
The Perspectives Of Criminal Justice To Adult Prostitution In Canada

Introduction

Basic morality is widely known as the guiding principle for our legal system, explaining why things like murder and assault are criminalized; but what about adult prostitution? Reasonably, the law argues that it is because prostitution often comes alongside dangerous activities such as drug use and violent crime, thus its heavy regulation is in the best interest of personal and public safety. Nevertheless, the nature of the issue still sparks controversy to this day. As a result, I will be answering the following research question: has the Canadian Criminal Justice System's treatment and perspective of adult prostitution evolved/improved?

This topic is relevant because it considers various perspectives, notably the feminist, civil libertarian, and law and order lenses which add to the perpetual relativity and evolution of values that need to be represented in our Criminal Justice System. This topic is an important example demonstrating how the law may not always be universally "right" and needs input from the public to create the safest possible environment for citizens. The arguments surrounding the (de)criminalization of prostitution also offer valuable insight on both sides, showing that legal decisions are not just black-and-white and require constant evaluation.

Literature Review

Throughout this literature review, three main frameworks, seen as approaches to prostitution regulation, will be of constant relevance: criminalization, decriminalization, legalization. In order to set the stage, first, we must discuss the evolution of society's beliefs which influence the evolution of laws surrounding prostitution. Prostitution was never technically illegal in Canada, however, it was illegal to a) keep/visit a common bawdy-house, b) communicate publicly for the purpose of prostitution, c) live primarily off of the avails of prostitution. While the law criminalized regular frequenters of brothels, mostly men, with a potential summary conviction, it was believed that the law was laxer on frequenters. Following this theme of gender bias, the 1872 Charter of Rights and Freedoms, Section 175 (1)(c) saw prostitution as vagrancy and said: "[a vagrant person] is a woman who is a prostitute or nightwalker, found in a public place", was then punished by imprisonment or a fine. This law that carries a sexist connotation which vilifies women mimics the largely sexist historical era where female sexual liberty was seen as deviance.

Another piece of evidence hinting at extremely biased legislation in Canadian history regarding prostitution is the Contagious Disease Act, 1865. It was an attempt to take more of a public health regulation approach, instead of blatant prohibition. However, it was riddled with gender discrimination. It involved someone swearing before a judge that a female prostitute was suffering from a venereal disease which would then prompt a constable to locate the woman, who would then have to submit voluntarily to a medical examination or be arrested. American Historian, Judith Walkowitz said that this Act represented: "the high water mark of an officially sanctioned double standard on sexual morality, one that held different standards of chastity for

men and women and tried to demarcate impure women from the rest” (Backhouse, 2005: pg. 6). This is simply mind-boggling given that this same method of compulsory examination was previously used to examine soldiers but was struck down by the 1850s for its inefficiency.

This low point in Canadian history and in the progression of prostitution statutes all stems from the belief that aggressive sexual desire is a moral sin and thus, society saw it as a social plague/evil. Although, it was the prejudiced nature of society that allowed prostitution to flourish in the first place, meaning, that it is unlikely to have such a high problem with prostitution if we lived in a society where everyone enjoyed equal rights and freedoms with little economic disparity.

Nevertheless, these views associating prostitutes as a social evil/sin were slowly starting to change. The basis of anti-prostitution sentiments in the law was sparking political backlash, mainly from feminist groups, encouraging the government to change their foundation of prostitution as a female-exclusive activity and using it to scapegoat individuals. Not only were laws on anti-prostitution oppressive but it was dangerous-- it pushed sex workers to continue their work more privately and tremendously discourages them from reporting any violent crimes and abuse, piling onto the hundreds of thousands of unreported cases each year. The points above notably represent the arguments against prohibitionism which is a sub-section under the criminalization approach, where prostitution is seen as a violation of human dignity and has an ultimate goal to entirely eliminate prostitution. To illustrate its prohibitionism's impact, let us look at California, where they heavily follow this model. It is illegal to agree to engage in prostitution and to actually engage in prostitution. Strict imprisonment is almost guaranteed if you are caught soliciting in prostitution. In fact, around 25% of female inmates in the U.S. are there due to a conviction of prostitution; valuable space and money that could be used for more effective resources to help men and women out of the sex trade. To continue, there are processing fees from the arrest racking up to thousands of dollars, as well as potential fines also ranging from a few hundred to a few thousand. While the intention is to deter people from rejoining the sex trade by enforcing such harsh penalties, often times, they have to revert back to their sex work in order to pay for those legal fees.

Thus, there is little to no evidence that these strict anti-prostitution measures are a significant deterrence. This was the same case in Canada and other nations during time periods where this legal model was favoured. This system is counterproductive and ignores the core issues of financial strain in society which ties in with other prominent inequalities such as ethnic inequality, given that the majority of female inmates via prostitution are from visible minorities or are immigrants. This issue of potential legal models misdiagnosing the real problems come up in the next time cluster analysis of the mid-late 1900s and is still prevalent in the recent 10 years.

There were still visible remnants of a separationist attitude between sex workers and the government/general public in the Canadian Criminal Justice System in the mid-1900s. The only real legal change in the mid-1900s that happened was in the small but still significant definition of prostitution. The 1872 legal view on prostitution shifted from affiliating prostitution specifically to women to as shown in the 1978 Law Reform Commission Report which then used the definition as a prostitute as: “every person who solicits any person in a public place for the purpose of prostitution,” who is then guilty of an offence punishable on summary conviction. (Robertson: 2003: pg. 2). The system made a big step in combatting the stereotype that all sex workers are women, although agreeably, the ratio of women involved in sex work to men is

significantly larger. However, you cannot ignore the reality is that more men were entering the field, with sex work comprising of more than 90% women, centuries back, that metric was virtually close to 100%.

This us vs. them concept was still being substantiated and the Canadian government still leaned towards the dangerous prohibitionist-criminalization approach (which later gradually shifted) because the three core laws heavily barring prostitution remained intact and in full-force with little alternative side efforts being made to truly help sex workers. The Criminal Justice System saw prostitution as a social plague and continued to hinder the response instead of the root of deeper systemic social issues. For example, as a result of these intergenerational, social, economic and structural factors, First Nations, Inuit and Métis women represent a disproportionate amount of sex workers in Canada. One study conducted in Vancouver's Downtown Eastside revealed that "52% of sex worker respondents were First Nations, Inuit and Métis women, while other studies have estimated up to 60% (Canadian Public Health Association, 2005: pg. 6). This trend acts as an important piece of empirical evidence highlighting that prostitution is a result of other underlying issues, not exactly the issue itself.

Additionally, many socialist groups throughout the 1990s. Upon noticing these trends, the Canadian government finally started leaning more towards targeting these critical social inequalities in the late-1900s. On October 4th, 1990, the Committee published a 31-page report surrounding three recommendations at providing better alternatives for people engaged in the street solicitation trade and further pushing away potential clients. The most significant recommendation in terms of improvement in the legal system when looking at the sex trade is:

That the departments responsible for justice, health and welfare, and employment, at all levels of government, develop programs to provide start-up and core funding to community-based agencies providing integrated, holistic programs accessible and responsive to the needs of male and female prostitutes wishing to leave the street solicitation trade.

Here, we start to see more government support for sex workers instead of the historic scapegoating and alienation which are signs of progress but it does not necessarily fix the social issues since the sex worker must actually willingly come to seek for government resources. In a cycle of abuse and violence, we know that voluntarily seeking help is rare due to factors of fear, dependence, and the desperation for money. Additionally, many sex workers maintain that their involvement in the trade is voluntary in order to get money, and thus, attempting to push away their demand is simply a business deterrence. As a result, they would not be willing to pull themselves out of the trade if they do not see resources that allow them to make money elsewhere in a safer way.

Nevertheless, it is a big start and the government's efforts to move away from strict prohibitionism and more into abolitionism in the late 1900s were clear. Abolitionism is the middle-ground between prohibitionism and legalization. It follows that even though prostitutes may choose to enter the trade, it is nevertheless a social problem. Advocates of this model believe that governments must take the necessary steps to allow prostitution to occur only as long as it does not infringe on public safety and order. This is a step forward from the previous attitudes in the late 1800s which sought to unrealistically stop the sex trade completely and did not acknowledge that some people were voluntarily apart of it, thus placing heavy criminalization measures would push the trade further underground and create more violence. It saw the sex trade as a social problem and less of a social evil, meaning that more strides were being

considered to create better programs and alternatives to alleviate the core issues.

Fast-forwarding to today, the government is still trying to get it right with sex work regulations. Up until just 5 years ago, in November 2014, prostitution laws were amended with the Protection of Communities and Exploited Persons Act which criminalizes buyers of sex services more heavily, instead of sex workers themselves. This update came as a response to when the three laws prohibiting prostitution-related activities mentioned prior (keeping a common bawdy house, communicating for the purposes of prostitution, and living off the avails of prostitution) were deemed unconstitutional by the Supreme Court in 2013 in the *Canada v. Bedford* case; a significant step in legal Canadian history. Prior to December 20, 2013, the buying and selling of sex in Canada was not illegal, but these aggressive laws were in place which restricted virtually all of its related activities. In a unanimous decision, the Supreme Court judges found that these laws “violate the right to life, liberty and security of the person as described in Section 7 of the Charter of Rights and Freedoms.” (Canadian Public Health Association, 2015: pg. 6). The provisions prevented sex workers from working safely indoors, screening clients for potential threats, or hiring drivers and bodyguards to increase protection.

As a result, the current system, Bill C-36, which came into effect in 2014 that focuses on criminalizing the buyers follows the Nordic model in an attempt to punish and, consequently, cut down the demand for sex work. Under these new provisions, sex workers could be involved in “procuring, communicating or operating bawdyhouses without fear of prosecution. They could offer sex services from fixed indoor locations, advertise their services and hire bodyguards to protect them. Also, they could negotiate on the street with their clients without fear of arrest.” (Matas, 2015). This model follows the part neo-abolitionism and decriminalization approach which call for the decriminalization of the activity of prostitutes themselves, but for the criminalization of the activity of pimps and the participation of clients. Thus, Bill C-36 represents a paradigm shift in legislation from the view of prostitution as a nuisance to being a form of sexual exploitation since it sees all sex workers as victims.

This could be seen as a step forward, as it aims at helping instead of harming sex workers-- but what are the true implications of this revised legislation? The reality is, although there have been some spotty metrics published, actual reduction rates of prostitution using this model are unknown; there is a giant knowledge gap since the majority of sex work activity is underground. While Swedish authorities claim that their model has resulted in a halted influx of violence and the number of individuals entering the trade is up to 50% less since its enactment, there is much criticism about the accuracy of these numbers.

Opponents of Bill C-36 argue that it is, like its predecessor, unconstitutional because it will put sex workers at risk again because they will be unable to effectively screen clients seeking to avoid arrest. In the official evaluation of the ban on purchasing sex in Sweden using the model Canada follows, the data showed that sex workers experienced increased police scrutiny, stigma and discrimination. It was found that sex workers had decreased negotiating power, increased risks of violence, difficulty in obtaining stable housing, and there was a reluctance of clients to help report violence against sex workers.

Keep in mind that this paper does not attempt to pick which method is better, rather, it is seeking a trend of evolution and progression in the Canadian Criminal Justice System. In this sense, the federal views on the trade have evolved within the past 10 years as, even though the real efficiency of Bill C-36 is debatable, it definitely is an attempt to help the sex workers for a

change. Additionally, more funding has also been granted as apart of this new provision, allotting \$20-million over a five-year period after its enactment to help sex workers get out of the trade. The stigma around the sex trade has then surely evolved, but blindly throwing money at a systemic problem is definitely not the best solution since, as mentioned before, sex workers are often reluctant to voluntarily seek help. Nevertheless, it is definitely a positive change in attitude.

Conclusion

The regulation of the sex trade in Canada has tremendously evolved in its treatment of adult prostitution, but real progression in the environment and the incidence of prostitution is lacking. To highlight some key evolutionary points: the law went from using prostitution provisions to emphasize gender-based discrimination to becoming less patriarchal. It also importantly went from an entirely prohibitionist approach to leaning more into decriminalization of the workers themselves and heavily regulating/criminalizing the buyers.

While there is not a global consensus on what the most beneficial legislation is on handling the sex trade, it is safe to say the underlying issues of prostitution are not being addressed methodically. An effective model for handling prostitution within our Criminal Justice System requires more review on institutional frameworks and resources available to target systemic inequalities. Thus, the answer to my research question that there has been a lack of real progress is significant to criminology because simply put, it hints at flaws in the system which require immediate intervention. To further explore the implications of this topic, the question: "how is data about the sex trade collected and how can it be improved?" should be visited because the large knowledge gap makes it hard to draw conclusive decisions to aid sex workers.