

The Nordic model in Europe

Prostitution, trafficking and neo-abolitionism



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Cover images sources:

<http://vancouver.mediacoop.ca/story/stop-backpagecom-taking-stand-against-prostitution-and-trafficking-women/9034>

and

<https://www.nydailynews.com/news/world/canada-supreme-court-strikes-anti-prostitution-laws-article-1.1553892>

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0. Introduction

Policies over prostitution in Europe and globally have widely diversified in the last few decades, shaping a legal and social landscape that deeply affected the activity, wellbeing and perception of the individuals involved. Countries' anxiety over the body of the prostitute and their visible presence is to a considerable extent a consequence of feminist discourse and counterposing ideologies over the body of women, an approach developed within a deeply gendered spectrum. The increasing concern over trafficking in persons for sexual purposes has also encouraged the international community and national governments to develop a new range of policies to tackle a phenomenon that seems to be out of control due to the globalised world's heightened mobility. One of the recent models that succeeded in establishing first in Sweden, followed by Norway and other countries in Europe, is the neo-abolitionist framework (the so-called Nordic model), promoted as a novelty by Swedish feminists to combat prostitution and yet not prostitutes, who are to be considered victims of an unjust and exploitative system. Radical feminists across the world embraced this model as an effective means to fight patriarchy and improve gender equality. The views within the western feminist discourse (Europe, United States, Australia and New Zealand) could not be more antithetical, as the liberal fringe warns against criminalisation policies while recommending forms of regulation of prostitution, as criminalising it would violate the right to self-determination and self-expression. Furthermore, a current and widely discussed issue yet to be solved is whether the Nordic model has provided an effective framework to reduce trafficking for sexual purposes. The question that guided our research was, therefore: after more than twenty years of Nordic model experience, can we witness an overall improvement of gender equality and a decrease in human trafficking?

The work is divided as follows: in the first section, we will focus on western feminist theories and debate on prostitution and a brief overview of the situation of human trafficking in Europe. Prostitution has also been consistently affected by the 1990s 'war on drugs' and the diffusion of HIV, intertwining with policies and social prejudices that had a relevant impact on sex workers' lives due to the accompanying stigma. Also, the rise of new technologies and the usage of the internet and social media has changed both sexual behaviour and sex workers/clients' relations, challenging national borders and local legislation.

However, the mentioned fields will not be touched by this study as they would require an in-depth and extensive separate study.

In the second section, the implementation of the Nordic model in Sweden will be described, analysing its legal framework and its international resonance. An assessment of its impact will follow, which will include an insight on the changes in trafficking trends, the international community response to its effect and a comparison with the regulatory model of The Netherlands. To conclude, we will inquire about the new challenges brought by the 2020 Covid-19 pandemic to the sex market, and how it has unfolded the limits of all models in protecting individuals involved in prostitution.

1. Western perspectives on prostitution

1.1 Feminist perspectives: a gender trouble

Over the last few decades, the debate over prostitution has manifested into two deeply contrasting positions within the feminist discourse. Along with profound social changes

brought by globalisation, the polarisation between two dramatically antithetical positions has become extreme. The legalisation of prostitution for liberal feminists and its abolition for radical activists have become increasingly compelling standpoints that have affected western countries national and international policies since the 1970s while shaping collective perception and opinion of the subject. The controversy unfolds on the ground of the relations among genders through sexuality, being sex and sexuality keys to understanding female identity construction and gender roles in feminist studies.

Prostitution is considered by radical feminists as the extreme condition of subjugation of females under the patriarchal system, where males deemed themselves entitled to purchase bodies, thus perpetuating their domination through a form of physical oppression on women (Jeffries, 1997). Although not exclusively women's occupation, the sex market is highly gendered, and the involvement of young women is prevalent, while clients are almost totally males (Honeyball, 2014). According to radical theorists, even the organisation of the market is dominated by males, who profit from the exploitation of women's bodies, materialising the quintessential evidence of male domination (Swanson, 2016). Therefore, women involved in prostitution are *always* considered victims, regardless of the exchange being consensual, as they become slaves of an inherently violent system. Now, from this position, the liberal feminists' idea of selling sex being a profession through which women can develop self-expression and self-determination is to firmly condemn. The very concept of "sex work" is considered unacceptable, as well as a range of terms that change according to the standpoint: the "sex worker" is the "victim", the "third party" is the "exploiter" (being him the pimp, the trafficker etc.), the client is not only a buyer but an actual criminal (Swanson, 2016). In refusing the idea of prostitution contracting a commercial exchange like any other, neo-abolitionists believe the prostituted woman not to sell a service, but to "selling herself in a very real sense" (Gauthier, 2011), in other words, the purchase of her body reduces her very inner self to an object; as stated by Pateman, women's selves are involved in prostitution differently from the involvement of the self in other occupations (Pateman, 1988). Furthermore, although the commodification of sexuality might even be potentially advantageous for the seller, it is remarkably self-alienating and thus "threatening to a critical source of self-expression" (Gauthier, 2011). Moreover, the presence of abuses, human trafficking, drugs and poverty as pervasive conditions in prostitutes' lives have been utilised to demonstrate the nearly total lack of agency of women when choosing to enter prostitution, although no such exhaustive statistics have been published yet (Swanson, 2016). But what radical feminism aims to achieve is the extinction of a whole culture that keeps women captive while encouraging male abusive domination over the female body and self, whether that is paid or not. The purchase of women's bodies is then to be considered a paid abuse. Therefore, the ultimate necessary solution is the abolition of prostitution altogether and its complete eradication along with that of male dominance over females. As Julie Bindel argues: "The violence against women will not end in a world where we accept prostitution"¹. Despite these arguments being convincing and emotionally impactful, the radical movement has been criticised for oversimplifying the issue and having entrenched it into the totalising dichotomy of dominator versus slave (O'Neill, 2013). This binary thinking fails to recognise the historical and cultural complexity of sexuality and prostitution and the possibility of considering it other than from contemporary western standards of evaluation (Swanson,

¹ freely translated from:

<https://www.resistenzafemminista.it/julie-bindel-non-finira-la-violenza-contro-le-donne-in-un-mondo-in-cui-accettiamo-la-prostituzione/> (Accessed 15/01/2021)

2016), which does not allow the prostitute to escape the status of the victim. History shows us that the highly heterosexual and gendered quality of prostitution in Western countries has changed over time, becoming predominantly covered by females in Middle Ages, with the exclusion of male prostitutes as too “feminised” (Matthews, 2008). Failing to grasp historical and cultural specificities anchors an extremely complex and diverse issue to an ideological dichotomy that can be dangerously perceived as natural. On the other hand, liberal feminists fail to diversify their approach too as they rely on conceptions that do not leave space to non-Western ideas associated with gender, religion, morality, and particularly female sexuality (Swanson, 2016).

Also, what neo-abolitionists miss to take into account are the concrete effects of their political requests: will the ‘victims’ actually benefit from such a change? Swanson highlights that the impact on human trafficking has not been impartially and extensively assessed yet (Swanson, 2016), and not only does the principle of victimising all prostitutes not grasp the variety of backgrounds of the actors involved, but it fails to single out the most vulnerable ones who are forced into the labour. Also, as Scoular asserts, the radicals’ hostile approach prevents any form of political confrontation with sex workers who report different experiences and ideas (Scoular, 2004).

As we will demonstrate, these rigid ideologies permeated groups and collectives who, in the last thirty years, have had a remarkable impact on national and international policies over prostitution, transforming the normative landscape, influencing public opinion and concretely affecting the individuals and groups involved.

1.2 The issue of human trafficking

The discourse over prostitution cannot be parted, both for ideological and implementation reasons, from concerns of different nature such as human trafficking. The choice to regulate, non-regulate or criminalise prostitution has generally a direct or collateral impact on the latter.

The United Nations Office on Drugs and Crimes’ (UNODC) 2018 *Global Report on Trafficking in Persons* (Kangaspunta *et al.*, 2018) shows that sexual exploitation represents the most detected form of trafficking globally and that the vast majority of the victims involved are adult females (68%, based on 2016 evaluations), followed by female minors (26%, same year). The report points out that the overall trend of trafficking is growing worldwide, with 254’000 victims identified in 2016, 40% more than in 2011 (Kangaspunta *et al.*, 2018). According to Resolution 1983 of the Council of Europe, the number of trafficked people in the European Union amounted to 70’000 to 140’000 each year, with a considerable proportion being women, namely from Bulgaria and Romania (Resolution 1983, Council of Europe, 2014). A surge in the identification of trafficked women coming from West Africa, especially from Nigeria, has also been registered in the last few years, from the 18 detected in 2014 to 25 in 2016 (Charpenel, 2019) up to 61 in 2018 only in Germany².

A novelty of the last decade, cyber-exploitation is becoming more popular and is benefitting from new technologies and social media: both selling of sex adverts and procuring can be easily disguised, and although measures to flag and remove suspicious contents are put into place, the responsible are rarely prosecuted (Charpenel, 2019).

²

<https://www.infomigrants.net/en/post/21117/germany-the-brothel-of-europe-for-trafficked-nigerian-women> (accessed 27/01/2021)

Trafficking in persons has been described as a practice that violates human dignity (Resolution 1983, Council of Europe, 2014) and prohibited by Art. 4 of the 1950 *European Convention of Human Rights*, which reads:

1. No one shall be held in slavery or servitude;
2. No one shall be required to perform forced or compulsory labour;
3. For this Article the term “forced or compulsory labour” shall not include:
 - (a) any work required to be done in the ordinary course of detention [...];
 - (b) any service of a military character [...];
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations. (ECHR, 2010)

Notably, trafficking for sexual purposes is not specifically mentioned by the Convention. The first case on which the European Court of Human Rights (ECHR) expressed its view on sexual slavery was the case of *S.M. v. Croatia* in 2014, in which the Court explicitly interprets Art. 4 of the Convention in an extensive manner and declares it applicable to cases of sexual exploitation, upon which national authorities have to investigate adequately (ECHR, 2014). Forced prostitution and sex trafficking have been cornerstones of the “moral crusade” of neo-abolitionist feminists, who have leveraged the formers to legitimate their demands to incorporate new legislation and transform a social condition into a “problem” (Swanson, 2016). In fact, “without men’s demand for and use of women and girls for sexual exploitation, the global prostitution industry would not be able to flourish and expand” (Ekberg, 2004); thus, human trafficking is portrayed as the essential means to meet the demand for sex (Swanson, 2016), especially in Western countries, so that the extremely complex mechanism of trafficking is somewhat narrowed within the dichotomy of the engendered discourse of slave/dominator. As all prostitutes are viewed as slaves and victims, the proposal of neo-abolitionists has been one that leaves little room for understanding the diversification within the sex market and consequently the multiple effects that criminalising sex purchase can have on the actors involved. Also, the “one and for all” solution has driven to national policies that have often merged anti-sex work, anti-trafficking and anti-immigration actions, as diffusely reported by Amnesty International in the case of Norway (Amnesty International, 2016) and by the Fuckförbundet collective for Sweden (Fuckförbundet, 2019), with the consequence of resulting in unpredicted punitive actions towards migrants selling sex (Vuolajärvi, 2019). On the other hand, liberal feminists developed a thorough distinction between sex workers who choose their profession freely and those who are exploited, and they proposed regulatory policies to check up on the market and eradicate slavery while facilitating the recognition and organisation of independent professionals. However, human trafficking and sexual slavery are far from being defeated by the regulation of sex work by itself, as demonstrated by various reports (among others: Charpenel, 2019; Mendes Bota, 2014). Criminal organisations seem to have adapted to the legal framework of countries such as Germany, where selling sex is regulated whereas meanwhile a trafficking system is thriving in exploiting foreign women, especially from Nigeria and Eastern Europe; in most cases, they become highly dependent on brothel

owners, who are granted “power directives” over the labourer³. This issue will be further discussed when discussing regulatory models.

2.The Nordic model

2.1 Nordic model: Sweden

The so-called ‘Nordic’ model, earlier called the ‘Swedish’ model, has been widely implemented in Scandinavian countries (namely Sweden, Norway, Iceland but also France and recently Ireland), and along the 2000s has influenced international policies and resolutions at the European Union’s level. The *Act of prohibiting the purchase of sexual services* (SFS 1998:408), entered into force in January 1999, made Sweden the first country to legally condemn the purchase of sex acts while relieving prostitutes from any form of criminalisation. The aim is to eventually eradicate the culture of prostitution by undermining its social acceptability while helping victims and survivors of trafficking exit the market. The latter objective has been developed in the 2008 national action plan for the prevention and combating of prostitution and human trafficking for sexual purposes, which has been advanced around five key areas, namely:

- Protection and support for people at risk;
- Prevention;
- Higher standards and greater efficiency in the justice system;
- Increased national and international cooperation;
- Higher level of knowledge and awareness in general (Ekberg, 2018).

The priorities were integrated by a new action plan released by the government in 2018, which incorporated at its core the principles of gender equality, ending violence against women, ensuring equal opportunities for women and men, and their right to bodily integrity, international human rights value including those of the *Convention on the Rights of the Child* (Ekberg, 2018). As a key strategy, the involvement and agency of public authorities both at a national and international level were stressed (Ekberg, 2018).

As far as the punitive measures are concerned, the 2011 amendments extended the maximum sentence for requesting sexual services from the previously established six months to one year of detention (Ekberg, 2020). Also, according to Swedish law, it is possible to prosecute and punish Swedish citizens who purchase sex abroad, to deter sex tourism (Charpenel, 2019). Similarly, other countries such as Italy⁴ have ratified laws that criminalise and punish the act of purchasing sex abroad from children, although it is not as comprehensive as the Swedish regulation. Remarkably, informal campaigns such as “You Decide!” have been the cornerstone to raise awareness and responsibility and constitute a deterrent for sex buyers (Erikson, Larsson, 2019).

However, the position of the Swedish government and the legislation towards a harsh ban on prostitution are somewhat contradicted by the action of the Swedish Court. The Supreme Court of Sweden established in 2001 that the offender, i.e. the person requesting to pay for a sexual act, should be sentenced to a minimum of fifty-day fines (Ekberg, 2020); following

³ <https://www.emma.de/artikel/prostitution-menschenhandel-sind-untrennbar-317541> (accessed 19/01/2021)

⁴ <https://www.camera.it/parlam/leggi/98269l.htm> (accessed 22/01/2021)

Swedish feminists complaints about the penalty not being proportioned to the seriousness and the harm of the offence towards the victim, the Appeal Court supported the decision of the Supreme Court concluding that the penal value of the act was to be evaluated as a crime against public order rather than against the person (Ekberg, 2020). Still, in 2008 the Court of Appeal stated that sex purchase in the context of organised prostitution is to be considered aggravated, and as a consequence increased the appropriate penal value (Ekberg, 2020). Nonetheless, the Court is yet to sentence to detention a prostitution user under any of the mentioned circumstances (Mendes Bota, 2014). However, between 1999 and 2008 the Court sentenced to conditional detention in addition to day fines five cases due to aggravated circumstances such as the purchase of sex in contexts of organised prostitution and the awareness of the buyer concerning the coerced condition of the victim (Ministry of Justice in Finland, 2013). In the case of sex tourism infractions, although until 2013 between 4,000 and 5,000 cases had been reported each year, only one offender was prosecuted (Charpenel, 2019).

Regardless of the lack of implementation of serious criminal sanctions, it is arguable that public opinion has largely embraced the underlying principle of the unacceptability of prostitution, while the risk of being fined has created a deterrent to asking for sex services (Mendes Bota, 2014). A survey taken in 2001 in Sweden showed that 80% of the Swedish population supported the law (Engström, 2001), and a report by a government commission in 2009 indicated that the percentage of citizens in favour of the criminalisation of buyers shifted to 70% from the 30% of ten years earlier (Charpenel, 2019).

The measures have proven effective as far as street prostitution is concerned: according to the SOU governmental report (Skarhed, 2010) it has halved since the implementation of the Act, and it can be considered as its direct result; this latter assumption is supported by the similar effect witnessed in Norway, the second country implementing a general criminalisation of the purchase of sex in 2009 (Skarhed, 2010). Street prostitution has been the main target of Swedish police, while sex purchase via other forms of prostitution has not been explicitly prioritised (Skarhed, 2010). Also, several surveys showed that the trend of buying sex has lowered remarkably, with 5,6% fewer men in 2008 affirming to have sought sexual services compared to 1996, while according to a 2008 study more men argued that the ban has affected their actions, convincing them to give up or cut back on purchasing sex (Skarhed, 2010). However, another report issued by the Stockholm County Administrative Board warned about an increase in hidden prostitution, namely massage parlours, although unable to measure its significance (Charpenel, 2019).

2.2 Legal framework and legacy

The 1999 law and its subsequent reforms are rooted in the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* of 1949, whose preamble states that prostitution and trafficking for sexual exploitation are “incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community” (UN General Assembly, 1949). Also, the *United Nations Convention for the Elimination of All Forms of Discrimination Against Women* (CEDAW) establishes that states should take all measures to suppress the traffic and sexual exploitation of women, as directly influencing the fight against women’s discrimination (Art. 2 and 6, CEDAW, 1979).

The Swedish regime on prostitution has later inspired numerous international agreements, firstly the 2000 *Protocol on Trafficking and Sexual Exploitation*, known as Palermo protocol,

which tackles the issue under the gendered (and age) lens (UN General Assembly resolution 55/25, 2000), as well as Art. 79 of the *Treaty on The Functioning of the European Union* (TFUE), which declares that member states shall adopt measures to combat trafficking in persons, especially women and children.

It is curious to highlight how these steps shifted from a precedent position of disregard of the issue of human trafficking, which has instead become later a relevant international field of cooperation; as a matter of fact, the vast majority of countries in the world have implemented anti-trafficking legislation only in the past decades (Swanson, 2016). Indeed, most of the political debate over prostitution at a transnational level has been tied mostly to trafficking and exploitation, therefore drifting public opinion and political action away from considering prostitution as a detached field (Ward, Wylie, 2017). At the European level, the neo-abolitionist-inspired 2014 Honeyball report (Honeyball, 2014) had great resonance and was successfully adopted by the European Parliament with the *Resolution on Sexual Exploitation and Prostitution and its Impact on Gender Equality* (Res. 2013/2103) of 26 February 2014, whose Art. 1 reads:

[...] prostitution, forced prostitution and sexual exploitation are highly gendered issues and violations of human dignity, contrary to human rights principles, among which gender equality, and therefore contrary to the principles of the Charter of Fundamental Rights of the European Union, including the goal and the principle of gender equality (Schulze *et al.*, 2014).

This internationally popular conception of prostitution virtually equates “slavery” and “trafficking” to selling sex in terms of danger and dignity (Jahnsen, Wagenaar, 2019). Furthermore, Art. 3 of Resolution 2013/2103 further underlines the links between prostitution and trafficking, identifying a clear relation between the existence of prostitution itself and the trafficking of vulnerable women and underage females (Schulze *et al.*, 2014). The following articles also highlight the evident relation between selling sex and health issues, both mental and physical, and the persistence of gendered stereotypes such as women’s bodies being objects for men’s pleasure (Schulze *et al.*, 2014). The inclination towards neo-abolitionism is made explicit for the first time in the European institutions through Art. 26 of Resolution 2013/2103, which recommends the Nordic model as a way to effectively combat trafficking, while Art. 34 states a clear opposition to models of complete decriminalisation (Schulze *et al.*, 2014). Since then, the Nordic model has been promoted as the most suitable legal regime to tackle the issue of trafficking and women’s discrimination and has been embraced in Europe by Northern Ireland (2015), France (2016), Ireland (2017), and by Canada (2014) and Israel (2018) out of Europe. Even some politicians in The Netherlands have considered a radical change of prostitution policies towards criminalisation (Charpenel, 2019), and recently some independent movements have organised a participated petition to ask for a total ban⁵. At a national and international political level, this approach has curiously gathered together representatives of radical feminism, Christian politicians and Social-Democrats joined by similar moral motivations (Jahnsen, Wagenaar, 2019).

⁵ <https://www.mirror.co.uk/news/world-news/netherlands-consider-total-ban-prostitution-14274275> (accessed 19/01/2021)

3. Assessing the impact of the criminalisation of sex purchase

3.1 Trafficking and immigration

As Swanson noticed, the effects of criminalising sex purchase on trafficking are yet to be assessed extensively, as it is a rather recent legislative field and the retrieval of data is complex to access (Swanson, 2016). For this reason, the main focus of the paragraph will be on Sweden and Norway, as these two countries have paved the way for the criminalisation experience and more data have been retrieved.

According to the 2010 SOU report (Skarhed, 2010), the 1999 Swedish Act has had an impact in keeping the number of victims of sexual exploitation stable since it entered into force, while a new study revealed a steady decline in the years preceding 2019 (Ekberg, 2020). The former report also responds to the concerns about the current law inhibiting exploited prostitutes from contacting local authorities to seek help, providing evidence that, on the contrary, the Prostitution Unit in Stockholm and the Prostitution Knowledge Center in Malmö have registered an increase of requests for medical services and for assistance to exit prostitution (Skarhed, 2010).

However, it has been observed that reliable and exhaustive statistics on trafficking for sexual exploitation are yet to be collected in any country (Jahnsen, Wagenaar, 2019). Contrasting studies have been published on the same subject. An examination published in 2019 by the Fuckförbundet collective reports that access to social services has become noticeably difficult for prostitutes in Sweden, and especially for the most vulnerable subjects, i.e. migrants (Fuckförbundet, 2019). In Sweden, around 80% of prostitutes are non-Swedish, and they often find themselves in extremely precarious conditions due to their illegal presence in the country (Charpenel, 2019). The most vulnerable individuals at risk of being trafficked are indeed migrants and asylum seekers, especially women, but also children and unaccompanied minors (Charpenel, 2019). According to the statistics, in 2017 30% more asylum seekers in Swedish territory were in danger of being trafficked compared to 2016 (Charpenel, 2019), reflecting the UNODC global trends. The Swedish National Board also raised concerns about the increasing relevance of pimps and third parties both in Sweden and Norway especially concerning foreign prostitutes, as the law has striven for hindering direct contact with their clients (Eriksson, 2007).

As migration, trafficking and prostitution have proved to be closely intertwined, the lines of the actual implementation of laws in all of these fields are often blurred. Activists and prostitutes interviewed have revealed details of how the anti-trafficking legislation has been used to enforce deportation of migrants lacking regular documentation, often offering aid at the only condition of collaborating with the authorities (Fuckförbundet, 2019).

Practices such as ethnic profiling, as well as the possession of condoms, have been also used to identify female prostitutes both in Sweden and in Norway (Fuckförbundet, 2019; Amnesty International, 2016), thus developing a biased and racialised culture, especially among police officers. This can often result in a condition of fear of the prostitute for the possible harassment and abuse perpetrated by police officers tracking and interrogating them (Fuckförbundet, 2019). Moreover, the access to social services and healthcare might also be limited due to the lack of anonymity and discretion, as these structures may cooperate with the police (Fuckförbundet, 2019). Therefore, these studies not only argue

that criminalising policies have also manifested into an erosion of authorities/prostitutes relations (especially for trafficked persons), but also that the local police have often undertaken unlawful and alarming practices. Particularly, ethnic profiling, although difficult to prove, is a violation of the principle of non-discrimination, included in the *Universal Declaration of Human Rights, Art.2* (Assembly U.G., 1948). Several other practices have been consistently reported in Norway, such as eviction following police identification (Amnesty International, 2016); these actions can make victims further vulnerable to exploitation due to the mixed conditions of migrants and homeless (Amnesty International, 2016). Not only are prostitutes made more exposed to exploitation, indigence and abuse by means of forced evictions, but there have been cases of refusals to take action where serious abuses against prostitutes have occurred (Fuckförbundet, 2019), or worst, happenstances where police have dealt with the abuses to deport the victims (Amnesty International, 2016). A disturbing example of the latter case has been revealed by a series of interviews published by Amnesty International in 2016. In early 2014, nine Nigerian prostitutes reported to the police to have been brutally raped and beaten by an armed man in a flat in Oslo; after four days, the landlord evicted them, giving them only a few hours to leave the flat. The victims of the abuse allegedly were not granted any appropriate protection, on the contrary, their removal from the country under immigration rules was prioritised, and the victims had to eventually leave the country without concluding their medical treatments even in the case of a severe head injury (Amnesty International, 2016). Also, border police in Sweden have been accused of the deportation of possible victims of trafficking, without ensuring that appropriate information or legal support had been provided, and instead detaining them for days before expulsion (Fuckförbundet, 2019). Unfortunately, as also GRETA reported, appropriate identification and treatment of victims of trafficking are negatively affected by the amalgamation of prostitution and trafficking in practice, which can easily lead to inappropriate policies (GRETA, 2014).

Another issue that has been more often reported in Sweden in the last years is male prostitution (unaccompanied male minors particularly), often for survival reasons and to obtain lodging, as also revealed by the Swedish Red Cross and other NGOs in 2018⁶: the most vulnerable to become victims are those minors who have not obtained asylum or a permit to remain on the territory, and as such, they have no access to public aid.

3.2 International outcry against criminalisation

The autonomy of both border and local police in the implementation of the prostitution ban seems to have caused a deep conflation of prostitution with trafficking policies and immigration laws, which could be considered one of the main issues raised by sex purchase criminalisation's laws. The practices mentioned have been widely criticised by international institutions within the UN, NGOs such as Amnesty International and Human Rights Watch (HRW) and sex workers collectives such as the Global Network of Sex Work Projects (NSWP) and International Committee on the Right of Sex Workers in Europe (ICRSE).

In the *Note on Sex Work, Sexual Exploitation and Trafficking* UN Women state that failing to distinguish sex work from sexual slavery is a violation of "the right to health and self-determination and can impede efforts to prevent and prosecute trafficking" (UN Women, 2013). In the note, the differentiation in treatment by police and society is condemned as "sex workers are right holders like all other women and men and should be recognized as

⁶ <https://www.svt.se/nyheter/lokalt/vast/ensamkommande-saljer-sex-pa-gatan> and <https://www.svt.se/nyheter/lokalt/skane/saljer-sex-i-utbyte-mot-boende> (accessed 21/01/2021)

such”, as long as they can choose freely whether to remain or quit the profession (UN Women, 2013). Also, in a note by UNAIDS⁷ retrieved on the NSWSP’s website, it is observed that groups of experts have demonstrated that there is no evidence of a cause-effect relation between sex work and trafficking. Moreover, the UN Special Rapporteur on the human rights of migrants in 2018 confirms that “laws and policies to combat trafficking in persons are often used to identify, detain and deport undocumented migrants without providing them with either assistance or compensation.” (González Morales, 2018). Indeed, the fusion of migration and prostitution into the public debate, and consequently within the legislation, has resulted in a rise of control and surveillance to fight traffickers and “save” the victims, causing local authorities to act in ways that often deviate or sometimes subvert national law’s formulations, eventually providing unexpected consequences (Jahnsen, Wagenaar, 2019). In fact, in countries where prostitution’s criminalisation is implemented, police often operate as its de facto regulator (Jahnsen, Wagenaar, 2019).

It has also been stressed by NSWSP that the Swedish campaigns of “report any suspicious behaviour” to raise awareness of sex trafficking among the population have spread incorrect and oversimplified notions on how to identify the victims, contributing to significantly perpetuate traditional stereotypes and stigma against prostitutes (ICRSE, 2019). Again, the depiction of the victim evens out background and experiences of human trafficking, reinforcing stereotypes and spreading a distorted common awareness that justifies legal enforcement (Swanson, 2016). Aligning to the Fuckförbundet collective, NSWSP and UN Women, also Amnesty International⁸ and Human Rights Watch⁹ have stated very clearly their recommendation to implement full decriminalisation of all activities connected to prostitution and respect of sex workers’ human rights, after assessing the negative effects of the Nordic model.

Apart from the concerns over police abuse towards immigrant prostitutes, there is also an increasing preoccupation over the stigmatisation and the discrimination of prostitutes where the Nordic model has been implemented, which may cause serious dysfunctions as far as access to healthcare and legal services is concerned, as a fair and impartial treatment is hardly guaranteed. In the 2010 UN *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, it is explicitly argued that:

The criminalization of sex work infringes on the enjoyment of the right to health, by creating barriers to access by sex workers to health services and legal remedies. When sex workers are not recognized as engaging in legitimate work, they are not recognized by standard labour laws in many countries [...]

Moreover, the criminalization of practices related to sex work can create barriers to the realization of safe working conditions. [...]

Sex workers should have the right to legal protection, with regard to various hazards such as violence, general occupational risks and labour exploitation. [...]
(Art. 43, 44, 45; Grover, 2010)

⁷ https://www.nswsp.org/sites/nswsp.org/files/sexwork_brief-21feb2014.pdf (accessed 25/01/2021)

⁸ <https://www.amnesty.org.uk/policy-protect-human-rights-sex-workers-qa> and <https://www.amnesty.org/en/latest/news/2016/05/amnesty-international-publishes-policy-and-research-on-protection-of-sex-workers-rights/> (accessed 25/01/2021)

⁹ <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized> (accessed 25/01/2021)

According to Amnesty International, the criminalisation of sex purchase has led to an aggravated vulnerability and exposure to abuse, violence and diseases such as HIV¹⁰. A well-known case of non-equal treatment which ended tragically is that of Swedish prostitute Eva Marree Kullander Smith, known as Petite Jasmine, murdered by her ex-partner in 2013¹¹. After being reported to the authority for her sexual services, the authorities declared her unfit to parenthood and she lost custody of her children, who were accorded to her ex-partner, although Eva repeatedly informed the police of his abusive behaviours. After two years of unheard notification of the threats she received from the former partner she regained contact with her children for the first time but was eventually stabbed to death by the ex-partner, who was present on the occasion of a session with the social services¹². The event had worldwide resonance and protests were staged by the English Collective of Prostitutes, the International Committee for the Rights of Sex Workers, the Global Network of Sex Work Projects (NSWP), the Sex Worker Outreach Project (SWOP) and other organisation asking for an end of criminalisation, accounting the Swedish legal system responsible for Eva's death¹³.

Nevertheless, the Nordic Model is still considered by several European countries and European Union institutions a valuable legal asset to fight back sexual exploitation and a necessary step to gender equality, although there is poor evidence of beneficial effects for women involved in prostitution and women in general, and more broadly, there is a lack of comprehensive and independent studies on the criminalisation of sex purchase's effects (Jahnsen, Wagenaar, 2019), apart from the decrease in the amount of visible street prostitution. From a rather critical perspective, it might be argued that the main success of the ban on buying sex has been the Swedish and Norwegian governments educating the world about the moral virtue of abolitionism (Jahnsen, Wagenaar, 2019).

3.3 A comparison with regulatory policies: The Netherlands

In calling for legalisation and regulation of sex work, collectives and international institutions rely on numerous beneficial consequences for prostitutes, such as effective protection from sexual exploitation, resulting in sex workers' empowerment, and guaranteed access to healthcare and welfare¹⁴. Being recognised as professionals and having the opportunity of being hired legally in appropriate night clubs is also another way of fighting street prostitution and the consequent major exposure to the risk of abuses (Fuckförbundet, 2019). Also, the clients can be protected by infectious diseases as health checks would be carried out and appropriate contraceptives may be provided by clubs' owners. The institutionalised sexual activity can also enable the State to ensure that no minor is involved in the sex trade. The overall rationale is the reduction of harm and respect of human rights concerning sex

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<https://www.amnesty.org/en/latest/news/2016/05/amnesty-international-publishes-policy-and-research-on-protection-of-sex-workers-rights/> (accessed 25/01/2021)

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<https://www.feministcurrent.com/2015/11/03/remembering-the-murdered-women-erased-by-the-pro-se-x-work-agenda/> (accessed 25/01/2021)

¹² <https://www.nswp.org/news/nswp-statement-response-the-murder-jasmine> (accessed 25/01/2021)

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<https://www.feministcurrent.com/2015/11/03/remembering-the-murdered-women-erased-by-the-pro-se-x-work-agenda/> (accessed 25/01/2021)

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https://www.nswp.org/sites/nswp.org/files/cg_-_impact_of_criminalisation_hiv_and_violence_nswp_-_2017.pdf (accessed 25/01/2021)

workers, including the right to self-determination¹⁵. The regulatory policies in The Netherlands will be briefly reviewed to assess their response to these needs. As far as trafficking is concerned, it is interesting to point out that The Netherlands have been ahead in condemning the practice by implementing early legislation through the *Public Morality Act* in 1911, which also prohibited brothels and the exploitation of prostitutes, almost a century before the Palermo protocol (Swanson, 2016). However, its effectiveness was questionable as brothels continued to exist until the ban over brothels and pimping were lifted with the *Repeal Bill* in 2000 when the government officially recognised prostitution as part of the country's everyday life, and as such impossible to eradicate (Swanson, 2016). The repeal of the ban came into force after controversial debates in the parliament and was accompanied by strict conditions to enforce institutional control over the employment of sex workers, increase their protection, end coercion and sexual exploitation of minors and cut the links between prostitution and crime (Ward, Wylie, 2017). An immediate effect of the reform was that two-thirds of sex workers, in the absence of residence or permit to be in the territory, were pushed out of the previous irregular but tolerated brothels, becoming more marginalised and exposed to the illegal sexual market and exploitation (Ward, Wylie, 2017). Twenty years later, it seems that the Dutch liberal model is facing a major crisis, due to the pressure of neo-abolitionist campaigns and the reports of abuses and human trafficking's figures rising. Indeed, consistent institutional control over the selling of sex proved to be feeble as prostitution status changes according to the municipality, which can be legal but requiring the registration of sex workers, legal without any permit or illegal (Charpenel, 2019). With 24% of Dutch towns not having a policy, the field has opened to clandestine prostitution, thus making any form of control or research problematic (Charpenel, 2019). Also, the number of licenced establishments in the country has overall decreased, with one out of four closing in the Amsterdam municipality between 2017 and 2018 since several were found to be managed by trafficking networks (Charpenel, 2019). Furthermore, in 2017 a police operation found that 60% of sex workers worked irregularly in The Hague and Rotterdam, as they were exploited, occupied the premises illegally etc. (Charpenel, 2019). Overall, the way that the regulation was implemented proved not to be an effective remedy to trafficking, in fact enabling sexual exploitation to grow, even behind the release of licences (Ward, Wylie, 2017).

Another major issue of the Bill is that, although in the political discourse sex workers are addressed as holders of rights and responsibilities as any other workers (Swanson, 2016), appropriate labour rights were not central to the law's frame and were never further implemented, thus not constituting relevant control over the relations between sex workers and employers: indeed, sex workers are legally considered 'independent professionals', and as such cannot benefit from employees' protection - although not even enjoying the labour rights of independent entrepreneurs (Ward, Wylie, 2017). Sex workers have consequently found themselves in a disadvantaged bargaining position rather than empowered. Big businesses and brothel-owners have profited from the legal framework as they generally have better financial chances to access clubs' licences and lawyers to affirm their interests at the expense of sex workers (Ward, Wylie, 2017). As a consequence, sex workers' abuses emerge with difficulties even in licenced contexts: in a survey conducted in legal Dutch sex establishments in 2015, 93% of sex workers interviewed admitted to having faced emotional

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<https://www.amnesty.org/en/policy-on-state-obligations-to-respect-protect-and-fulfil-the-human-rights-of-sex-workers/> (accessed 25/01/2021)

violence, such as harassment or humiliation, over 75% reported sexual violence, 60% experienced physical violence and 50% confirmed being subjected to economic violence such as theft and extortion (Charpenel, 2019).

After governmental pressures from Christian and neo-abolitionist movements, in 2009 the *Law Regulating Prostitution and Preventing Abuses in the Sex industry* was introduced, which determined a clear shift of the regulatory trend towards the criminalisation of prostitution. Among others, measures such as compulsory registration on a central database, possession of an ID, the increase of the legal minimum age from 18 to 21 to register and the criminalisation of clients of unregistered sex workers were introduced (Ward, Wylie, 2017). However, although rather invisible and difficult to assess, the issue of the trafficking of women, but also female minors and young males seems to be currently increasing, although national authorities are identifying fewer victims each year, possibly due to a shift in political priorities (Charpenel, 2019).

Overall, although acceptance and regulation of prostitution do not seem necessarily the cause of malevolent practices against sex workers, there is little doubt that it is not by itself a guarantee to erase violence and exploitation. In fact, according to a study on prostitution's legislation carried out in Sweden, the Netherlands and Great Britain, it is evident that in countries where the same anxiety posed by the presence of the "prostituted body" was approached in consistently different manners, the same issues remained, and instead of having solved effectively the problem of gender justice one way or another, new spaces for marginality and exclusion were created (Hubbard *et al.*, 2008). Still, it is relevant to stress that the main obstacle to an effective assessment of the models and an exhaustive comparative study is the deficit of data collected, the mobility (and often invisibility) of the individuals and organisations operating in the market, and the ideological disagreement and differences over the definitions of specific categories, such as "victims", "trafficked" or "sex workers" (Jahnsen, Wagenaar, 2019).

4. New challenges

4.1 Covid-19 and job insecurity

The 2020 Covid-19 pandemic has posed a major challenge to sex workers worldwide while proving the inefficacy of all European models in protecting individuals involved in prostitution. Working under a regulated, criminalised, or decriminalised but not organised system, prostitutes have been greatly neglected by institutional aid and support. Although during the confinement there has been an increase in virtual activity led by sex workers, shifting to the internet has not proved to be a sufficient and affordable replacement for most, as it obviously requires proper filming equipment, a broadband internet connection and a private space¹⁶.

Due to the lockdown in March 2020, many brothels in Germany had to temporarily close for months and a number of them eventually shut down, but only a fraction of the sex workers previously active had access to social aid, namely the ones who could demonstrate to be residents¹⁷. However, two-thirds of sex workers in Germany come from Romania, Bulgaria, Ukraine and Nigeria and possess only temporary permits (Charpenel, 2019), therefore many

¹⁶ for more information on this subject:

<https://saw.americananthro.org/pub/sex-work-during-the-covid-19-pandemic/release/1> (accessed 27/01/2021)

¹⁷ <https://www.youtube.com/watch?v=NGsYSSgx3P0> (accessed 25/01/2021)

of them became extremely exposed to poverty and homelessness while relying on charities for accessing basic needs and often continuing selling sex despite the ban and the high risk of being infected¹⁸. Also, not having full access to contraceptives due to the lack of economic resources, the exposure to sexually transmitted diseases has risen as well¹⁹. Clearly, testing and contact tracing, which are key to understanding trends and diffusion of the virus appear to be unfeasible under these circumstances, not to mention social distancing (Platt, 2020). Indeed, it has been demonstrated that work deprivation, reduced access to healthcare and further isolation are very likely to produce more inequalities, poorer health conditions, especially where individuals are broadly excluded from social protection already (Adam, 2020). It has been reported that only 13% of those who applied for public aid in The Netherlands obtained access to it, while 1 out of 3 of those who did not apply declared they would not have been eligible and 1 out of 6 of them stated that they were concerned about being identified as sex workers by the government²⁰. Indeed, at a global level the most marginalised, namely women, migrants, transgenders and the homeless mostly failed to access institutional aid (Platt et al., 2020). Particularly alarming is the fact that even during the pandemic police raids and actions to identify, evict and deport migrant prostitutes have not ceased (Lam, 2020; ICRSE, 2020). In European Nordic countries where the purchase of sex is criminalised, the impact on sex workers has been rather harsh. In Norway, several deportation decisions were enforced in the last months of 2020, targeting migrant sex workers who broke the confinement rules, as a response to the fear of the uncontrolled spreading of the virus and the difficulty of tracking it down²¹. Also, as prostitutes could not have access to labourers' national aid there, many reported being particularly subjected to poverty, as reported in a survey conducted by NSWP²². Similar precarious conditions have also been recorded in countries where neither selling sex nor buying it is illegal (although both soliciting and organising are prosecuted), such as Italy and the United Kingdom (ICRSE, 2020). In April 2020 ICRSE, NSWP and UNAIDS have promoted urgent calls to actions, monitoring through surveys and reports, press statements²³ and a letter to the European Commission²⁴. ICRSE has also organised video conferences to inform and share sex workers' experiences in times of Covid while demanding their human rights to be respected beyond preconceptions and ideologies²⁵.

The Council of Europe's report *Upholding human rights in times of crisis and pandemics: gender, equality and non-discrimination*, recalling The Committee of the Parties to the Istanbul Convention's warnings over the heightened dangers of gender-based violence in times of confinement, underlines that women in disadvantaged groups, as women involved

¹⁸ https://www.youtube.com/watch?v=tVa0Q-38Ke8&feature=emb_title and <https://www.youtube.com/watch?v=NGsYSSgx3P0> (accessed 25/01/2021)

¹⁹ <https://www.youtube.com/watch?v=NGsYSSgx3P0> (accessed 25/01/2021)

²⁰ <https://www.politico.eu/article/sex-workers-coronavirus-dilemma/> (accessed 25/01/2021)

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<https://sputniknews.com/europe/202012221081535214-potential-infection-bombs-norwegian-police-fear-wave-of-covid-spreading-prostitutes/> (accessed 27/01/2021)

²² <https://www.nswp.org/es/news/impact-covid-19-sex-workers-europe> (accessed 27/01/2021)

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<https://www.sexworkeurope.org/news/news-region/press-release-over-100-ngos-endorse-statement-calling-emergency-support-sex-workers> and

<https://www.sexworkeurope.org/covid-19/covid-19-sex-workers-need-immediate-financial-support-and-protection> (accessed 28/01/2021)

²⁴ http://redlightcovid-europe.org/wp-content/uploads/2020/04/Letter_ICRSE_COVID-19-2.pdf (accessed 28/01/2021)

²⁵ https://www.youtube.com/channel/UCEJQn5D57Y_e-hXjQK-jYaw/videos (accessed 28/01/2021)

in prostitution and migrants need particular support during the current pandemic (Stienen, 2020). Not only, but The Committee also remarks that according to the Istanbul Convention states parties to the Convention have an obligation

“to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered therein, in accordance with their obligations under the European Convention on Human Rights”,

which should always apply, and calls for a reinforcement of gender-sensitive policies and actions to prevent gender-based violence, protect women from it and prosecute the perpetrators (Committee of the Parties to the Istanbul Convention, 2020).

In some cases, NGO and sex workers collectives' assistance were key to reach sex workers for help. For instance, in Norway prostitutes were provided with travel fares to return to their country of origin, although in most cases they had to remain in the country they worked in and had, therefore, to rely on community-led assistance (ICRSE, 2020). In The Netherlands PROUD, the Dutch sex workers' union, provided small emergency funds for sex workers in dire conditions, which could cover basic needs although not a full rent²⁶.

Currently, sex workers' conditions are still extremely precarious, as after the lift of the temporary ban in July for The Netherlands²⁷ and in September for some Land in Germany²⁸, in December (2020) the clubs had to close again due to new restrictions²⁹.

5. Conclusions: the need for new perspectives

Assessing and comparing the effectiveness of different legal frameworks administering prostitution and dealing with trafficking proved not to be a straightforward task. Indeed, what is still missing and would greatly support the research in the field is a consistent and comprehensive retrieval of data, which takes into account the growing mobility of the individuals and the hidden sphere of indoor/underground activity. Also, a universal methodology and categorisation related to the working conditions of prostitutes would be beneficial for comparing data coming from countries with different legal models, although governmental reports and authorities make often use of ideologically defined terminology such as “victim” and “trafficked” person (Jahnsen, Wagenaar, 2019). The claims of radical feminists over the superior worth of the Nordic model to improve gender equality and combat sexual slavery will surely need further local and international analysis, but it has shown several limits as far as its implementation and effects are concerned. It is not only defiant of the fundamental human right to self-determination, but it seems to have heightened prostitutes' vulnerability and exposure to hidden abuses by means of their further exclusion from the social arena, as reported by UN Women, Amnesty International and ICRSE. Also, according to a number of studies, the conflation with immigration laws and police practices such as deportation and detention of potential victims of trafficking seem to have widened

²⁶ <https://www.dw.com/en/coronavirus-a-devils-bargain-for-dutch-sex-workers/a-53744562> (accessed 25/01/2021)

²⁷ <https://www.reuters.com/article/uk-health-coronavirus-netherlands-redlig-idUKKBN24265L> (accessed 25/01/2021)

²⁸ <https://www.politico.eu/article/several-german-states-lift-coronavirus-ban-on-prostitution/> (accessed 25/01/2021)

²⁹ <https://business.gov.nl/corona/situations/sex-worker-during-the-corona-crisis/> (accessed 25/01/2021)

the relational gap between prostitutes and local authorities. Overall, although the criminalisation of the Nordic model is aimed at penalising only sex buyers and exploiters, there is evidence that it has had indirect punitive consequences on prostitutes too (exploited and not).

On the other hand, countries such as The Netherlands or Germany where sex work is legal and regulated face similar issues. Particularly, due to the extremely limited agency and independence of Dutch and German sex workers, in sharp contrast with the power of club-owners, it is rather problematic to speak of sexual liberation, self-determination and gender equality. The most precarious are once more immigrant women, who have also paid the highest price during the Sars-Cov2 outbreak as clubs closed and access to national aid was limited to proofs of residency. Consequently, they have been the most exposed to abuse and disease, as many continued to sell sex on the road to cope with extreme conditions of indigence. Also, criminality seems to have often leaked into the system of licencing to take advantage of immigrant minors and women. In any case, the regulatory framework should not be considered a barrier against trafficking and abuse, as it can be easily circumvented. Instead, gender equality, immigration and prostitution laws should acknowledge each other's proximity without ever fully conflating, so as to always maintain their social, legal and enforceable specificities.

As far as feminist theory is concerned, framing prostitution within a gendered discourse unveils its shortcomings, especially as pertinent legislation comes to life: not allowing a debate neither with the feminist counterpart, due to ideological oppositions, nor with sex workers, as the credibility of their representatives is questioned, only an extremely narrow understanding of sex work is possible from the neo-abolitionist perspective. Radical feminists tend not to accept that prostitution is an extremely diversified field and according to different cultural and historical reading, it can provide significances that are other than engendered or linked to exploitation. Feminist academic production could benefit the whole debate by means of providing meaningful and critical insights on the strengths as well as the drawbacks of both theories while framing their research within broad cultural and historical backgrounds, evading the trap of self-serving ideological argumentation.

As for trafficking for sexual exploitation, it would need in any case to be tackled independently from the topic of prostitution, as all national and international laws agree on the fact that the practice is seriously harmful towards human dignity. As discussed above, immigration and anti-trafficking laws have been previously used inappropriately with prostitutes by Norwegian and Swedish local authorities, causing serious damage to the individuals in question. Surely, the effects of different national models of controlling prostitution should be thoroughly studied, but it should be recognised that they consist of separate social fields which need different legal implementation.

To conclude, it is recommended to pursue more impartial field and comparative studies on the countries at issue, including the production of reliable and exhaustive reports and surveys and assessments on the successes and shortcomings of the different legal models.

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