalize 'sound prostitution' which is through decriminalization as well as by imposition of certain necessary restrictions.
- Decriminalization or legalization should not be absolute as rise in human trafficking, drug abuse, terrorists activities have been note in the Netherlands and other countries also where this measure was adopted.
- In Europe, licensing of sex commerce houses was employed as a method of to regulate prostitution and limit it to licensed bodies. This method, however, suffered serious criticism from feminists as it made difficult for women to change occupation.
- In West Germany, England and Wales, the locations, solicitations, and manner were completely restricted and confined. However, they made little efforts to address the issues, health problems, and rights of sex workers.
- Following the line of the Netherlands, several countries adopted laissez-faire policy of decriminalization or legalization but later incorporated restrictions to check illegal activities and violence against prostitutes.

<sup>16</sup> Liberto, H.R. (2009). Normalizing Prostitution versus Normalizing the Alienability of Sexual Rights: A Response to Scott A. Anderson, *The University of Chicago Press Journals, Ethics*, 120(1), 138-145

- The study by Scott Cunningham and Manisha Shah also highlighted the drastic decrease in rape in Rhode Island with decriminalization of prostitution.
- Decriminalization of sex commerce as an instrument of reducing rape has led several countries to get rid of the moralist tradition and age old values, and to adopt it with proper restrictions.
- Along with the manifest consequences of entitling prostitutions benefits and entitlements equal to other workers, corporations have tried to raise

awareness of breaking the prejudices and stereotypes associated in the business. This possibility was laid down by Scott A. Anderson and has been actualized through the marches organized in France and formation of groups like Red Thread.

- Decriminalization also has unanticipated results associated with it. Enforcement of contracts for delivering such service for a specified period, takes away the liberty of sex workers to deny consent in between.



## DISCUSSION

The society has made several efforts to eradicate prostitution. International laws like Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), in its Article 6 mentions states that the state should take “all appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women” [17]. Such measures put prostitutes to even more disadvantageous and counterproductive situation as they have been and will have to be in the business. The labeling by the society makes it difficult to change the profession, the added neglect of being recognized and entitled beneficial provisions make the situation worse. They also suffer a number of chronic health issues like HIV/AIDS, Tuberculosis, and Syphilis etc.

Recognizing that prostitution mainly arises due to necessity and no personal choice which gradually becomes the only means of sustenance for sex workers, efforts have been made to justify and decriminalize it. The community needs fair representation so that the illegal practices which harm them as well order of society are controlled and benefits actually reach them. Several unions have been formed for the same like DecrimNow campaign in Britain and Organizacion de

Trabajadoras Sexuales (OTRAS) in Spain [18]. Taking every aspect of this social issue, efforts have to be made by government, activists, theorists and the society.

## CONCLUSION

The entire paper has tried to present the different aspects associated with decriminalization of prostitution. After analyzing the needs to decriminalize, the neglected issues of prostitutes, positive as well as detrimental effects of decriminalization or legalization, we can derive that no perfect solution to this social problem is available. Decriminalization of prostitution itself remains a conundrum because of the different alternatives available each of which has its own demerits and flaws. Also, the limited learning about sex education across the countries in the world makes this commerce a taboo which has lingered to the time as long as it was first practiced. The satisfaction of sex needs through this means is inevitable as even the strictest countries do have Red light areas. Therefore, government intervention through recognition and decriminalization is necessary to alleviate the chance of association with heinous crimes and break the hollow prejudices linked with it. The major advantage will be in bringing rape rates down and in entitling sex workers as ‘workers’. However, periodic reforms, health care

services, and imposition of restrictions are needed to prevent the detrimental consequences.



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