

DOES PROSTITUTION VALIDATE OR VIOLATE HUMAN RIGHTS? *

Abstract

Albeit, erroneously, sex work (or prostitution) is negatively feminized. Women are socially vilified as 'sellers' of illicit sex. Men are not vilified as 'the buyers'. Determining the legal status of sex work place two prominent groups in a critical debate, that is, whether female prostitution validates or violates human rights. The civil rights group, Amnesty International argues that prostitution is a lawful expression of the right to work and freedom from non-discrimination guaranteed in international human rights law, and must be liberalized and protected as such. On the contrary, the United Nations argues instead that prostitution is a form of exploitation which violates the right to dignity of women, among others; hence, it is rightly prohibited and criminalized in most jurisdictions. This paper is socio-legal, and non-religious. It explores the arguments on both sides with a view to reconciling them, using the doctrinal methodology. It finds the arguments strong and convincing, hence, reconciling them remains onerous. It concludes that unless the legal and social perception of prostitution is determined with certainty, the global quest for sustainable guarantee of equality and dignity rights of sex workers, especially women, will remain indefinite. The paper therefore recommends further research on the subject matter.

Keywords: Prostitution, Violation of dignity, Right to work, Critical debate, Women, International law.

1. Introduction

Prostitution is a synonym for commercial sex work or sex work. It entails trading in sexual services in exchange for cash or kind, that is, a form of social interface which is simultaneously sexual and economic.¹ In most jurisdictions, sex work is criminalized and sex workers, especially women, are stigmatized. Oftentimes, they suffer the risk of violence, indignity, discrimination and abuse. Sometimes, they are raped, harassed, short-changed, denied access to basic housing or public health services, or even murdered. Reports show that for female sex workers in Britain, selling sex means 'managing risks' of daily street hazards such as violence from male clients, harassment from community protesters, criminalization and over policing.² Unfortunately, violence against female sex workers are sometimes, albeit illogically, deemed 'appropriate' simply because linguistically, society considers them to be 'women of easy virtue'³ In some cases, highly visible violence against prostitutes goes unpunished because they 'are unlikely to seek justice, or to get it,'⁴ hence, the need to resolve human rights contradictions and 'global tensions' in the governance of sex work in international law.⁵ This quest necessitated a critical debate between two prominent human rights groups, namely, the United Nations and *Amnesty International*,⁶ each expressing contrasting views on same subject. The *Amnesty* group argues that sex work is a lawful enterprise vis-à-vis the right to work guaranteed in relevant international human rights instruments, including the protection of sex workers' rights and social privileges relating to human dignity, equality and equal protection of the law, non-discrimination on the basis of gender, sexual orientation, or choice of trade or profession. For this group, sex trade or prostitution is, at worst, a consensual and 'victimless crime'

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¹ O'Connell Davidson, J. (2007). Prostitution. *The Blackwell Encyclopedia of Sociology*.

² Sanders, T. (2004). 'The risks of street prostitution: Punters, police and protesters.' *Urban Studies*, 41(9), 1703-1717.

³ Kurguzenkova, Z. V. (2015). 'Linguistic and Cultural Analysis of Gender Marked Phraseological Units of Phraseosemantic Group Designating Women of Easy Virtue.' *Russian Language Studies*, (1), 60-66.

⁴ The Economist, 'Prostitution: A personal choice' 9 August, 2014. <https://www.economist.com/news/leaders/21611063-internet-making-buying-and-selling-sex-easier-and-safer-governments-should-stop> (6/3/2020).

⁵ Sanders, T., & Campbell, R. (2014). Criminalization, protection and rights: Global tensions in the governance of commercial sex. Available at: <http://eprints.whiterose.ac.uk/87961/3/EditorialSpecialIssueGoverningSexWorkFINAL23June.pdf> (3/6/2020).

⁶ See *Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers*. 26 May 2016, Index number: POL 30/4062/2016. Available at: <https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF> (23/5/2020).

which should be globally decriminalized, liberalized and regulated.⁷ On the contrary, the UN group insists that prostitution is unlawful and demeaning sexploitation,⁸ and that describing it as ‘work’, ‘trade’ is an attempt to diminish its social menace. They argue that being hazardous and exploitative, people who ‘indulge’ in it should endure every incidental abuse and violence, based on the legal maxim: *volenti non fit injuria* (if you consent you cannot complain).⁹ For them, prostitution is akin to slavery and violence against women, and should be criminalized and outlawed across jurisdictions.¹⁰ This group rejects the opposite view that sex work is ‘consensual’ and ‘victimless’, and argues instead that prostitution is ‘a blatant example of the sexual oppression of women’ who are the real victims coupled with inherent gender and socio-economic inequalities which rob poorer women of the right of choice and involuntarily drive them into the illicit trade.¹¹

This paper is socio-legal and non-religious inquiry into prostitution. It adopts a doctrinal methodology to explore critical conflicting views on sex work and the human rights of female sex workers. It highlights some logical arguments, particularly of *Amnesty International*, that prostitution/sex work is protected by the right to work in international law, and juxtaposes same with relevant research findings and the provisions of core UN human rights instruments on human dignity, prohibition of sexual exploitation, non-discrimination and violence against women. Remarkably, both groups present strong and convincing arguments thereby complicating the objective of the paper and leaving the subject open for further discourse, which must *include* the ‘customers’ or ‘buyers’ of sex who have, ordinarily, been excluded from contemporary debates on prostitution.¹²

2. The Concept of Prostitution

The term, ‘prostitution’ is used interchangeably with ‘sex work’ or ‘commercial sex work’ to describe the trading in sex or sexual services in exchange for material considerations, especially cash.¹³ Prostitution is commonly associated with women,¹⁴ hence a prostitute is defined as ‘someone, usually a woman, who has sex with people for money’.¹⁵ Practically, there is no distinction between prostitution and sex work, or between a sex worker and a prostitute. Rather, ‘commercial sex work’ and ‘sex worker’ are mild terms for ‘prostitution’ and ‘prostitute’.¹⁶ Banyard, however, argue that the use of ‘sex work’ in place of ‘prostitution’ is momentous and not just a matter of mere political correctness because of ‘the important effect of moving global understandings of sex work toward

⁷Richards, D. A. (1978). Commercial sex and the rights of the person: A moral argument for the decriminalization of prostitution. *U. Pa. L. Rev.*, 127, 1195.

⁸Alexandre defines ‘sexploitation’ as the perpetuation of myths and stereotypical notions regarding men and women in order to further an agenda of oppression and subordination in certain spheres of society. See Alexandre, M. (2014). *Sexploitation: Sexual Profiling and the Illusion of Gender*. Routledge.

Sexploitation covers diverse sexual violation and abuse, including the sexual utility or manipulation of persons (especially women and girls) irrespective of age, through sexual objectification, sex trafficking, pornography, sexual violence, prostitution, obscenity, commercial sex acts, internet-related sexual acts and strip clubs. See Thompson, L. L., & Hughes, D. M. (2017). Introduction to Dignity Special Issue: Freedom from Sexploitation. *Dignity: A Journal on Sexual Exploitation and Violence*, 2(3), 1; and Hawkins, D. (2017). The freedom from Sexploitation Agenda: Policy and Legislative Recommendations to Curb Sexual Exploitation. *Dignity: A Journal on Sexual Exploitation and Violence*, 2(3), 12.

The Oxford Dictionaries describe it as a blend of Sex and Exploitation, and defines it as ‘commercial exploitation of sex, sexual attractiveness, or sexually explicit material.’ Oxford Dictionaries, Definition of Sexploitation in English, <https://en.oxforddictionaries.com/definition/sexploitation>. (27/5/2020).

⁹Monto, M. A., & Hotaling, N. (2001). Predictors of rape myth acceptance among male clients of female street prostitutes. *Violence against women*, 7(3), 275-293; Russo, A. (1997). Lesbians, Prostitutes, and Murder. *Feminism, Media, and the Law*, 249.

¹⁰Barry, K. (1981). Female Sexual Slavery: Understanding the International Dimensions of Women's Oppression. *Hum. Rts. Q.*, 3, 44; Joffres, C., Mills, E., Joffres, M., Khanna, T., Walia, H., & Grund, D. (2008). Sexual slavery without borders: trafficking for commercial sexual exploitation in India. *International Journal for Equity in Health*, 7(1), 22.

¹¹Decriminalization, W. E. (1973). Prostitution: a non-victim crime?. *Issues in Criminology*, 8(2), 137-162.

¹²Monto, M. A. (2004). Female prostitution, customers, and violence. *Violence against women*, 10(2), 160-188.

¹³Baral, S. D., Friedman, M. R., Geibel, S., Rebe, K., Bozhinov, B., Diouf, D., ... & Cáceres, C. F. (2015). Male sex workers: practices, contexts, and vulnerabilities for HIV acquisition and transmission. *The Lancet*, 385(9964), 260-273.

¹⁴LoPiccolo, J. (1987). Women and Prostitution: A Social History. *Psyccritiques*, 32(11).

¹⁵Cambridge Dictionary of English Language, ‘Prostitute’. <https://dictionary.cambridge.org/dictionary/english/prostitute> (3/3/2020).

¹⁶Mossman, D. (1999). ‘Hired guns,’ ‘whores,’ and ‘prostitutes’: case law references to clinicians of ill repute. *Journal of the American Academy of Psychiatry and the Law*. Available at: <https://psycnet.apa.org/record/1999-11858-005> (8/6/2020); Aloy Ojilere (2020). Human Dignity and the Right to Work: Seeking Protection for Commercial Sex Workers. *African Journal of Law and Human Rights*, 4(1), 11-21.

a labour framework.¹⁷ It is, therefore, an alternative form of work which, arguably, offer some women a good enough standard of income for shorter working hours as well as some degree of autonomy and independence for those working for themselves.¹⁸ Although women's involvement in prostitution is taken for granted, this does not eliminate the active involvement of men in the global sex trade.¹⁹ Nonetheless, referring to sex workers as 'whore', 'harlot' or 'prostitute' (except for mere academic purposes) is uncharitable and ostensibly serves to demean one's dignity and public value. According to Lizzie Smith,

Referring to female sex workers as 'prostitutes' in the media is not new, but it is a sobering reminder of how pervasive negative understandings of sex work and sex workers are. These understandings originate from various 'expert' fields of knowledge including psychology, medicine, sexology, religious doctrine and various feminist perspectives, through which sex workers are positioned as dirty, diseased, sinful, deviant and victims.²⁰

3. The Concept of Human Dignity

Dignity means intrinsic value, that is, 'absolute, priceless, unconditional worth.'²¹ Human dignity therefore means 'human worth', and surely, no international human rights instrument place a higher premium on the human dignity of one over the other, whether or not they are female sex workers.²² Core international human rights instruments,²³ particularly the Universal Declaration of Human Rights (UDHR) guarantee the right to human dignity, equality and non-discrimination. By Articles 1 and 5 of the UDHR, '*All human beings are born free and equal in dignity and rights*' and '*no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*' Article 5 of the UN Convention on the elimination of all forms of discrimination against women (CEDAW) specifically defines dignity of women as the elimination of 'prejudices' and practices based on assumptions about the inferiority or superiority of either sex.²⁴ Remarkably, none of these instruments impliedly or expressly place the right to dignity of sex workers, especially women, at the mercy of other individuals, the media, or the general public. In *S v. Makwanyane*,²⁵ South Africa's Constitutional court described *dignity* as 'the foundation' of other human rights. Similarly, in the Indian case of *Khedat Majdoor Chetna Sanghat v. State of M.P.*,²⁶ the Supreme Court underlined the prominence of dignity to human life by posing an almost impossible poser to itself, thus: 'If dignity or honour vanishes what remains of life?'

4. The Concept of Right to Work

By this concept, people have a human right to engage in a work or productive employment of their own choosing, and may not be prevented from doing so. The right to work is guaranteed in international human rights instruments, especially the ILO Convention which allows a person and their family to earn a living.²⁷ Like other human rights (including the right to human dignity), the right to work is prescribed to be enjoyed without any discrimination, including race, creed, gender, sex or sexual orientation, or other status. The right to work has three basic components: (1) the liberty component, which considers the right to work as a liberty or as the freedom of

¹⁷Kat Banyard, *The Guardian*, (7 June 2016) 'The dangers of rebranding prostitution as 'sex work'
<https://www.theguardian.com/lifeandstyle/2016/jun/06/prostitution-sex-work-pimp-state-kat-banyard-decriminalisation>
(6/3/2020).

¹⁸ Bullough, V. L., & Bullough, B. (1987). *Women and prostitution: A social history* (p. 62). Buffalo, NY: Prometheus Books; O'Neill, M. (2003). Prostitute women now. In *Rethinking prostitution* (pp. 21-46). Routledge.

¹⁹ Phoenix, J. (2000). Prostitute identities. *British journal of criminology*, 40(1), 37-55.

²⁰ See Lizzie Smith, 'Dehumanising sex workers: what's 'prostitute' got to do with it?' *The Conversation*, July 29, 2013, <http://theconversation.com/dehumanising-sex-workers-whats-prostitute-got-to-do-with-it-16444> (5/3/2020).

²¹ See Parent, W. (2014). Book Review: *Dignity: Its History and Meaning*, written by Michael Rosen. *Journal of Moral Philosophy*, 11(3), 361-363, at 361, referring to the famous Kantian definition.

²² The Vienna Declaration of the UN World Conference on Human Rights, 1993 state that '*the human rights of women and of the girl-child are an inalienable, integral and indivisible part of human rights.*'

²³ They include relevant provisions of the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment 1984, the International Covenant on Economic, Social and Cultural Rights (ICECSR) 1966, the Convention on the Rights of the Child (CRC) 1989, the International Covenant on Civil and Political Rights (ICCPR) 1966, Slavery Convention of 1926 as amended and Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery.

²⁴ CEDAW Article 5.

²⁵ 1995 (3) SA 391 (CC).

²⁶ (1994) 6 SCC 260.

²⁷ See: Universal Declaration of Human Rights, 1948; Declaration on Social Progress and Development, 1969; International Covenant on Economic, Social and Cultural Rights, 1966; Convention on the Elimination of All Forms of Discrimination against Women, 1979; Declaration on the Right to Development, 1986; Declaration on the Rights of Disabled Persons, 1975; Constitution of the International Labour Organisation, 1919; ILO Convention, 1964; ILO Recommendation No. 169 concerning Employment Policy, 26 June 1984.

occupation without governmental interference. (2) The freedom to work and the guarantee against coerced work, namely, slavery. (3) The right to have work and the corresponding duty of the State or of employers to provide work to individuals.²⁸ The *right to work* is the first of the specific rights recognized in the International Covenant of Economic, Social and Cultural Rights which guarantees access to *work*, and just and favourable *working* conditions. Its Articles 6, 7 and 8 respectively guarantee the right to earn a living, the right to fair and favorable conditions and the right to form trade unions for all human beings. In this context, sex work is, logically, ‘work’, hence, some scholars including the civil rights group, *Amnesty International*, argue that criminalizing or prohibiting sex work is a gross violation of the right to work of sex workers. This reasoning of *Amnesty International*, however, contrasts with nearly every intent of UN human rights instruments. For instance, in the preamble to the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949, the States Parties recalled that prostitution is ‘incompatible with the dignity and worth of the human person’, and obligate themselves to combat pimping in all its forms and aid prostituted persons. Such contrasting arguments necessitate the debate on whether prostitution violates or validates human rights.

5. Arguments that Prostitution Validates Human Rights

There is a strong argument that prostitution is ‘a blatant example of the sexual oppression of women’²⁹ and that even if it is legalized, it still harms women emotionally, physically and socially.³⁰ However, the Civil Rights group, *Amnesty International*, as well as some scholars and activists, hold a contrary view, namely, that prostitution extends the right to work in the context of human rights, and that sex workers should neither be victimized nor sex work criminalized except when they involve teenagers and children or when the sex service is obtained by fraud.³¹ *Amnesty’s* arguments and policy on sex work, including its view on the proper status/treatment of sex workers as well as the desired obligation of states with respect to the guarantee of the right to work, and freedom from discrimination of sex workers, among others, are contained in the document, *Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers*.³² Therein, ‘sex work’ is used to describe situations where adults who engage in commercial sex have freely consented to do so, but which would constitute a human rights abuse and verily treated as a criminal offence where consent is absent or obtained by deception, threat or use of force, abuse of power, fraud, or involvement of a child.³³ Furthermore, that sex work which is derogatorily referred to as prostitution is nothing more than a consensual sexual relationship between adults who agree to specific financial term, and that it is usually populated by vulnerable women who face multiple discriminations and inequalities, and that such persons should not suffer the added pain of depriving them of the only form of work which they may choose to do for a living. According to the *Amnesty* document: ‘Multiple and intersecting forms of discrimination and structural inequalities have an impact on the lives of many sex workers and can play a role in a person’s decision to engage or remain in sex work, as well as their experiences while in sex work.’³⁴ Proponents of this group insist that the female sex trade is sometimes populated by an elitist class of workers, including professionals, housewives, civil servants, students and non-professionals, expressing freewill in their choice of work,³⁵ hence, it is unreasonable to treat sex work a crime because it is actually ‘victimless’.³⁶ Suffice to say, that sex workers rights are human rights.³⁷ They further argue, and rightly so, that it is unreasonable and unlawful to censure persons, or to judge and blame on the

²⁸ Mundlak, G. (2007). The right to work: Linking human rights and employment policy. *International Labour Review*, 146(3-4), 189-215.

²⁹ Decriminalization, W. E. (n. 15); Farley, M. (2005). Prostitution harms women even if indoors: Reply to Weitzer. *Violence against women*, 11(7), 950-964.

³⁰ Farley, M. (2004). ‘Bad for the body, bad for the heart’: Prostitution harms women even if legalized or decriminalized. *Violence against women*, 10(10), 1087-1125.

³¹ Schwarzenbach, S. (1990). Contractarians and feminists debate prostitution. *NYU Rev. L. & Soc. Change*, 18, 103.

³² Dated 26 May, 2016, Index number: POL 30/4062/2016. Available at: <https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF> (23/5/2020).

³³ See *Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers*. (n. 10), p.4.

³⁴ *Ibid*, p.2.

³⁵ Longo, J. D. D., Simaléko, M. M., Ngbale, R., Grésengué, G., Brücker, G., & Bélec, L. (2017). Spectrum of female commercial sex work in Bangui, Central African Republic. *SAHARA-J: Journal of Social Aspects of HIV/AIDS*, 14(1), 171-184

³⁶ Richards, D. A. (n. 11).

³⁷ Mgbako, C. (2020). The Mainstreaming of Sex Workers' Rights as Human Rights. *Harvard Journal of Law and Gender*, 43.

imaginary supposition of having transgressed social or sexual norms and/or gender stereotypes for the singular reason of engaging in sex work.³⁸ For *Amnesty international*:

The stigmatized and criminalized nature of sex work routinely forces sex workers to operate at the margins of society in clandestine and dangerous environments with little recourse to safety or state protection. As a result, sex workers face an increased risk of violence and abuse, and such crimes against them often go unreported, under-investigated and/or unpunished, offering perpetrators impunity.³⁹

In all, it advocates the decriminalization of all aspects of adult consensual sex work because of the foreseeable threat which criminalization poses to the realization of the human rights of sex workers. The *Amnesty International* policy measures which enjoin states to promote and institutionalize prostitution (sex work) as a lawful expression of the right to work and non-discrimination guaranteed in international law are summarized thus:

1. Addressing underlying harmful stereotypes including gender and structural inequalities, social stigmatization and discrimination which promote the exclusion and marginalization of sex workers, especially women, who then become vulnerable and oftentimes compelled to sell sex in disproportionate numbers.
2. Combating gender inequality and all forms of covert or overt discrimination, and to facilitate, respect, protect and fulfil the human rights of all persons, including women and girls, and all those likely to suffer violence, abuse or discrimination as a result of their gender identity and expression, sexual orientation, ethnicity, caste, race, migrant status, Creed, Indigenous identity etc.⁴⁰
3. Complying with inherent obligations to respect the social, cultural and economic rights of all peoples, and particularly guaranteeing equal and liberal access to education, social security and employment options in order to prevent any person from having to rely on selling sex as a means of survival due to discrimination or poverty.
4. Repealing existing laws which prohibit or criminalize prostitution, and to refrain from introducing new laws against the practice of consensual exchange of sexual services between adults for a fee or other agreed remuneration.
5. Refraining from the discriminatory enforcement against sex workers of allied laws, such as those on loitering, vagrancy and immigration requirements, where they apply.
6. Involving and ensuring the meaningful participation of sex workers in the development of law and formulation of policies that directly affect their lives, work status and safety. This will enable sex workers to enjoy equal access to justice, equal protection under the law, as well as equal health care and other public services, including effective law and policy framework for allowing people to freely quit sex at their own instance. This will also include refocusing laws away from the 'catch-all' instance whereby most or all aspects of sex work are criminalized, and directing them towards criminalizing the exploitation and trafficking in commercial sex (including of children), and also guaranteeing the development of laws and policies which protect the overall safety and health of sex workers.⁴¹

Interestingly, the *Amnesty* policy does not argue that there is a human right to buy sex or a human right to financially benefit from the sale of sex by another person. Instead, it argues for the broad protection of sex workers from individuals or groups who seek to violate, exploit and harm them. Accordingly, the group enjoins individual

³⁸ See *Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers*. (n. 38), p.1. They cite Article 5 of the CEDAW, and multiple international human rights treaty bodies which interpret the rights to equality and non-discrimination to include implied obligations on states to address stereotypes and stereotyping, including gender stereotypes alongside a range of other human rights and fundamental freedoms.

³⁹ See *Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers*. (n. 42), p.2.

⁴⁰ The International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of all forms of Discrimination against Women (CEDAW); the International Convention on the Elimination of all forms of Racial Discrimination (CERD); the Convention on the Rights of Persons with Disabilities (CRPD); the International Convention on the Rights of all Migrant Workers and Members of their Families (CMW), and the Convention on the Rights of the Child (CRC) cumulatively prohibit discrimination on all grounds, including race, age, caste, disability, ethnicity, sexual orientation, migrant status, gender identity, and marital status. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires governments to specifically address discrimination against women and guarantee substantive gender equality in all areas.

⁴¹ This is in conformity with the mandate of the United Nations Committee on Economic, Social and Cultural Rights which recognize the right of individuals and groups to participate in decision-making processes which may affect their development, as an integral component of any policy, strategy or programme developed to discharge governmental obligations under article 12', General Comment No. 14: The right to the highest attainable standard of health, para. 54

countries and jurisdictions where commercial sex work is criminalized and prohibited to take the following specific actions for guaranteeing the desired protections, namely:

1. To decriminalize all aspects of adult consensual sex work, bearing in mind that the criminalization thereof is the illogical basis of all nearly all violations of the human rights of sex workers.
2. To repeal laws which criminalize the sale of sex as well as those which make the buying of sex from consenting adults or the organization of sex work (such as prohibitions on renting premises for sex work) a criminal offence. This is because such laws compel sex workers to operate clandestinely in ways that compromise their safety, deny them public protection and support from government officials, and limit of prohibit actions which they could ordinarily take in order to maximize their safety or redress violations to their human rights, or to freely access public housing, health or other social security services.
3. To apply the criminal law and justice system to prevent or redress human trafficking, forced labour, abuse and violence in the commercial sex trade, as well as the involvement of minors and children in all aspects and for all forms of sex work.⁴²
4. To ensure that legal protections for guaranteeing the dignity, health, safe and non-discriminatory work environment as well as non-exploitation are put at the unimpeded disposal of sex workers.
5. To put in place specific law and policy measures for addressing harmful gender stereotypes, intersectional discrimination, as well as illogical denial of socio-economic and cultural rights and privileges which may lead to entry into sex work, stigmatizing sex workers or preventing the exit of sex workers who wish to quit the sex trade.⁴³

Amnesty International's stand has gained prominent philosophical support. For instance, Ericsson argued from a philosophical viewpoint, that prostitutes are 'entrepreneurs' or other 'professionals' and that the criminalization and stigmatization of sex work merely arises from the wrong notion whereby all discussion of 'harlotry'⁴⁴ are premised on the notion that 'prostitution is undesirable', and that on this note, crucial issues become scientific and political rather than being philosophical.⁴⁵ Pateman defended Ericsson's view and wrote thus: 'To supply services contracted for, professionals must act in certain ways, or use their bodies; to use the labor power he has bought the employer has command over the worker's capacities and body; to use the prostitute's 'services,' her purchaser must buy her body and use her body.'⁴⁶

Brock and Stephen also supports Ericsson's proposition and stated quite directly that 'women who work in the sex trade are workers, just like women working at GM or in any of the service industries.'⁴⁷ Relatedly, Nussbaum argued interestingly, that 'prostitution is not much different from many other jobs like the opera singer, factory worker, nightclub singer, domestic servant, masseuse, and even university professor' because all the jobs 'involve selling parts of oneself and often the use of one's body in exchange for money, and historically doing so has been frowned upon.'⁴⁸ She posited that the best way to understand prostitution is to consider in what ways people who sell sexual services are similar to, or different from 'others who sell their bodies and emotions for pay in capitalist societies', notwithstanding the 'irrational' stigma of exchanging sex for money.⁴⁹ Hayes-Smith and Shekarkhar, noted however, that sex work 'is a dangerous occupation', but that arguments for its criminalization are actually prefaced on illogical, insufficient and un substantiated evidence.⁵⁰ These arguments reasonably and possibly explain why the prostitution/sex trade remains active and functional, even in prominent jurisdictions like the USA

⁴² On this proposition, *Amnesty International* relies on the fact that under international law, states are obliged to prevent, suppress and punish trafficking in persons, especially women and children, and to protect the human rights of victims of trafficking.

⁴³ See *Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers*. (n. 43), p.2.

⁴⁴ A harlot is another derogatory synonym of sex work, just like 'whore' or 'prostitute'.

⁴⁵ Ericsson, L. O. (1980). Charges against prostitution: an attempt at a philosophical assessment. *Ethics*, 90(3), 335-366 at 336.

⁴⁶ Pateman, C. (1983). Defending prostitution: charges against Ericsson. *Ethics*, 93(3), 561-565 at 562.

⁴⁷ Debi Brock and Jennifer Stephen, 'Which We Is Who?' *Broadside* 9, no. 3 (December 1987-January 1988): 4 (cited in Overall, C. (1992). What's wrong with prostitution? Evaluating sex work. *Signs: Journal of Women in Culture and Society*, 17(4), 705-724).

⁴⁸ Nussbaum, M. (1998). 'Whether from reason or prejudice': Taking money for bodily services. *Journal of Legal Studies*, 27(2), 693-723 (cited in Benoit, C., Smith, M., Jansson, M., Healey, P., & Magnuson, D. (2019). 'The prostitution problem': Claims, evidence, and policy outcomes. *Archives of Sexual Behavior*, 48(7), 1905-1923). Available at: <https://understandingsexwork.ca/sites/default/files/uploads/2018%20Benoit%20et%20al%20The%20Prostitution%20Problem%20Claims%20Evidence%20andPolicy%20Outcomes.pdf> (2/6/2020).

⁴⁹ *Ibid.*

⁵⁰ Hayes-Smith, R., & Shekarkhar, Z. (2010). Why is prostitution criminalized? An alternative viewpoint on the construction of sex work. *Contemporary Justice Review*, 13(1), 43-55.

and UK.⁵¹ The hard reality, according to Meyer, is that the criminal prosecution of prostitutes may only decrease the visibility of prostitution, but certainly cannot eliminate the practice, and accordingly, that decriminalization, liberalization and public regulation thereof may be a more realistic approach.⁵²

6. Arguments that Prostitution Violates Human Rights

The United Nations, with its agencies and some human rights scholars argue that prostitution is particularly exploitive of women, abusive, demean women's dignity and grossly violates human rights, and that the universality of human rights cannot be achieved unless this common understanding is respected and upheld.⁵³ Proponents of this group argue, *inter alia*, that in spite of whatever name so called, prostitution or sex work is a form of violence against women because it thrives on their inequality and economic vulnerability, among others.⁵⁴ Common cases of rape and violence,⁵⁵ theft and drug abuse,⁵⁶ robbery, murder⁵⁷ and brutality,⁵⁸ kidnapping, car snatching and allied criminalities which threaten public peace have also been associated sex work.⁵⁹ Although violence is long assumed to be an intrinsic trait of female prostitution,⁶⁰ it is ironical that some prostitutes actually see men's abuse as an indispensable part of male-female relationship,⁶¹ and also believe that women need men, no matter how abusive, to protect them from the threat of other men.⁶² These factors advance the proposition that prostitution falls outside the context of right to 'work' protected in international law. Moreover, most texts on which international law is founded, never mention 'sex work' knowing that prostitution is roundly exploitive and cannot actually be considered to be work.⁶³ It has been further argued, and logically so, that the dehumanization, humiliation and inherent inequality in the sex trade represent an obvious form of sexploitation, and the fact that a perpetrator or 'buyer of sex' has some spare cash and the 'victim' of the sexploitation needs money does not eliminate the legal requirement of free consent for sex.⁶⁴ As such, a society which acts in law and language as if men who pay to sexually access women are simply consumers, legitimately availing workers of their services, is one in deep denial of the exploitation and inequality inherent in the sex trade.⁶⁵ These arguments logically challenge Ericsson's 'contractarian' defense of prostitution as an enterprise which extends the liberal ideals of individualism, equality of opportunity, and the free market to sexual life, and which had likened a prostitute to a kind of social worker, but whose services relate 'in a more intimate manner to her body than those of other professionals.'⁶⁶

Other specific arguments which support the view that prostitution/sex work violates human rights and is rightly criminalized in most jurisdictions are based on the provisions of core UN and international human rights templates. These include:

1. The UN *2030 Agenda* commits to universality of human rights and leaving nobody behind. In relation to sex work/prostitution, the Preamble to the UN Convention for the Suppression of the Traffic in Persons

⁵¹ For instance, authoritative reports show that in the US, the sex trade remains a 'silent' high revenue earner for government, and that in Britain where prostitution is legal but pimping and brothels are not, the sex trade is estimated to boost GDP figures by at least £5.3 billion (\$8.9 billion). See: *The Economist*, (n. 8).

⁵² Meyer, C. (1993). Decriminalizing prostitution: Liberation or dehumanization. *Cardozo Women's LJ*, 1, 105; Shuster, K. (1992). On the oldest profession: A proposal in favor of legalized but regulated prostitution. *U. Fla. JL & Pub. Pol'y*, 5, 1.

⁵³ International Law Defines Prostitution as a Human Rights Violation. UN Women. 'Submission of the Scelles Foundation in the consultation of opinion on the approach of UN Women concerning the sexual work, the sex trade and prostitution', 27 October, 2016. Available at: <https://www.fondationscelles.org/fr/actualites/134-international-law-defines-prostitution-as-a-human-rights-violation> (29/5/2020).

⁵⁴ MacKinnon, C. A. (2011). Trafficking, prostitution, and inequality. *HARv. cR-cLL REv.*, 46, 271.

⁵⁵ Monto, M. A., & Hotaling, N. (n. 13).

⁵⁶ Jacobs, M. S. (1998). Prostitutes, drug users, and thieves: The invisible women in the campaign to end violence against women. *Temp. Pol. & Civ. Rts. L. Rev.*, 8, 459.

⁵⁷ Russo, A. (n. 13).

⁵⁸ Williamson, C., & Folaron, G. (2001). Violence, risk, and survival strategies of street prostitution. *Western Journal of Nursing Research*, 23(5), 463-475.

⁵⁹ Church, S., Henderson, M., Barnard, M., & Hart, G. (2001). Violence by clients towards female prostitutes in different work settings: questionnaire survey. *Bmj*, 322 (7285), 524-525.

⁶⁰ Ribeiro, M., & Sacramento, O. (2005). Violence against prostitutes: findings of research in the Spanish-Portuguese frontier region. *European Journal of Women's Studies*, 12(1), 61-81.

⁶¹ Agnich, L. E. (2007). *Masculinities and sexual violence among a sample of clients of street prostitutes* (Doctoral dissertation, Virginia Tech). https://vtechworks.lib.vt.edu/bitstream/handle/10919/33068/Laura_final_thesis_1.pdf?sequence=1 (6/3/2020).

⁶² Erbe, N. (1984). Prostitutes: victims of men's exploitation and abuse. *Law & Ineq.*, 2, 609.

⁶³ See: International Law Defines Prostitution as a Human Rights Violation. UN Women (n. 57).

⁶⁴ Banyard, K. (2016). *Pimp state: Sex, money and the future of equality*. Faber & Faber.

⁶⁵ *Ibid.*

⁶⁶ Ericsson, L. O. (n. 49), cited in Pateman, C. (n. 50), p. 562.

and the Exploitation of the Prostitution of Others⁶⁷ states, among others, that ‘*prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person*’. The mere use of the phrase, ‘prostitution and the accompanying evil’ of the traffic in persons for the purpose of prostitution essentially confirm that international law is opposed to prostitution in furtherance of the human right to work.⁶⁸

2. Under international law, states are obliged to combat sexual slavery and the trafficking in persons, especially women, for purpose of prostitution, bearing in mind that respecting and protecting the dignity of human beings is the cornerstone of global human rights.⁶⁹ Thus, when defining and implementing policies with regards to prostitution and its resultant exploitation, states must ensure that they work towards the elimination of prostitution and the protection of its victims. The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), enjoin states to ‘*take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women*’.
3. Prostitution is classified as a crime blended in torture or cruel, inhuman or degrading treatment or punishment,⁷⁰ being incompatible with articles 3 and 5 of the Universal Declaration of Human Rights (UDHR), which provides thus: ‘*Everyone has the right to life, liberty and security of person*’ and ‘*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*’.
4. Prostitution is a form of exploitation and not work, properly so called because the majority of texts upon which international law is founded, never recognize or mention ‘sex work’.⁷¹
5. In addition to being abusive and exploitive, prostitution strives on inequality, vulnerability, and violence, hence, the UN Secretary General defined sexual abuse as any ‘*actual or threatened physical intrusion of a sexual nature under unequal or coercive conditions*’.⁷² The UNSG equally targeted and prohibited the purchasing of sexual intercourse by UN personnel by issuing a special bulletin outlining measures for addressing and preventing sexual exploitation and abuse by United Nations personnel. The bulletin specifically explained that the ‘*Exchange of money, employment, goods or services for sex is prohibited*’.⁷³

The foregoing underlines the seriousness with which the UN and its agencies and allied human rights scholars, argue that prostitution/sex work violates human rights and cannot validate it.

7. Observations and Remarks

Arising from the universality and inviolability of human dignity as a core essence of the sacrosanct right to life, the need to protect the dignity of all persons, including prostitutes or sex workers by respecting their sanctity of their right to work, among others, cannot be over-stretched. This fact is equally compelling in the light of global human rights provisions against all manner of discrimination based on factors such as gender, race, social standing or ‘other status’. Thus, it is proper and reasonable for Governments to institutionalize appropriate law and policy mechanism for achieving this goal. The proposed policy must strive to reduce the likelihood of client violence against sex workers, even though the potential for a dramatic positive change will be limited by existing high level stigmatization and perceived illegalities surrounding prostitution, especially the street-working prostitutes.⁷⁴ Nonetheless, the age-long social context of most societies whereby prostitution has ever been viewed and ‘nearly accepted’ as a violation of public decency, morality and sanctity, must not be overlooked, hence, the practice is criminalized in most countries of the globe, including the USA⁷⁵ based on concerns of public morality, public health, public decency and public safety.⁷⁶ The relationship between the infection and spread of terminal sexual infections including HIV/AIDS among the buyers and sellers of commercial sex in red-light districts must also be

⁶⁷ Adopted by the General Assembly on 2 December, 1949.

⁶⁸ Dempsey, M. M. (2010). Sex trafficking and criminalization: In defense of feminist abolitionism. *University of Pennsylvania Law Review*, 158(6), 1729-1778.

⁶⁹ Jakobsson, N., & Kotsadam, A. (2013). The law and economics of international sex slavery: prostitution laws and trafficking for sexual exploitation. *European journal of law and economics*, 35(1), 87-107.

⁷⁰ Cooke, J., & Sontag, M. L. (2005). Prostitution. *Geo. J. Gender & L.*, 6, 459.

⁷¹ See: International Law Defines Prostitution as a Human Rights Violation. UN Women (n. 67).

⁷² See UN General Assembly resolution 57/306 and the issuance of the *Secretary General’s bulletin on special measures for protection from sexual exploitation and sexual abuse* (ST/SGB/2003/1023).

⁷³ *Ibid.*

⁷⁴ Barnard, M. A. (1993). Violence and vulnerability: conditions of work for street-working prostitutes. *Sociology of Health & Illness*, 15(5), 683-705.

⁷⁵ Cunningham, S., & Shah, M. (2018). Decriminalizing indoor prostitution: Implications for sexual violence and public health. *The Review of Economic Studies*, 85(3), 1683-1715.

⁷⁶ Posner, Richard A. and Katharine B. Silbaugh. 1996. *A Guide to America's Sex Laws*. 1st ed. University of Chicago Press.

underscored.⁷⁷ Suffice to say, that while some scholars believe that human rights are more secure when the right to work is sacrificed on the altar of the rights to dignity and life of persons (including sex workers), others believe in the reverse, arguing that prostitution is not even morally repugnant, hence 'some' countries also permit it. One may, however, be inclined to concede that on a balance of scale, the rights to human dignity surely outweigh the right to work. For instance, throughout the early days of the COVID-19 (coronavirus) global pandemic, governments, workplaces, schools, places of religious worship etc. were completely locked down across the globe in order to save lives. Workers of all professions and in all non-frontline sectors (including sex workers) stayed at home and out of work too, and still lived dignified lives on social security and palliatives. Nonetheless, the core arguments of both sides remain convincing, especially as prostitution or sex work continues to flourish, even in jurisdictions where the trade is, so to say, criminalized.

8. Conclusion

Prostitution is Known as the world's 'oldest profession' and, despite its long history, it has for many centuries been condemned by some as both immoral and criminal, but applauded by others as a legitimate expression of human rights, especially the right to work. Nonetheless, it is nearly the only unskilled job where women can averagely earn more than men.⁷⁸ This paper has explored critical but conflicting views on prostitution, especially as argued by eminent scholars and at least, two major stakeholders in international human rights jurisprudence, namely, the United Nations and its allied agencies on the one hand, and the civil rights group, *Amnesty International* on the other. The crux of this debate is whether prostitution is a legitimate and acceptable form of employment, freely chosen by women, or whether men use prostitution as a form of degrading treatment and violence against women,⁷⁹ that is, whether prostitution validates the right to work recognized in international human right law or whether it amounts to sexual exploitation and abuse of women's right to dignity. The paper found conflicting opinions of scholars and critical stakeholders in international human rights law on the same subject. While some insist that performing sex work or offering sexual services is a legitimate form of labour which should be so recognized and protected as a guarantee of the dignity and work rights of all sex workers,⁸⁰ others counter argue that 'voluntary consent' is a legal precondition for lawful sex and that the fact that a sex trade offers men sexual access to women who do not ordinarily want to have sex with them, underline criminality and sexploitation.⁸¹ In all, the various arguments and counter-arguments in the debate on whether prostitution/sex work violates or validates human rights, that is, the legality or otherwise of prostitution/sex work, especially in relation to women's dignity, shows a balance of logic and reasonableness.⁸² As such, this paper is yet unable to definitely reconcile the current debate, and hereby recommend the subject for further socio-legal research, and which must cover the 'customers' or 'buyers of sex' who have ordinarily been excluded from many debates on prostitution.⁸³

⁷⁷ Aloy Ojilere (2008). The Socio-legal Implications of the Fight against HIV/AIDS in Nigeria. *Nigerian Journal of Food, Drug and Health Law*, 1(1), 84-106.

⁷⁸ Miller, C. R., & Haltiwanger, N. (2004). Prostitution and the legalization/decriminalization debate. *Geo. J. Gender & L.*, 5, 207.

⁷⁹ Jeffreys, S. (2008). *The idea of prostitution*. Spinifex Press.

⁸⁰ Murphy, C. (2015). Sex Workers' Rights Are Human Rights. *Amnesty International*, 14; Strathdee, S. A., Crago, A. L., Butler, J., Bekker, L. G., & Beyrer, C. (2015). Dispelling myths about sex workers and HIV. *The Lancet*, 385(9962), 4-7.

⁸¹ Aloy Ojilere (n. 20); Kat Banyard (n. 21).

⁸² Moran, R., & Farley, M. (2019). Consent, coercion, and culpability: is prostitution stigmatized work or an exploitive and violent practice rooted in sex, race, and class inequality? *Archives of sexual behavior*, 48(7), 1947-1953.

⁸³ Monto, M. A. (n. 16).