Ambivalence and exclusion in anti-prostitution law: Understanding the malleable legal status of sex workers in Sweden

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While sex workers are seen as victims of male violence in Swedish political discourse, according to established law they are consenting individuals. For instance, the ban on sex purchase is predicated on mutual consent and designed to protect public order. Moreover, as in other countries with a repressive policy, the various anti-prostitution laws and regulations cast sex workers in a tenuous legal and civic position. This gives rise to the question: If a person selling sex in Sweden is not a victim of crime, then what are they as a legal subject?

Since the sex-purchase offense hinges on consent, the legal system has needed to clarify how the ban relates to the general legal principles that apply to the penal code and defines the legal statuses of individuals selling sex. This paper scrutinizes three legal norms: the rules concerning exemption from liability; the rule on complicity in crime; and the role of the sex worker in trial. After that, it considers how sex workers are cast in tax and contract regulations and discourse, as well as health and social service measures. Finally, it turns to the reasoning of Swedish authorities when challenging their legal status.

By subjecting established law and statements by legal and social authorities to closer examination, we find that sex workers are cast in multiple roles, oscillating between victim, consenting individual, witness, self-employed entrepreneur, and criminal – and sometimes as nothing at all. While this ambivalence expresses social ambiguity and an exclusionary logic intrinsic to all anti-prostitution policies, I suggest the malleable legal status of sex workers also helps to perpetuate these stigma-based discriminatory practices, providing authorities with an “strategy of ambivalence”. I also argue that discussions on the governance of prostitution can benefit from focusing on legal principles, while recognising the historic parallels to the regulation of female labour and repression of deviancy.

Key words

Anti-prostitution law, legal status, prostitution policy, sex workers, strategic ambivalence, sex-purchase ban, Sweden