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THE NECESSITY OF REPEALING SECTION 19 OF THE PRA: AN ANALYSIS THROUGH THE LENS OF FEMINIST LEGAL THEORY

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Contents

Summary

This research explores the nuances of sex work regulation through the lens of feminist legal theory. The research has a focus in New Zealand and in the prohibition placed by the Prostitution Reform Act 2003 on temporary migrants to work in the sex industry. This research shows that sex work should be treated the same as any other job and migrant sex workers should be assured the same rights and protections as permanent residents and citizens of New Zealand.

I Introduction

The core issue of this research will be the extent to which s 19 restrict rights afforded to sex workers under the Prostitution Reform Act (PRA) framework for Migrant sex workers. Section 19 of the PRA restricts sex work for temporary migrants, who cannot invest or work in the sex industry, or they will face deportation. The topic has become increasingly pressing in recent years as many migrant sex workers are being caught and deported from New Zealand, despite sex work being decriminalised in the country. The historic PRA which decriminalised sex work passed in 2003. The purpose of the legislation as stated under s 3, is to decriminalise prostitution and create a protective framework, assuring the human rights of sex workers and protecting them from exploitation.

The existing principles of the legislation clashes with s 19 of the Act, which forbids temporary visa holders to work in the sex industry and if they do, they are liable for deportation. This section is a result of concerns with sex trafficking. At the time the Act came into force there was a great concern that the decriminalisation of prostitution in New Zealand would facilitate sex trafficking of foreign women so s 19 was included as a mechanism to prevent it happening. To this day it is not clear if s 19 has had the desired impact but it is clear that s 19 criminalises the work of migrants in the sex industry by punishing them with deportation. The PRA holds a double standard of sex work, sex work treated as a regular job for citizens and permanent residents, but not for other migrants who hold the right to work in the country.

This paper will outline the issues with s 19 of the Act and the purpose of the legislation stated at s 3 through the lens of Feminist Legal Theory. This research will analyse if the PRA, which does not treat sex work as a regular job, places migrant sex workers in a vulnerable position within the sex industry. It will also analyse if the anti-trafficking discourse that originated s 19 was evidence based or if originated from a moral panic that backlashed on sex workers rights, denying rights for a whole category of sex workers in name of "protection" against sex trafficking, but not against exploitation. The paper will show that sex work is a type of work and there is no need to be treated separately from other jobs.

II Sex Work, Prostitution & Trafficking in Persons – Important Concepts

A Sex Work & Prostitution

Despite often being associated with prostitution, the terminology – *sex work* – is a broader category and encompass sex work in all its different shapes, such as pornography, stripping and prostitution. *Sex work* has a political connotation, as it is used for equating sexual services as a job, as labour. It is only used by those who see sex work in its different shapes as an occupation. This nomenclature was coined by sex worker and activist Carol Leigh[1] and applies to the selling or trading of sexual services for financial compensation, which can be in the form of money, shelter, food, drugs or alcohol. This means that brothel owners, managers or bosses are excluded of the definition of sex work.[2] The term *sex work* and *sex worker* came to replace *prostitution* and *prostitutes.* It was an effort to highlight that those services actually consist of a job, "'sex worker' emphasises that it's a job, something you do for a living rather than something that you are."[3]

As briefly explained, sex work covers a variety of sexual services, however, this paper will use *sex work* and *sex worker* to refer to the activities that consists within prostitution. Prostitution consists of the direct act of selling sex. It is common for prostitution to happen in forms of street prostitution or indoor prostitution, that can be in brothels or escorting. The PRA defines prostitution as the *"provision of commercial sexual service*"[4] and sex work as "*a person who provides commercial sexual services*"[5].

III Feminist Legal Theory

Feminist legal theory originated in the United States of America[6] and it has spread across the world because the underlying reasons for the search of a feminist analyses of law can be found in all jurisdictions, such as New Zealand.[7] Feminist legal theory can also be called Feminist Jurisprudence and it envisages an integrated theoretical framework which considers

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[1] Carol Leigh coined the term when she attended a conference in San Francisco by Women Against Violence in Pornography and the Media in 1979. The workshop she was going to attended was called "Sex Use Industry", which embarrassed her. Therefore, she suggested the name to be changed to "Sex Work Industry", because it described what women did, while men were the ones who *used* the services.
(Carol Leigh "Inventing Sex Work" in Whores and other Feminists (1st ed, Routledge, London, 1997) 225)

[2] Juno Mac, Molly Smith Revolting Prostitutes: The Fight for Sex Workers' Rights (1st ed, Verso, London, Brooklyn, 2018) at 1.

[3] Natalie Fiennes, Behind Closed Doors, (online ed, Pluto Press, 2019) at 130.

[4] Prostitution Reform Act 2003, s 4 (1).

[5] Prostitution Reform Act 2003, s 4 (1).

[6] Carol Smart F*eminism and the Power of Law* (Online ed, Taylor & Francis Group, London, 1989) at 66.

[7] Smart, above n 6, at 66.

fundamental issues with law "like legal logic, legal values, justice, neutrality, and objectivity."[8] through women's perspective. The theory and practice are founded on women's experience and its analyses can be understood as *deconstruction*.[9] It encompasses the three methods of feminist legal analyses because it aims to deconstruct the ordinary understandings of law as neutral and objective which come from a hegemonic male perspective[10]. The combination of a practical and theoretical framework in feminist legal theory concerns the idea of praxis. Praxis is a "methodology which ensures that the insights of theory are reflected in the politics of action, and that the insights of practice are reflected in theory construction.".[11]

As Katharine Bartlett and Rosanne Kennedy wrote, feminist legal theory:[12]

> "draws from the experiences of women and from critical perspectives developed within other disciplines to offer powerful analyses of the relationship between law and gender and new understandings of the limits of, and opportunities for, legal reform."

Feminist legal theory integrates theory, practical experience and applications with the aim to transform law, society and the reality of women's lives. Feminist legal theory is the collection of ideas and strategies that comprehend the law as necessary to the understanding of the historic subjugation of women but also as a tool for transforming and elevating women's place within society.[13] The methods of analyses of feminist legal theory derives from the understanding that traditional norms represent existing power structures and demonstrate the necessity of flexibility regarding those rules, in order to identify missing points of view.[14] There are three main methods of feminist legal analysis: asking the woman question, feminist practical reasoning and consciousness-raising. These methods are critical of the current legal system and challenge the current structures of power. They are also constructive, helping to demonstrate features of a legal question that traditional methods of analysis overlook.[15]

As Bartlett writes, the method of *asking the woman question* intends to reveal how traditional law may silence and conceal women's points of view on determined legal issues. In addition, *feminist practical reasoning* aims to enlighten and broaden the view of law, "by identifying

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[8] Smart, above n 6, at 66.
[9] Smart, above n 6, at 68.
[10] Marija Urlich "A Short Topology of Feminist Legal Theory" (1993)7.2 AULR 483 at 485.
[11] Smart, above n 6 at 69.
[12] Kim Brooks "Why Feminism Matters to the Study of Law" (2015) 27 CJWL at 209.
[13] Gabriella Mesce "Sex Work Decriminalization and Feminist Theory" (BA (Hons) Theses, University of South Carolina, 2020) at 23.
[14] Katharine T. Bartlett "Feminist Legal Methods" (1990) 103 HLR 829 at 832.
[15] Bartlett, above n 14, at [830-836].

and taking into account the perspectives of the excluded".[16] *Consciousness-raising* provides a way of testing a certain legal issue through the lens of the personal experience of individuals who were affected by it.[17]

All of those methods have a special value for feminist legal theory, but this paper will mainly draw on the method of feminist legal reasoning. The method of asking the woman questions is really relevant since it requires analysis of the gender bias of a legal problem. However, this broad categorization of woman can be exclusionary, focusing only in one type of woman: white and/or privileged woman, while this paper is about migrant sex workers in New Zealand. Moreover, as it can be captured through the analysis of the parliamentary debates[18], the woman question was made during the passing of the PRA: how was the previous law interfering with women's lives? A question that challenged the gender neutrality of a law. Consciousness-raising was also really important during the legislative process as the experiences of sex workers became knowledge "by exploring common experiences and patterns that emerge from shared tellings of life events"[19] of New Zealand sex workers and were taken into consideration to pass a law that catered to their interests.

On the other hand, the PRA created a new scenario and framework for the sex industry, changing sex workers' lives for better, but it also created a new dilemma that demands a pragmatic resolution. This dilemma is the prohibition of temporary migrants to work in prostitution. This dilemma shall be analysed through feminist practical reasoning. This method differentiates itself from traditional legal analysis because it does not "call for the choice of one principle over another" [20], it calls for different imaginative integrations and reconciliations, demanding the examination of different points of views. Feminist legal reasoning also draws substance from asking the woman question and consciousness-raising, but in a way that includes a broader understanding of injustice, encompassing "missing perspectives of women. […] Feminist practical reasoning compels continued expansion of such perceptions."[21] Therefore, this paper will analyse a situation, the prohibition of sex work for temporary migrants, through practical perceptions of this law, in order to inform society if it is in accordance with the desired means of the law, as stated on section 3 of the PRA.

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[16] Bartlett, above n 14, at 850.
[17] Nancy Levit, Robert R. M. Verchick "A Primer Feminist Legal Theory" (1st ed, New York University Press, New York and London, 2006) at 49.
[18] (19 February 2003) 606 NZPD 3607. | (14 May 2003) 608 NZPD 5739. | (25 June 2003) 609 NZPD 6585.
[19] Bartlett, above n 14, at 864.
[20] Bartlett, above n 14, at 851.
[21] Bartlett, above n 14, at 863.

A Feminist Legal Theory and Praxis

The practical aspect, or praxis, is very important in feminism legal theory since it has always used women's experience as the starting point for consciousness-raising, asking the woman question and feminist practical reasoning. The analyses of women's experiences show those "are not isolated or unique"[22] and that these common experiences are important to comprehend society but also create knowledge that can feed theory.[23] Feminist legal theory challenges the law, an institution that controls people's lives, through non-isolated personal experiences. Feminist legal theory presupposes analysis, not merely how to apply concepts. Analyses through feminist legal theory requires the comprehension of the impact the law have on women's lives. Feminist legal theory is about the way law is and how it could be.[24] Feminist legal theory is the junction of practice and theory.

Praxis will be especially important to this paper to the extent that the practical experiences of sex workers in New Zealand under a partially criminalized framework were the driving factor for the decriminalization of the sex industry. Beforehand, the decriminalization of sex work was a theorical perspective advocated by some legal feminist scholars, sex workers and other supporters. The decriminalization of sex work in New Zealand as a theoretical perspective was reasoned on the effects of the old regulation (the Massage Parlours Act) on sex workers rights and the contradictions of the law[25]. Their view was that the Massage Parlours Act 1978 (MPA) marginalized sex workers and endangered their health, as will be discussed further in this paper. After the passing of the PRA those ideas were confirmed because it the improvement of sex workers lives became visible under a new decriminalised framework.[26]

However, section 19 of the PRA excluded migrant sex workers from its protections under the allegation it would prevent the occurrence of sex trafficking.[27] Nonetheless, this paper will analyse the theoretical foundations of this exclusion and the practical implications of this section in order to build an argument for its repeal in light of feminist legal theory.

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[22] Elisabeth McDonald "The Law of Contract and the Taking of Risks: Feminist Legal Theory and the Way It Is" (1993) 23:2 VUWLR 113 at 115.
[23] Smart, above n 6, at 70.
[24] McDonald, above n 21 at [113-118].
[25] Tim Barnett, Catherine Healy, Anna Reed and Calum Bennachie "Lobbying for decriminalisation" in Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor (ed) *Taking the crime out of sex work* (The Policy Press, Bristol, 2010) 57 at 60.
[26] Kade Cory-Wright "Sex work in New Zealand – A case for repeal of section 19 of the Prostitution Reform Act, 2003" (2019) NZWLJ 277 at 278.
[27] (14 May 2003) 608 NZPD 5739.

B Feminist Legal Theory & Sex Work

The sex industry is a matter for feminist legal theory because the vast majority of sex workers are women – both cis and transgender – and their clients are "overwhelmingly men"[28], cis and heterosexual men. Although it is possible to find men as sex workers and women as the purchasers of sexual services, that is not the most common scenario.[29] Sex work is, therefore, gendered.[30]

The reality that sex work is deeply gendered, and the commercialization of sexual services symbolizes for many women, especially feminists, the objectification of their own bodies and the idea that a women's body should always be available for men.[31] As the authors of *Revolting Prostitutes* have said:[32]

> Prostitution is a richly symbolic terrain. It is where our society's anxieties about power, womanhood, and the nation coalesce. For feminist women, the figure of the prostitute often comes to represent the trauma that is inflicted on all women within patriarchy – the ultimate symbol of women's pain, of the violence that women suffer. The client thus becomes the symbol of all violent men: he is the avatar of unaltered violence against women, the archetypal perpetrator.

As a result, women in academia and in politics have leaned over the topic of how to deal with prostitution. Feminist legal scholars diverge from criminalising the clients and third parties around prostitution to defending a totally decriminalised environment. This is the reason that issues concerning prostitution, its regulation and sex workers' rights and experiences are part of the scope of feminist legal theory.

C Is sex work work? Agency, Consent & Choice in Prostitution

There is a very heated debate among feminist legal theorists regarding consent and choice of women working with prostitution. Simple words as "consent" and "choice" are used to argue that no women can freely consent or choose to work with prostitution or they are used in "attempts to create non-intersecting, separate definitions of sex work and sex trafficking".[33]

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[28] Johanna Schmidt "The regulation of sex work in Aotearoa/New Zealand: An overview" (2017) 31.2 WSJ 35 at 35.
[29] Schmidt, above n 28 at 35.
[30] Mac, Smith above n 2 at 4.
[31] Catharine A. MacKinnon "Prostitution and Civil Rights" (1993) 1 MJGL 13 at 20.
[32] Mac, Smith above n 2, at 141.
[33] Mesce, above n 33, at 10.

These two prominent and oppositional discourses originated from radical feminists and feminists – of different strands – who view that sex can be work.

The PRA recognized only certain people in the sex industry are victims, but denied migrant sex workers the ability to exercise agency, despite having recognized that, overall, sex work is voluntary. Permanent residents and citizens can engage in sex work, but not migrant women – even if their visa allows them to work. The recognition of sex work as an ordinary job is crucial for this paper. The reason why temporary migrants who are allowed to work in NZ are denied working in the sex industry is related with the idea that sex work is not actually a job and that migrants working in the industry are always trafficked or coerced.

Radical feminists argue that all sex work is a form of violence against women and when men purchase sex, he is commanding sex through prostitution, buying the control of a woman's body when otherwise she would have said no. Prostitution is a form for men to exercise their power over women's bodies and minds. In their view prostitution harms all women, because sex workers would be contributing to the view women are always available for men. They argue sex work could not be considered labour because sexual services do not have inherent value, neither produces value. Therefore, prostitution should be abolished [34]

A prominent radical feminist scholar, Janice Raymond claims that the debate between sex trafficking being forced and prostitution being voluntary creates confusion among anti-trafficking NGOs and some governments. She argues that this differentiation is an illusion because it is not possible to end sex trafficking without challenging prostitution. She argues that this discourse benefits sexual exploitation, placing the burden of proving that a prostitution was forced on the woman. This would lead to a aituation "very few women will have legal recourse, and very few offenders will be prosecuted"[35]. In her view, it would be easier to prosecute both voluntary and forced prostitution than to collect evidence to prove coercion.

Radical feminists call themselves *abolitionists* because they see prostitution as a form of slavery, sexual slavery, conflating all sex work with sex trafficking and prostitution as a gendered violence against women. Therefore, all women who work in prostitution are seen as victims. They argue that all migrant sex work is a product of international sex trafficking. In Raymond's words: "The anti-abolitionist position is based on a labor model of prostitution and

[34] Carisa R. Showden *Choices Women Make Agency in Domestic Violence, Assisted Reproduction, and Sex Work* (1st ed University of Minnesota Press, Minnesota, 2011) at 138.
[35] Janice G Raymond Not a Choice Not a Job Exposing the Myths about Prostitution and the Global Sex Trade (1st ed, Potomac Books, Nebraska, 2013) at 22.

international sex trafficking, where both are redefined as sex work, or as migration for sex work."[36]

In opposition are the feminists who view prostitution as sex work, which is the position this paper agrees with and will follow. There is an enormous difference between voluntary and consensual sex work and forced sex work: the first is called legitimate sex and the latter is called sexual violence.[37] It is unreasonable to classify voluntary sex workers and women who were trafficked and forced into prostitution as sexual slaves. It is disrespectful with both groups of women, but especially those who have been deprived of their freedom and are constantly raped to provide profit for criminal organizations.

Sex workers can enter the industry for different reasons, but economic necessity is the most common, which is why most people work. Studies show that women enter prostitution escaping from low paid jobs.[38] Poverty does not removes one ability to consent, instead, it is the factor that drives their decision.[39] For sex workers "poverty and the low-paying jobs that they can obtain are more alienating than providing sex to strangers. Why, they ask, should poor women not be able to make a living wage?".[40]

Sex workers who work with prostitution are selling their time and service. Radical feminists and society in general think that sex workers are selling their bodies and the consent of sex workers have been "purchased". Therefore, prostitution is considered to be paid rape, this view was seen in the New Zealand parliament during the second reading of the Prostitution Reform Bill (PRB). A member of parliament, Judith Collins said she would not support the PRB because "prostitution is rape accompanied by payment—if the prostitute is lucky."[41] A radical legal feminist scholar, Catherine Mackinnon, considers sex workers as submissive beings, highlighting that these women are being bought and sold for sex.[42] This view obscures the fact sex workers can be victims of rape. Sex workers in prostitution are not selling a product (their body), but a service (sex). The client does not purchase or rent the right to a woman's body; they pay for a service that is offered by a sex worker. If the client tries or do something that was not agreed by the sex worker, it will consist of sexual assault. This is one of the reasons

[36] Raymond, above n 35 at xxxvi.
[37] Sylvia A. Law "Commercial Sex: Beyond criminalisation" (2000) 73:523 SCLR 523 at 588.
[38] Kimberly Kay Hoang, Dealing in Desire: Asian Ascendency, Western Decline, and the Hidden Currencies of Global Sex Work (Online ed, University of California Press, 2015) at 105.
[39] Lola Olufemi, Feminism, Interrupted: Disrupting Power, (Online ed, Pluto Press, March 2020) at 101.
[40] Showden, above n. 34 at 147
[41] (19 February 2003) 606 NZPD 3607.
[42] Catharine A. MacKinnon "Prostitution and Civil Rights" (1993) 1 MJGL 13 at 15-27.

why it is important to understand sex workers as people who are able to make choices, even if it was driven by an oppressive structure.

The conflation of sex work with sex trafficking is dangerous, it is a contributing factor to the moral panic surrounding this issue. A migrant is only a victim of such horrendous crime if they were coerced or forced into the industry. The role of consent and choice in prostitution has significant value especially when considering it with factors such as race, class and nationality. Women of colour, women from the developed world have always been silenced and still are by feminists that say they cannot choose or consent by arguing they are victims and slaves.

Migrants that fled their home countries and ended up in the sexual industry have not always been trafficked. They might have done that for different reasons, such as escaping "from small-town prejudices, dead-end jobs, dangerous streets, and suffocating families."[43] Women can have benign motivations to migrate apart from deception or coercion, they are not necessarily victims of sex trafficking. If migrants arrive in a country with documentation that allows them to work, there should not be barrier for them to choose how to exercise a right that is guaranteed for other local sex workers.

The radical feminists discourse echoed in New Zealand. The PRA passed in 2003 and understood prostitution as labour, recognizing that only certain people in the industry are victims, such as underage or coerced individuals. However, this same Act excluded migrant workers from the protections provided for citizens and permanent residents. The Act does not classify migrants as victims of sex trafficking, but it forbids them to work within the sex industry even if their visa allows them to work. The alleged reason for the exclusion of migrant sex workers from the PRA was the possibility that foreign women could be coerced into New Zealand for the purpose of prostitution.[44] In other words, migrants who voluntary want to work in prostitution were forbidden to do so in order to prevent coerced women to be forced into prostitution.

[43] Laura Maria Agustin, *Sex At the Margins: Migration, Labour Markets and the Rescue Industry* (1st ed ZedBooks, London, 1998) at 45.
[44] (14 May 2003) 608 NZPD 5739.

However, there is no evidence that this prohibition has indeed prevented sex trafficking. Instead, it created conditions that make migrant sex workers vulnerable to exploitation and trafficking since they cannot access the rights provided by the PRA.[45]

1 Trafficking in Persons

The dominant anti-trafficking discourse is not evidenced based. It is built on a particular mythology of human trafficking, resulting in the development of policies that cannot cater to the actual problem or reduce the number of trafficked people. This dominant discourse propagates the idea trafficking is rapidly increasing, but this assertion is not supported with empirical research. The issue here is not if that information is true or false, but the fact that it is deviating attention from the actual solutions to tackle the crime of trafficking in persons.[46]

Radical feminists, alongside other actors, such as conservative politicians, conflate voluntary prostitution with sexual enslavement and migration with human trafficking.[47] This makes the victims of trafficking to be equal to women who have migrated or those who became sex workers – the same does not happens to migrant men. The absence of women and girls is understood as missing persons, which is then considered to be trafficking. This is one of the problems with the data regarding women trafficking.[48] The fusion of human trafficking and prostitution ignores that trafficking involves human rights violations during recruitment, transport and confinement. Human trafficking implies in deprivation of freedom, coercion and exploitative labour conditions.

The conflation of prostitution and human trafficking ignores other types of trafficking, such as forced labour: "Not all victims of trafficking are prostitutes, nor are all prostitutes victims of trafficking".[49] The policies developed to address other types of human trafficking target the abuse and the violation of rights that victims suffer and not to eradicate, or forbid foreigners to work in a specific industry those persons were trapped into. It does not happen because it is an unrealistic objective that denies rights to a vulnerable community (migrants), making them even more susceptible to abuse and exploitation.[50]

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[45] Cory-Wright above n 26 at 277. | Lynzi Armstrong, Gillian Abel, Michael Roguski "Fear of Trafficking or Implicit Prejudice? Migrant Sex Workers and the Impacts of Section 19" in Sex Work and the New Zealand Model 113 at 4.
[46] Jyoty Sanghera "Unpacking the Trafficking Discourse" in Kamala Kempadoo (ed) Trafficking and Prostitution Reconsidered (Paradigm Publishers, London, 2012) 3 at 5.
[47] Sanghera above n. 46 at 2.
[48] Sanghera above n. 46 at 12.
[49] Sanghera above n. 46 at 12.
[50] Sanghera above n. 46 at 11.

III Feminist Legal Theory Perspectives for Sex Work

The relationship between feminist legal theory and sex work can be described as is fractious.[51] Feminist legal theorists could not reach an agreement regarding sex work: some theorists says it is a valid form of work and therefore it should be decriminalised or regulated while others say it is a form of violence against women and the clients should be criminalised.[52] Feminist legal theory accepts different views and discourses among feminists. This section will analyse the main different theoretical approaches to sex work and compare it to the New Zealand system.

A Neo-abolitionist Approach

Under the neo-abolitionist approach selling sexual services is decriminalised but the commodification of those services by third parties is criminalised. In other words, sex workers are not criminalised, while their clients, managers, landlords are. It was first adopted by Sweden and followed by Norway, Iceland and partially by Finland, which criminalised the purchase of sexual services of victims of trafficked people or sex workers who have managers. Because of this, this regime came to be called the *Nordic Model*.[53] This regime differentiates itself from the traditional abolitionist approach because the latter criminalises all parties involved with sex work, banishing it altogether.[54] Popularly, the neo-abolitionist model is called a purchase ban.

This framework originated with the idea that prostitution is an expression of men's sexual exploitation towards women.[55] This regime has the unrealistic and utopic aim to abolish prostitution by eliminating the demand. The woman is seen as a victim of their own choices, of a sexist society and also of their clients. Prostitution is considered to be gendered violence

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[51] Prabha Kotiswaran 2006

[52] Mesce, above n 33 at 23.

[53] However, other European countries decided to take a similar approach, such as France*, Northern Ireland** and Ireland**. Outside of Europe the criminalisation of the client was followed by other countries, such as South Africa*** and Canada***.
Sven-Axel Månsson "The History and Rationale of Swedish Prostitution Policies" (2017) 2.4 DJSEV 1 at 2.
May-Len Skilbrei, Charlotta Holmström "Is there a Nordic Prostitution Regime" (2011) 40 CJ 479 at 482. | *Prostitution: le Parlement adopte définitivement la pénalisation des clients (06 April 2016) Le Monde <https://www.lemonde.fr/societe/article/2016/04/06/prostitution-le-parlement-adopte-definitivement-la-penalisation-des-clients_4897216_3224.html> | **Paying for sexual services. Nidirect <https://www.nidirect.gov.uk/articles/paying-sexual-services> | ***Sven-Axel Månsson "The History and Rationale of Swedish Prostitution Policies" (2017) 2.4 DJSEV 1 at 2.

[54] May-Len, Charlotta above n 53 at 480.

[55] Månsson above n 53 at [1].

against women, often perpetrated by men.[56] Their idea is that criminal law would act as a deterrent on regarding third parties, especially clients. Sex workers would then not have any clients, would lose their source of income and they would have to find another occupation. The industry would not sustain itself and as a final result the commercialization of sexual services would no longer exist.

This model is strongly advocated for by radical feminists, who had a considerable amount of influence in Swedish society.[57] Professor Catherine Mackinnon, radical feminist and feminist legal theorist, understands that prostitution denies civil rights and humanity for its *victims* (sex workers).[58] In one of her papers about prostitution and the neo-abolitionism model she writes:[59]

> Against his demand to buy her for sex, this law says she is not for sale, or rent. Eliminating her criminality raises her status; criminalising him lowers his privilege. This is a sex equality law in inspiration as well as effect.

One of the most common claims made by sex workers and academics is that this model drives the sex industry underground. A criminalised market does not have any rules, protections or regulation and sex workers do not have access to any work rights, facing extreme forms of exploitation.[60]

In Sweden, the default mode of dealing with migrant sex workers or victims of sex trafficking is to deport them and write on their deportation letter that "she has not maintained/supported herself in an honest manner/way".[61] People travelling to Sweden can have their entry into the country denied if the border authorities believe they are entering Sweden to sell sex[62]. If the industry is decriminalised and these women have permission to work, why are they being deported? Moreover, the police in Norway also use evictions to penalise sex workers. If "they suspect a tenant to be a sex worker, they invite the landlord to either evict the tenant or face prosecution themselves"[63]. It usually happens within hours and sex workers might have trouble collecting their belongings.[64]

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[56] Jay Levy and Pye Jakobsson "Abolitionist feminism as patriarchal control: Swedish understanding of prostitution and trafficking" (2013) DA 333 at 334.
[57] Arthur Gold "The Criminalisation of buying sex: the politics of prostitution in Sweden" (2001) JSP 437 at 443.
[58] MacKinnon, above n 31 at 29.
[59] Catharine A. MacKinnon "Trafficking, Prostitution, and Inequality" (2011) HCRCLLR 271 at 301.
[60] Mac, Smith above n 2, at 51.
[61] Levy, Jakobsson above n 56 at 337.
[62] May-Len, Charlotta above n 53 at 484.
[63] Mac, Smith above n 2, at 161.
[64] Mac, Smith above n 2, at 161.

This highlights the incompatibility of the claims broadcasted by supporters of neo-abolitionism with the reality. They claim this model decriminalises the seller, but that is not the reality sex workers face. Migrant sex workers are also in vulnerable conditions under the model.

B The Pragmatic or Total Decriminalisation Approach

The model of full decriminalisation ignores the criminal justice system in regulating sex work. It is a legal model where everyone involved with sex work is decriminalised, even third parties including sex workers, their managers, drivers, landlords. This model recognizes sex workers as workers, even if they work independently, they would be entitled to labour rights, such as holidays, parental leave, sick leave and to work freely without being arbitrarily bothered by police. This approach is the only one that provides recognition of the social rights of sex workers, just as sex workers' movements have been claiming for a long time.

The recognition of prostitution as work is located under the umbrella of human rights. To deny someone the label of worker is to deny them the fruition of democratic rights foreseen on the Universal Declaration of Human Rights, such as the right to social security, to just and favourable conditions of work, to form and to join trade unions for the protection of personal interests, the right to just and favourable remuneration. Those rights recognize the dignity of all members of the human family, they are some of the fundamental rights of justice in the world.[65]

This approach is pragmatic because it understands the decriminalisation of prostitution as something that works, opposing to the impractical punitive laws, laws that reverberate on sex workers themselves, as briefly demonstrated in the last topic.[66] The decriminalisation framework intends to abolish the criminal laws regarding sex work, administrative and civil orders that target different spheres of sex work, such as regulation on advertising or collective work. These are punitive laws aimed at eradicating sex work – but not the conditions that lead women into prostitution. Under the pragmatic approach, sex work is then treated under labour law and commercial law, just as any other services. The assurance of such rights to sex workers guarantees a fairer and more just life to them, since they would be able to access rights available to all other workers.[67]

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[65] Universal Declaration of Human Rights UNTS 8547 (opened for signature 10 December 1948, entered into force 23 Mar.1976), art 22, 23, preamble.
[66] Gold, above n 57 at 438.
[67] Mac, Smith above n 2, at 93.

It is important to note that decriminalisation does not necessarily means there is no exploitation of sex workers. Different workplaces within regulated and decriminalised industries also experience exploitation and it would not be different with sex work. However, the decriminalisation "aims to mitigate the intense exploitation that is propped and fuelled by criminalisation"[68], providing sex workers the possibility to seek justice as any other worker: through law and courts. As an example, a New Zealand sex worker received financial compensation after being sexually harassed at work. This compensation assures all workers "have the right to freedom of sexual harassment in the workplace"[69]. The decriminalisation framework makes it easier to tackle exploitation and punish abusers because sex workers do not need to hide from authorities or risking being penalised.

In a decriminalised environment, sex workers do not need to fear police, they are also free to work as they wish. For example, sex workers would not be charged with brothel keeping for working together under the same roof. A decriminalised framework gives power to sex workers, who do not have to depend on their managers to get clients or cannot be threatened into do something out of the fear of being criminally punished or deported by violent clients or bosses. In New Zealand, temporary migrants are still forbidden to be sex workers, and this is the reason why it is not possible to say the country has completely adopted the decriminalisation approach to deal with prostitution. The prohibition of temporary migrant to engage in sex work is considered to be *de facto* criminalisation, since migrants with visas that allow them to work face deportation if they work with prostitution.

IV The New Zealand Paradigm to Prostitution

This topic will present the landscape of the New Zealand sex industry and its convergence to other regulations in the country, as the norms regarding the trafficking in persons. Although New Zealand claims to have decriminalised sex work through the PRA, temporary migrants cannot access the same protections as sex workers who are citizens and permanent residents.

A Who are the migrants this paper is talking about?

As mentioned, the PRA recognizes prostitution as labour, accepting women can choose to work in the industry, rejecting the idea that all sex workers are victims and sexual slaves. Controversially, the PRA prohibited temporary migrants – who are allowed to work in the

[68] Mac, Smith above n 2, at 195.
[69] "New Zealand sex worker given six-figure sum in sexual harassment case" (14 December 2020) BBC News <https://www.bbc.com/news/world-asia-55298303>

country – to engage in sex work, although it does not consider them (temporary migrants) victims of sex trafficking. Since migrants are not seen as victims, they are punished with deportation if they work in the sex industry.

All temporary migrants are forbidden to work as sex workers, but there are different types of visas that allow temporary migrants to work, such as student visas, post study work visas, partner of a student, resident work visa and temporary residence visas.[70] However, none of these visa holders can engage in sex work. This is very controversial, after all, if sex can be work and women can exercise their agency and choose to work in the sex industry, why is this right not granted to temporary migrants entitled to work in the country?

According to the parliamentary debates of the PRB, migrants were prohibited from engaging in sex work because of the possibility of foreign women being coerced into the country and forced into prostitution. Another reason pointed out my Members of Parliament was that the new legislation would transform the country into a sex tourism destination. As Peter Brown, a Member of Parliament pointed out: [71]

> People will be coming to this country not only to sell their services as pimps, but also to bring in young women under false pretences. […] and a sex tourist industry will come into this country like nobody's business.

Temporary migrants who are allowed to work in New Zealand and want to work in prostitution cannot do so, allegedly to prevent forced prostitution. This paper opposes this rationale and will argue that if a migrant is allowed to work in the country, they should not be prohibited from work in the sex industry. This paper will show that there are other ways to prevent sex trafficking that do not make certain workers – temporary migrants – vulnerable.

The PRA defines sex worker as "a person who provides commercial sexual services"[72], it does not extrinsically exclude migrants from being sex workers. The PRA does not understand all migrants sex workers as trafficked victims, on the contrary, they are punished by entering the industry. The PRA recognizes that sex can be work and understands commercial sexual services as a voluntary activity for everyone. However, by not allowing migrants – who are

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[70] New Zealand Immigration <https://www.immigration.govt.nz/new-zealand-visas/options/work/all-work-visas> | New Zealand Immigration < https://www.immigration.govt.nz/new-zealand-visas/options/live-permanently/things-to-consider/residency>
[71] (14 May 2003) 608 NZPD 5739.
[72] Prostitution Reform Act 2003, s 4 (1)

entitled to work – it does not treat sex work as a regular job and places migrant sex workers in a vulnerable position within the sex industry.

B The Massage Parlours Act

The PRA repealed the MPA. The underlying factor for the passing of the MPA was concerns with drugs being taken and crimes being committed inside brothels. Under this law, "a massage parlours (euphemism for a brothel)"[73] needed a special license.[74] Massage Parlours were considered to be a public place, which meant sex workers could be arrested for soliciting in public. The MPA prohibited the employment of people convicted of prostitution related offences in massage parlours, or individuals with drug criminal records and people under 18 years old.[75] The massage parlour staff had to be listed and accessible to the police.[76]

Under the MPA, the act of selling or buying sex was not itself a criminal offence, but it was impossible to do so without breaching the law.[77] For instance, sex workers could be prosecuted for soliciting, meaning sex workers could not openly advertise that their service were available for sale. Brothel keeping was also criminalised, making illegal for sex workers to work together under the same roof and created barriers for sex workers to engage in safe-sex practices, because condoms and lubricants used to be seized by the police as evidence of brothel keeping.[78]

Moreover, under the MPA, it was an offence to live off the earnings of the prostitution of another person. This constraint, alongside with the other prohibitions created a dangerous environment for sex workers. They could not hire a manager or a security guard to, for example, screen clients beforehand as their wages would come from someone else's sex work and

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[73] Jan Jordan, "Of whalers, diggers and 'soiled doves': a history of the sex industry in New Zealand" in Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor (ed) Taking the crime out of sex work (The Policy Press, Bristol, 2010) 25 at 37.
[74] Jan Jordan *The sex industry in New Zealand: A literature review* (Ministry of Justice, Wellington, 2005) at 20.
[75] Gillian Abel, Liza Fitzgerald, Cheryl Brunton *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee* (Department of Public Health, and General Practice University of Otago, Christchurch, 2007) at 17.
[76] Jordan, above n 74 at 20.
[77] Cecilia Benoit, Michaela Smith, Mikael Jansson, Priscilla Healey, Doug Magnuson "The Prostitution Problem: Claims, Evidence, and Policy Outcomes" (2018) 48 ASB 1905 at 1917.
[78] (14 May 2003) 608 NZPD 5739. | Elaine Mossman "Brothel operators' and support agencies' experiences of Decriminalisation" in Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor (ed) *Taking the crime out of sex work (The Policy Press, Bristol, 2010)* 119 at 126.

therefore they would be living off the earnings of a prostitute. Legally, sex workers could not even financially support their dependants, as they too would be living of their earnings. [79]

The convictions related to sex work impacted people's lives negatively, both personally and professionally as it could affect someone's employment options as any criminal conviction can do. In addition, the New Zealand legislation had a double standard, criminalising the sex worker but not the client.[80] The state's inertia against the client (majority men) was considered to be unfair against sex workers (majority women). Especially considering how a criminal conviction could negatively affect a sex worker to other types of legal employment. The previous system clearly discriminated against women while being bluntly beneficial to men.[81]

C The New Zealand Prostitutes Collective & Law Reform

Around 1987 the New Zealand Prostitutes Collective (NZPC) was created to "*create a supportive social environment for sex workers and to prevent the transmission of HIV".*[82] They were funded by the state, but government policies were incompatible with their work. For instance, in order to stop the spread of HIV, the NZPC distributed condoms to sex workers to protect themselves. Nonetheless, police would use these condoms as evidence of sex work taking place in massage parlours or that a woman was soliciting on the streets, resulting in reluctance of massage parlours and sex workers to have condoms with them. The NZPC raised awareness against this discrepancy and discussions around decriminalisation started.[83]

The first draft of the PRB was made by the NZPC and finalised by Bill Hastings, Professor at Victoria University of Wellington. The illegality of the sex industry was understood as harmful for sex workers, who were vulnerable to some bad situations, such as police brutality. Other models of regulation, such as the criminalization of the clients were seen as threat to sex workers, as it would force sex workers to work in "dangerous ways".[84] The Maori Women's

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[79] Gillian Abel, Catherine Healy, Calum Bennachie, Anna Reed "The Prostitution Reform Act" in Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor (ed) *Taking the crime out of sex work (The Policy Press, Bristol, 2010)* 75 at 76.
[80] Jordan above n 75 at 20.
[81] Alison Laurie "Several sides to this story: feminist views of prostitution reform" Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor (ed) *Taking the crime out of sex work (The Policy Press, Bristol, 2010)* 85 at 93-94.
[82] Tim Barnett, Catherine Healy, Anna Reed and Calum Bennachie "Lobbying for Decriminalisation" Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor (ed) *Taking the crime out of sex work (The Policy Press, Bristol, 2010)* 57 at 60.
[83] Barnett, Healy, Reed, Bennachie, above n 82 at 59.
[84] Laurie, above n 81 at 93-97.

Welfare League Inc., also approved the PRB, they thought the decriminalization would have positive impacts for sex workers, allowing them to be treated as any other worker. [85]

The PRB represented a change in the paradigm of New Zealand policy, representing the departure from a moralistic view to viewpoint based on social science evidence.[86] The PRB included feedback from sex workers and the NZPC, contemplating a view on the human rights of sex workers, recognizing them as workers and legal subjects, whom are entitled to employment rights.[87]

As mentioned, in a decriminalised environment sex workers' human rights are recognized and enforceable in praxis, as this paper will demonstrate in the following topics. In a criminalised environment sex workers are still entitled to human rights, but those are ignored since they cannot be enforced. Rights cannot practically be enforced because if a sex worker seeks help from the authorities, they will be liable for criminal prosecution and punishment. This results in sex workers enduring harm and exploitation as an attempt to prevent state punishment.

It is interesting to see that the reasons that lead to the drafting of the PRB, the necessity of safer environment for sex workers and to treat sex work as any other job, are still present today for temporary migrant sex workers. Migrant sex workers have to protected themselves from authorities since they can be deported if immigration authorities believe on reasonable grounds that a visa holder is engaging in sex work. Immigration authorities do not even need proof, just a belief on reasonable grounds. Practically, this could mean that temporary migrants are engaging in sex work without any protection from abuses.

D Evidence-based Law Reform – Feminist Approach to sex work?

In order to understand the rights and the protective framework that migrant sex workers cannot access, it is necessary to understand the legislative approach taken by parliament on the passing of the PRA. The NZPC drafted a bill focusing on sex workers' human rights and during the legislative process, parliament mainly focused on harm minimisation.[88] This section will explain both of these concepts and highlight how it was used in the PRA. In order to understand the rights and the protective framework that migrant sex workers cannot access, it is necessary to understand the legislative approach taken by parliament on the passing of the PRA.

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[85] Laurie, above n 81 at 96.
[86] Benoit, Smith, Jansson, Healey, Magnuson above n 78 at 1917.
[87] Abel, Fitzgerald, Brunton, above n 74 at 23.
[88] Benoit, Smith, Jansson, Healey, Magnuson above n 78 at 1917.

1 Harm Minimisation and Human Rights

Members of parliament saw sex work as inevitable and the law should do its best to minimise its harms.[89] The PRA (PRA) is understood as human rights approach to sex work, that was established through the principle of harm minimisation.[90] In this sense, the PRA states under its section 3 that:[91]

> The purpose of this Act is to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that—
>
> (a) safeguards the human rights of sex workers and protects them from exploitation:
>
> (b) promotes the welfare and occupational health and safety of sex workers:
>
> (c) is conducive to public health:
>
> (d) prohibits the use in prostitution of persons under 18 years of age:
>
> (e) implements certain other related reforms

The first four characteristic of the purpose of the Act are evidence of its human right approach and harm minimisation. When the PRB was going through the legislative process, law makers referred to harm minimisation and human rights as their reason to support the bill. Through the analysis of the Hansard it is possible to extract what is a human rights and harm minimisation approach to sex work.

(a) Harm Minimisation

The harm reduction approach could be seen during the parliamentary readings of the PRB:[92]

> The fourth stage in decriminalisation is to create that new prostitution law that is, in essence, the bill before members today. **It directly addresses potential harm and risks unique to prostitution**. If it were in force, sex workers would work in an environment in which both brothel owners and individual workers would have a legal obligation to take all practical steps to promote the use of safer-sex devices. (Tim Barnett, NZ Labour—Christchurch Central – Second Reading)
>
> […] restrictive laws merely encourage violence, trafficking, rape, and the spread of HIV/AIDS—not the opposite. **The way to combat these things is through the harm**

[89] Benoit, Smith, Jansson, Healey, Magnuson above n 78 at 1917.
[90] Lynzi Armstrong "Out of the Shadows (and Into a Bit of Light): Decriminalization, Human Rights and Street-based Sex Work in New Zealand" Kate Hardy, Sarah Kingston (ed) *New Sociologies of Sex Work* (Routledge, London, 2016) 39 at 40.
[91] Prostitution Reform Act 2003, s 3.
[92] (19 February 2003) 606 NZPD 3607. | (25 June 2003) 609 NZPD 6585.

> **minimisation approach promoted in the bill before** us today. through good public health and education; through strong penalties against coercion and the use of under-age prostitutes; and through the creation of an environment in which sex workers, mainly women, are not obliged to become part of the criminal underworld in order to carry out their occupation. (Sue Bradford, Green – Third Reading)

It is interesting to note that harm minimisation was always linked to the potential dangers sex workers could endure, such as:

- being victims of violence (physical and emotional) perpetrated by brothel operators or clients; [93]
- being victims of rape, sex trafficking; [94]
- the risk of being contaminated and of spreading HIV and others sexually transmitted infections; [95]
- the risk of under 18-year-olds engaging in sex work; [96]
- sex workers being trapped in the sex industry [97]
- the lack of common health standards. [98]

Therefore, in order to control all of those potential dangers, the harm minimisation approach was seen as necessary by the members of parliament who supported the PRB. This approach lead to the inclusion of different sections in the PRB targeting those risks to protect sex workers.

(b) Human Rights

Moreover, the necessity of assuring sex worker's human rights was also discussed during the legislative process and pointed to by Members of Parliament as one of the reasons to pass the new legislation.[99]

> In a perfect world, there would be no need for prostitution. Good education, effective social development programmes, and high levels of employment can reduce the economic factors that push people into prostitution. But social and economic policies will not stop prostitution. […] We cannot deny a group of workers the protection that others have as a right. I do not believe that passing this bill will lead to a significant increase in prostitution. **I am**

[93] (19 February 2003) 606 NZPD 3607.
[94] (19 February 2003) 606 NZPD 3607.
[95] (19 February 2003) 606 NZPD 3607.
[96] (19 February 2003) 606 NZPD 3607.
[97] (19 February 2003) 606 NZPD 3607.
[98] (19 February 2003) 606 NZPD 3607
[99] (25 June 2003) 609 NZPD 6585.

> **committed to protecting the human rights of all citizens, whatever occupation they undertake**. (Luamanuvao Winnie Laban, NZ Labour – Third Reading)

Members of parliament understood that the decriminalisation of sex work would assure sex workers' human rights. While harm minimisation was linked to the possible risks sex workers could endure, human rights was connected with employment rights, gender equity, freedom and even agency. As quoted above, Anne Tolley (National Party), said she would support the PRB in virtue of unfair work rules for sex workers, supporting the basic the right to work[100]. Another MP Katherine Rich (National), declared she supported the bill because she "would want to know that my daughter had the same rights as my son."[101], in other words, she endorsed the PRB on grounds of gender equality, also a human right.[102] Other MPs were in favour of the PRB on the grounds of personal freedom, Katherine Rich (National) and Lynne Pillay (Labour), were honest in saying that although they disapproved sex work, they did not want to impose their view on others.[103]

Despite advocating for Human Rights, Members of Parliament still voted for the exclusion of migrant workers from the PRA and their deportation if caught working within the sex industry. Therefore, is not possible to state that the PRA promotes and protects human rights of sex workers when some are excluded from the protections assured by the Act – migrant sex workers. The PRA only decriminalised sex work for New Zealand permanent residents and citizens, excluding temporary visa holders, even those permitted to work in the country. This exception was not included in the original PRB, it later was introduced by the Minister for Immigration through a Supplementary Order Paper.[104]

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[100] (19 February 2003) 606 NZPD 3607. | Universal Declaration of Human Rights UNTS 8547 (opened for signature 10 December 1948, entered into force 23 Mar.1976), art 23.
Article 23.
(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.
(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
(4) Everyone has the right to form and to join trade unions for the protection of his interests.
[101] (19 February 2003) 606 NZPD 3607.
[102] Convention on the Elimination of All Forms of Discrimination Against Women I-20378 UNTS (opened for signature 1 March 1980, entered into force 3 September 1981), art 3.
"States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."
[103] (19 February 2003) 606 NZPD 3607.
[104] Armstrong, Abel, Roguski above n 45 at 113.

(c) Human Rights & Harm Minimisation in the PRA – Sex Workers Rights in New Zealand

The conflation of human rights and harm minimisation resulted in a decriminalised sex industry and in a law assuring solid rights for sex workers, including "the right not to be subjected to discrimination, the right to safety, the right to respect for private and family life, the right to work, and the right to health."[105]. The PRA repealed the existing legislation, which meant that sex workers do not need to fear being arrested for prostitution related offences, which used to have a significant impact on their lives, limiting different types of employment and overseas travelling.[106] After the passing of PRA, sex workers' human rights are safeguarded in practice, as it will be demonstrated in this topic, and the law protects them from exploitation. They are also protected by different acts, such as the Human Rights Act 1993, Employment Relations Act 2000 and Health and Safety at Work Act 2015.[107] The PRA provide to sex workers other protections, such as:

> i) Contractual protections: s 7 provides that no contract for the provision of commercial sexual services is illegal or void on public policy or similar grounds. However, s 17(1) provides that despite anything in a contract for the provision of commercial sexual services, a person may at any time refuse to provide, or continue to provide, a commercial sexual service to any other person.
>
> ii) Health and safety protections: ss 8 and 9 require operators of businesses of prostitution, sex workers, and clients to adopt safer sex practices, including, for example, requiring all reasonable steps to be taken to ensure that no commercial sexual services are supplied unless a condom or other appropriate barrier is used, and taking all other reasonable steps to minimise the risk of sex workers or clients acquiring or transmitting sexually transmissible infections. In addition, the Health and Safety at Work Act is stipulated to apply to a sex worker.
>
> iii) Further protection: s 16 provides that no person may explicitly or impliedly threaten or promise that they will:
>
> (a) improperly use any power or authority arising out of any occupational or vocational position or relationship;
>
> (b) commit an imprisonable offence; or

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[105] Bridie Sweetman, "Reflection from the Field, The Judicial System And Sex Work In New Zealand" (2017) 31.2 Wsanz 61 At 63.
[106] Armstrong, above n 91 at 41.
[107] Cory-Wright above n 26 at 282.

(c) make an accusation or disclosure of any offence or other misconduct committed by a person or that a person is unlawfully in New Zealand

(d) to induce or compel another person to provide commercial sexual services to any person.3 4 Such an act done with intent to induce or compel sexual service is punishable with imprisonment of a maximum term of 14 years.

Overall, the PRA recognized that there is a difference between coerced and voluntary prostitution, as defined in topic II and recognizes that only certain people in the sex industry are victims such as persons under 18 years old. Therefore, it also forbids assisting underage individuals to work in the sex industry. A person who contracts for commercial sexual services, receive sexual services or assist a person under 18 years old is liable to 7 years of imprisonment.[108]

In addition, because prostitution has to be voluntary the PRA it includes the right to sexual autonomy and provides under section 17 (1) that a sex worker may withdraw consent at any time. In *NR v MR (2014)* a client tried to argue that contract law and the obligation of completing a contract trumps the right to refuse to provide commercial sexual services. However, the decision of the Court confirmed that the right to sexual autonomy prevails over contractual obligations or any Consumer Guarantees Act 1993 obligations.[109] This is important because it shows how the PRA offers support and protection for sex workers. It illustrates how the sexual autonomy of the sex worker is respected and enforced in practice. A right not guarantee for migrant sex workers.

In summary, New Zealand Parliament distanced itself from discourses claiming prostitution was always coerced and the same as sex trafficking. The PRA represents a departure from the neo-abolitionist understanding that all sex workers are victims. By taking this approach the PRA recognized different human rights to sex workers, such as the right to sexual autonomy (right to withdraw consent), the right work, by allowing sex workers to work in any environment they feel most comfortable at (privately, in brothels, street sex work); the right to health, as "sex workers can access products such as condoms and services such as sexual health

[108] Prostitution Reform Act s 20, 21, 22, 23.
In *Booten v Police (2008)* the defendant was charged of engaging in commercial sex with three different complainants under 18 years old. The defendant appealed in relation to one of them, arguing he thought she was over 18 years of age at the time and, as a consequence, he could not be found guilty of breaching section 22 of the PRA. The Court of Appeal rejected this argument, stating that a "defendant cannot hide behind the argument that they did not know a victim was under 18, and the onus is on them to check the age" (Sweetman, above n 105 at 6165.)
[109] Sweetman, above n 105 at 65.

checks from the New Zealand Prostitutes' Collective, Family Planning"[110]; the right to safety, by allowing police to act alongside with NZPC promoting "safety and well-being of sex workers"[111] and the right not to be discriminated (by application of the Human Rights Act 1993).[112]

The PRA understood sex work as a regular occupation and the laws criminalising it, interfered with the protection of sex workers' human rights.[113] However, it excluded a group of sex workers from its protections: temporary migrant sex workers. Section 19 of the PRA states that:[114]

> 19 Application of Immigration Act 2009
>
> No visa may be granted under the Immigration Act 2009 to a person on the basis that the person—
>
> (a) has provided, or intends to provide, commercial sexual services; or
>
> (b) has acted, or intends to act, as an operator of a business of prostitution; or
>
> (c) has invested, or intends to invest, in a business of prostitution.
>
> (2) It is a condition of every temporary entry class visa granted under the Immigration Act 2009 that the holder of the visa may not, while in New Zealand,—
>
> (a) provide commercial sexual services; or
>
> (b) act as an operator of a New Zealand business of prostitution; or
>
> (c) invest in a New Zealand business of prostitution.
>
> (3) It is sufficient reason for the Minister of Immigration or an immigration officer to determine that a temporary entry class visa holder is liable for deportation under section 157 of the Immigration Act 2009 if the Minister or the officer believes, on reasonable grounds, that the holder is engaged in any of the things listed in subsection (2)(a) to (c) of this section.

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[110] Sweetman, above n 105 at 66.
[111] Sweetman, above n 105 at 64.
[112] Sweetman, above n 105 at 63. (In DML v Montgomery the plaintiff "alleged that the brothel operator 'subjected her to sexual harassment by the use of language of a sexual nature'. These comments impacted the plaintiff's ability to eat and sleep and made her feel 'on edge' and depressed. Eventually she was unable to continue working there. The Human Rights Tribunal held (at paragraph 105) that 'even in a brothel, language with a sexual dimension can be used inappropriately in suggestive, oppressive or abusive circumstances. The Tribunal also held (at paragraph 111) that to deny the right not to be subjected to sexual harassment to sex workers would be to deny them 'the protection of the Human Rights Act'. To recognise the breach of the plaintiff's rights, the defendant was ordered to pay the sex worker the sum of NZD$25,000. Other orders were made to prohibit the defendant from engaging in further behaviour in breach of section 62 of the Human Rights Act.")
[113] (14 May 2003) 608 NZPD 5739.
[114] Prostitution Reform Act 2003, s 19.

> (4) Any conditions of a resident visa are deemed not to have been met and the resident is liable for deportation under section 159 of the Immigration Act 2009 if the Minister of Immigration or an immigration officer determines that the holder of a resident visa acts as an operator of, or invests in, a New Zealand business of prostitution.
>
> (5) This section applies to all visas and permits held and all requirements and conditions imposed under the Immigration Act 1987 or the Immigration Act 2009, whether granted or imposed before or after the commencement of this section.

This section prohibits anyone that is in New Zealand or is coming to the country on a temporary visa to work from prostitution, even if their visa allows them to work. Immigration New Zealand can refuse entry to someone if it is suspected they are planning to become sex workers in the country or deport migrants if they are found to be working in the sex industry. This policy is contradictory because it created two categories of sex workers. Sex workers that are citizens or permanent residents have legal rights to challenge exploitation, while temporary migrants are not entitled to this same structure and are more vulnerable to exploitation and harm.[115] The rationale for the exclusion of migrant sex workers from the PRA was, according to the Minister for Immigration, Lianne Dalziel, the possibility that foreign women could be coerced into New Zealand for the purpose of prostitution. In her words:[116]

> I want to speak only very briefly in this debate, and on the Supplementary Order Paper in my name. […] That is to ensure that in decriminalising the laws on prostitution, we do not unwittingly allow people to be brought into the country for the purposes of prostitution.

This Supplementary Order Paper culminated in the section 19 of the PRA, which states that no one holding a temporary visa can work as a sex worker or operate or invest in a "business of prostitution". That means that even if a person holds a temporary visa which allows them to work, they are forbidden to work in the sex industry. The consequence for temporary migrant workers working in the industry is deportation. Section 19 also allows the deportation of a temporary visa holder if the Minister of Immigration or an immigration officer believes, on reasonable grounds, that the holder is engaged in the sex industry.[117]

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[115] Armstrong, Abel, Roguski above n 45 at 114.
[116] (14 May 2003) 608 NZPD 5739.
[117] In the year ending November 1, immigration figures estimated there were 207 actual or suspected sex workers refused entry in New Zealand. Of those, 111 were from China and eight were Hong Kong passport holders, 56 were from Brazil and 24 were from Taiwan. (Samantha Gee "Migrant sex workers in top of the south deported" (05 November 2019) Stuff <https://www.stuff.co.nz/national/crime/117188869/migrant-sex-workers-in-top-of-the-south-deported>)

The prohibition of temporary visa holders to engage in prostitution represents a major flaw of the PRA, placing migrant workers in a vulnerable position. The national manager compliance of Immigration New Zealand (INZ), Dave Campbell, said migrant who engage in sex work are vulnerable to exploitation by "unscrupulous employers and clients" and "are unlikely to come forward and complain.".[118] It is completely understandable they would not report they exploitation since if they are caught engaging in sex work, they are most likely to be deported.

Section 19 unveils the presence of a double standard within the PRA: it forbids and penalise migrant workers who work with sex work, while permanent residents and citizens benefit from a protective legal framework and access to basic human rights provided by the PRA. This double standard also appears in the punishment migrant sex workers face, while there is not any sanction for clients that consciously purchase sexual services from a temporary migrant worker.

2 Evidence-based law reform? Feminist Approach to Sex Work - The Prostitution Reform Act through the Lens of Feminist Legal Theory

Analysing the PRA through feminist legal theory, it is possible to see how the PRA can be considered a result of feminist legal analysis. It was drawn on the experiences of sex workers in New Zealand, taking a critical stance towards the previous legislation and the understanding of the limits of the law. Members of Parliament saw prostitution as a result of social inequalities, understanding it would not be feasible to abolish prostitution, or minimize its occurrence without addressing the underlying causes of it. They concluded that the factors that lead people into becoming sex workers are "poverty, lack of education or addiction or abuse"[119] and presented a desire for focusing on these issues and on the social welfare in pursuance of making prostitution "less attractive or less necessary".[120] A majority of parliament also saw that the negative effects related with prostitution were also caused by a flawed law and not prostitution itself. It recognized that sex workers needed more rights to minimize the harms prostitution can still cause, though, temporary migrants cannot access those rights. Therefore,

[118] Samantha Gee "Migrant sex workers in top of the south deported" (05 November 2019) Stuff <https://www.stuff.co.nz/national/crime/117188869/migrant-sex-workers-in-top-of-the-south-deported>
[119] Carisa R. Showden "From human rights to law and order: The changing relationship between trafficking and prostitution in Aotearoa/New Zealand policy discourse" (2017) 31 WSJ 1173 at 1185.
[120] Showden, above n 121 at 1185.

it is not completely right to say New Zealand has a human rights-based approach for sex work if a category of sex workers is excluded from these rights.

It is possible to say the PRA is based on feminist legal analysis, especially considering the fact that the PRB was drafted by the NZPC, an organization that advocates for the "human rights, health and well-being of all sex workers"[121]. It did suffered changes during the legislative process and these changes can be pointed to as a reason for the PRA not to be fully supported by a comprehensive feminist legal theorical analysis. There are three different methods of feminist legal analysis, that intend to focus on features that traditional legal methods of analysis usually overlook: asking the woman question, consciousness-raising and feminist practical reasoning. It is clear that the PRA takes into consideration *the woman question* and c*onsciousness-raising*, as it used the input of the NZPC to formulate a human rights-based and harm minimisation approach to guarantee sex workers are safe.

The PRA does not directly state that prostitution is a gendered occupation, as it follows the neutrality of the law. Despite that, the PRA addressed *the woman question* and *consciousness-raising* because it draws on women's point of view, as it was originally drafted by the NZPC. The PRA took into consideration the problems generated by the MPA to change New Zealand approach on sex work. This new approach intended to minimise the harms criminalisation had on sex workers, who are mostly women, as a result of the gendered nature of the occupation. In addition, the considerations of sex workers experiences were fundamental for consciousness-raising. It was the lobbying of the NZPC with the stories and experiences of sex workers that promoted law reform and shifted the New Zealand paradigm of sex work. It is possible to note that those two methods of feminist legal analysis complement each other, one focusing on the gendered characteristic of sex work – a fact agreed by opposing strands of feminist legal theories, and the other concentrating on the common, but individual experiences shared by different sex workers that gave origin to the PRA.

Unfortunately, the initial bill drafted by the leadership of the NZPC endured some alterations during the legislative process and, as exhaustively presented in this paper, excluded temporary migrants from its protections expecting it would prevent sex trafficking in the country. This demonstrates how law makers had a narrow view of the effects the exclusion would have on migrant sex workers. They did not consider or identify the perspectives of the excluded,

[121] Aotearoa New Zealand Sex Workers' Collective <https://www.nzpc.org.nz/About-NZPC>.

temporary migrant sex workers. Consequently, feminist practical reasoning was not considered by parliament in their analyses before deciding to include section 19 of the PRA.

V Section 19 of the PRA – The Necessity of Repeal in light of Feminism Practical Reasoning

A Temporary Migrant Sex Workers Voices

As discussed in the previous topics, parliament excluded migrant sex workers from the PRA as a measure to prevent sex trafficking. However, this allegation did not take into consideration the reality and practical aspects of human trafficking and migrant sex work. It ignored the real aspects of trafficking and forbid migrants from exercising their agency and accessing human rights, allegedly to prevent coerced and forced prostitution. This logic lacks a practical perspective.

A New Zealand criminologist, Lynzi Armstrong, analysed the inclusion of section 19 of the PRA and noticed that it originated from the fear and anxiety that the decriminalisation of prostitution would expand the sex industry and bring sex tourism into the country, without any evidence.[122] Migrant sex workers were only mentioned by parliament during the debates when sex trafficking was being discussed and because of that section 19 is a[123]

> consequence of intersecting political and social forces, including ratification of the Trafficking Protocol, opposition to decriminalisation, and fears of an "explosion" of prostitution. In this context, discourse around "trafficking" was an effective way of legitimising the prohibition of migrant sex work.

Regardless of the reasons migrant sex workers were excluded by the PRA, the reality is that their voices were silenced, and their realities made invisible for most members of parliament. It is more than necessary to give voice to these workers and analyse their reality in light of feminist practical reasoning. Despite the necessity of further research in this area, there two published studied that gave voice and space to temporary migrant sex workers to share their perspectives[124], which is essential for a feminist practical reasoning analysis. This topic will draw on the finding of these researchers to expose the necessity of migrants to be granted the same rights as sex workers that are citizens and permanent residents. One study was

[122] (14 May 2003) 608 NZPD 5739.
[123] Understanding the experiences of migrant Asian sex workers in New Zealand: An exploratory study at 12.
[124] Gillian Abel, Michael Roguski *Migrant Sex Workers In New Zealand Report MBIE* (Ministry of Business, Innovation, and Employment, Wellington 2018).

commissioned by the Ministry of Business Innovation and Employment (MBIE) and the other was conducted by Lynzi Armstrong for the in Global Alliance Against Trafficking in Women (GAATW)[125]. The MBIE report focused into the "lived experiences of migrant sex workers in New Zealand"[126], while the study carried out by Armstrong concentrated on sex workers perceptions of the PRA[127].

1 Global Alliance Against Trafficking in Women Report

The Armstrong study for the GAATW consisted of 20 in-depth interviews with sex workers from Wellington and Auckland. The participants were: four staff of NZPC, four sex workers – "one migrant sex worker from China, one Māori sex worker, and two New Zealand European sex workers—one with extensive experience of travelling for sex work, and another who had worked with migrant sex workers in brothel environments"[128]. The interviews aimed to explore the "key issues for sex workers in the New Zealand context, perceptions of trafficking into sex work as an issue, and identify how organisations should respond to sex workers who experience exploitation"[129].

The study did not find any occurrences of sex trafficking happening in the country, but participants described different cases of exploitation and demonstrated preoccupation with the conditions that temporary migrant sex workers find themselves in New Zealand, that increase the risk of trafficking and exploitation.[130] Participants pointed out Immigration NZ engaged in a number of brothel raids and never found a case of a trafficked woman in New Zealand. Moreover, there was a shared frustration related to the anti-trafficking discourse because "sex work exploitation is portrayed in extreme terms, eclipsing the more mundane forms of exploitation that sex workers experience"[131], such as excessive hours of work, management holding or delaying sex workers payment and not having a satisfactory work environment. Participants understood trafficking happens when deception and coercion occur or when sex workers lack choice and freedom – "freedom—as a situation in which an individual would be forced to do sex work against their will without remuneration"[132].[133]

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[125] Lynzi Armstrong Women Sex Workers Organising for Change: Self-representation, community mobilisation and working conditions (Report Global Alliance Against Trafficking 2018) 73.
[126] Armstrong, Abel, Roguski above n 45 at 119.
[127] Armstrong, above n 125 at 74.
[128] Armstrong, above n 125 at 82.
[129] Armstrong, above n 125 at 82.
[130] Armstrong, Abel, Roguski above n 45 at 116.
[131] Armstrong, above n 125 at 88.
[132] Armstrong, above n 125 at 90.
[133] Armstrong, above n 125 at 57.

Participants also expressed concern with migrant sex workers "being subject to unacceptable working conditions"[134], such as reduced control on their work hours, or even sex workers who live in the brothels' premises and have to pay board and expenses. All participants were concerned about the implications of the exclusionary policy of the laws regarding migrant sex work. They identified that the prohibition of sex work for migrants create conditions that facilitate exploitation of these sex workers. The precarious legal status of migrant sex workers causes their disempowerment while empowering abusive clients and managers. This might be one of the unintended results of section 19, in an attempt to protect New Zealand from trafficking it gave ammunition to abusive clients, managers, brothel operators to take advantage of migrant sex workers.

Amy, a migrant sex work from China who was interviewed in this study, said she already went through bad experiences with clients. She said a client once thought she did not have the proper visa to be a sex work and he told her that if she did not give him a good service, he would report her to the police. She also said there are racist clients, who see Asian sex workers as submissive and will try to push their boundaries. They think migrant sex workers, but especially Asian, are not aware they are entitled to say "no" to the client. She said this type of client "*will grab you and say 'I'm gonna do this' and you can say 'no' but they won't listen to you… you will say 'stop' and they say they want their money back…* "[135]. This situation shows clients can threaten and pressure temporary migrant sex workers into doing something they normally would not, such as unprotected, anal sex or even not pay for the service that was provided, since they know the sex worker will not report that to the authorities.

It is important to highlight that, although under section 16 of the PRA is an offence "to use the threat of disclosing that a person is unlawfully in New Zealand to induce or compel another person to provide commercial sexual services"[136], temporary migrant sex workers do not have any effective protection against those exploitative practices. If they go to the police, they might be penalised along with their clients. Another important concern demonstrated by the study is the fact that brothel owners who employ migrants might not be willing to report other types of disputes with clients because they do not want the police to be coming to their premises.[137]

[134] Armstrong, above n 125 at 90.
[135] Armstrong, above n 125 at 91.
[136] Armstrong, above n 125 at 92.
[137] Armstrong, above n 125 at 92.

2 Report of MBIE

In the report about migrant sex workers for MBIE, 11 migrant sex workers and nine stakeholders were interviewed. The report found different vulnerabilities that migrant sex workers can endure and depending on some of their individual characteristics, these vulnerabilities can intersect to make "migrant sex workers more or less open to exploitation"[138]. Overall, the research identified migrants who do not speak English or are not white-European are more vulnerable than caucasian and English speakers' migrants. Migrant sex workers who works in brothels are less "vulnerable to blackmail from clients as often their faces were visible and their nationality was included in online adverts. This also held more potential for coming to the notice of authorities"[139]. In addition, due to the fear of deportation, migrant sex workers said they would not report problems to the police. Vulnerable migrant sex workers did not access NZPC or the sexual health clinics.[140]

The main exploitative practices perceived by the report were: [141]

- made to work long hours;
- having to pay fines and bonds;
- not allowing sex workers to access NZPC for advice or sexual health check-ups;
- having money withheld;
- not allowing workers to leave the premises;
- holding passports;
- being forced to offer unprotected sex; and,
- the brothel operator raping the women.

The study found that the illegal status of migrant sex workers can led them to isolate themselves and they may be reluctant to attend the free sexual health clinic at the NZPC. In Auckland, the city's Health Board requires the clinic to collect personal information of patients and this had a detrimental effect on migrant sex workers in seeking medical assistance, according to a Sexual Health Nurse interviewed in the study.[142]

Migrant sex workers who participated on the study said there is no evidence of sex trafficking in New Zealand, on the contrary, they had witnessed or being through exploitative practices by

[138] Abel, Roguski above n 124 at ii.
[139] Abel, Roguski above n 124 at ii.
[140] Abel, Roguski above n 124 at ii.
[141] Abel, Roguski above n 124 at 11.
[142] Abel, Roguski above n 124 at 14.

brothel operators or clients. They stressed the law should be more humanitarian and fairer to create an environment that empower and protect them as workers.

B Feminist Practical Reasoning

The framework created by the PRA revealed how necessary and vital is for sex workers to access basic human rights and not to be punished for performing an occupation. The decriminalisation of sex work in New Zealand was driven by the recognition that the previous law was causing more harm than good and the urgency of sex workers to be granted basic human rights. It was recognised how sex workers could freely consent to engage or not in prostitution, so why this right was not extended to migrant sex workers? The conflation of sex trafficking with prostitution is a threat to women's access to human rights and the reality of migrant sex workers in New Zealand is proof of that. The prohibition placed on migrant's sex workers amplifies their "marginalised status and potentially places migrants underground and at risk of a series of dangers"[143].

The departure from the MPA, when sex work was partially criminalised, was the recognition that prostitution should be located under the umbrella of human rights. Specifically, it was the perception sex workers should be entitled to parental leave, social security, to just and favourable conditions of work. The decriminalisation aims to empower sex workers to fight their exploitation, if it occurs. However, all of this is denied for migrant sex workers.

Their voices were not heard during the legislative process, and this silencing generated this opportune framework for exploitation. As a result, as shown by the studies portraited in the previous topic, migrants sex workers endure or are susceptible to endure different types of harms and exploitation. The real-life experiences of sex workers should be the fuel for law reforms regarding their work. The prohibition of temporary migrants to engage in sex work as a policy to prevent sex trafficking is odd. How could the rights of a vulnerable group make them more susceptible to harm and exploitation? The rationale for section 19 was disconnected from the practical experiences of sex workers in general.

In addition, New Zealand has extensive measures to address human trafficking. The Minister of Foreign Affairs and Trade[144] is part of the Inter-Agency Coordination Group against Trafficking in Persons (ICAT), which is "a forum mandated by the United Nations to facilitate

[143] Abel, Roguski above n 124 at 18.
[144] New Zealand Foreign Affairs & Trade <https://www.mfat.govt.nz/en/peace-rights-and-security/international-security/people-smuggling-and-human-trafficking/>

a holistic and comprehensive approach to preventing and combating trafficking in persons, including protection and support for victims of trafficking"[145]. In addition, there are offences for trafficking in the Crimes Act 1961, that was amended through the Organised Crime and Anti-corruption legislation Bill to include internal human trafficking through act of deception or coercion. The anti-trafficking framework resulted in the prosecution and conviction of a man for financial and labour exploitation of migrant workers in horticulture. There has been a case of sex trafficking in New Zealand.[146]

The praxis related to section 19 of the PRA demonstrate how law is not neutral and objective even for working women. It shows how the law can interfere in the subjugation of migrant women. It is here where feminist legal theory is necessary to identify the missing points of view of migrant sex workers in order to demonstrate the urgency of repealing section 19 of the PRA. The power structures built by the PRA places migrant sex workers in extreme vulnerability, in opposition to the purposes of the PRA, as stated in its section three. The prohibition on migrant sex workers is not safeguarding their human rights, neither protecting sex workers from exploitation, in discordance with section 3 (a) of the PRA. It is a barrier to the welfare and occupational health and safety of sex workers, in contrary to section 3 (b).

If the same immigration rules that are applied for any other type of work in New Zealand were applied to sex workers, the authorities would have much more control of the industry. Immigration would be able to ensure that migrants only work in determined and safe avenues. As Kade Cory-Wright, a legal officer at INZ states,[147]

> This could include tighter regulation on conditions for nationals from visa-waiver countries, who are not required to apply for visas. Anyone applying for a visa to enter New Zealand with the intention of becoming a sex worker would likely need a job offer from a licensed sex work employer, proof they have legally acquired experience as a sex worker and evidence that there are no suitable New Zealanders applying for the job. If applied to the sex work industry […] would also require the employer of any migrant sex worker to be formally accredited, and potentially be subject to industry specific regulations. As a result, most migrants who wished to practice sex work would need to have their employment verified by Immigration New Zealand. New Zealand, therefore, has a robust immigration and justice system that could be

[145] The Inter-Agency Coordination Group against Trafficking in Persons (ICAT) <http://icat.network/about-us>
[146] Cory-Wright, above n 26 at 287.
[147] Cory-Wright above n 26 at 288.

reviewed before any repeal of s 19 to ensure that any rise in sex trafficking, imagined or real, could be managed appropriately.

Unfortunately, the repeal of section 19 would not solve all problems related to migrant sex work, but it would, indeed, be a start. The new problems that might surface after the repeal is the impossibility of some temporary migrants, as students, to do contract work or to be self-employed, which are common characterises of sex work. However, the repeal would be a step in the right direction, recognizing sex work as an ordinary job and temporary migrant as sex workers who deserve protections of human rights and are not necessarily victims of trafficking.

VII Conclusion

This research has analysed sex work through the lens of feminist legal theory. It started outlining the theoretical framework regarding the topic and the reasons why feminist legal theory is applicable to sex work: the gendered nature for the occupation. It was understood that the PRA took two approaches to regulate sex work: humans rights and harm minimization. The PRA granted sex workers the access to human rights and eliminated the harms created by the MPA, but section 19 excluded migrant sex workers from its protections.

This research analysed the PRA and sex work in practice through feminist practical reasoning. In other words, this research decided to hear the views that were ignored by parliament during the legislative process of the PRA: the voices of temporary migrant sex workers. The studies used to do so demonstrated the danger that migrant sex workers face. This research found that is unconceivable that a practice that is decriminalised for a category of people is still dangerous and harmful for another category of people. The anti-trafficking discourse is not supported by any evidence. Migrants sex workers who are already entitled to work in New Zealand should not be prohibited to engage in sex work. The prohibition demonstrates how sex work is not treated as any other job and also inflicts harm in people who are already in the country and might find themselves in a position of entering sex work.

VIII Bibliography

A Cases

NR v MR and others - SC 3/2015.

B Legislation

Massage Parlours Act 1978.

Human Rights Act 1993.

Employment Relations Act 2000.

Prostitution Reform Act 2003.

Health and Safety at Work Act 2015.

C Books and Chapters in Books

Alison Laurie "Several sides to this story: feminist views of prostitution reform" Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor (ed) Taking the crime out of sex work (The Policy Press, Bristol, 2010) 85.

Arthur Gold "The Criminalisation of buying sex: the politics of prostitution in Sweden" (2001) JSP 437.

Caren Wilton My body my business, New Zealand Sex Workers in an era of change (9th ed, Otago, 2019).

Carol Smart Feminism and the Power of Law (Online ed, Taylor & Francis Group, London, 1989).

Carisa R. Showden Choices Women Make Agency in Domestic Violence, Assisted Reproduction, and Sex Work (1st ed University of Minnesota Press, Minnesota, 2011).

Gabriella Mesce "Sex Work Decriminalization and Feminist Theory" (BA (Hons) Theses, University of South Carolina, 2020).

Elaine Mossman "Brothel operators' and support agencies' experiences of Decriminalisation" in Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor (ed) Taking the crime out of sex work (The Policy Press, Bristol, 2010) 119.

Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor Taking the crime out of sex work (The Policy Press, Bristol, 2010)

Gillian Abel, Liza Fitzgerald, Cheryl Brunton The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee (Department of Public Health, and General Practice University of Otago, Christchurch, 2007).

Gillian Abel, Catherine Healy, Calum Bennachie, Anna Reed "The Prostitution Reform Act" in Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor (ed) Taking the crime out of sex work (The Policy Press, Bristol, 2010) 75.

Jan Jordan, "Of whalers, diggers and 'soiled doves': a history of the sex industry in New Zealand" in Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor (ed) Taking the crime out of sex work (The Policy Press, Bristol, 2010) 25.

Jan Jordan The sex industry in New Zealand: A literature review (Ministry of Justice, Wellington, 2005) at 20.

Janice G Raymond Not a Choice Not a Job Exposing the Myths about Prostitution and the Global Sex Trade (1st ed, Potomac Books, Nebraska, 2013).

Jay Levy and Pye Jakobsson "Abolitionist feminism as patriarchal control: Swedish understanding of prostitution and trafficking" (2013) DA 333.

Juno Mac, Molly Smith Revolting Prostitutes: The Fight for Sex Workers' Rights (1st ed, Verso, London, Brooklyn, 2018).

Jyoty Sanghera "Unpacking the Trafficking Discourse" in Kamala Kempadoo (ed) Trafficking and Prostitution Reconsidered (Paradigm Publishers, London, 2012)

Kimberly Kay Hoang, Dealing in Desire: Asian Ascendency, Western Decline, and the Hidden Currencies of Global Sex Work (Online ed, University of California Press, California 2015).

Laura Maria Agustin, Sex At the Margins: Migration, Labour Markets and the Rescue Industry (1st ed ZedBooks, London, 1998) at 45.

Lola Olufemi, Feminism, Interrupted: Disrupting Power, (Online ed, Pluto Press, March 2020).

Lynzi Armstrong “Out of the Shadows (and Into a Bit of Light): Decriminalization, Human Rights and Street-based Sex Work in New Zealand” Kate Hardy, Sarah Kingston (ed) New Sociologies of Sex Work (Routledge, London, 2016) 39.

Lynzi Armstrong Women Sex Workers Organising for Change: Self-representation, community mobilisation and working conditions (Report Global Alliance Against Trafficking 2018) at 90.

Lynzi Armstrong, Gillian Abel, Michael Roguski “Fear of Trafficking or Implicit Prejudice? Migrant Sex Workers and the Impacts of Section 19” in Sex Work and the New Zealand Model 113.

Nancy Levit, Robert R. M. Verchick “A Primer Feminist Legal Theory” (1st ed, New York University Press, New York and London, 2006)

Natalie Fiennes, Behind Closed Doors, (online ed, Pluto Press, 2019).

Ronald Weitzer “Understanding Prostitution” in Legalizing Prostitution: From Illicit Vice to Lawful Business (1st ed, New York University Press, New York, 2011).

Sylvia A. Law “Commercial Sex: Beyond criminalisation” (2000) 73:523 SCLR 523.

Tim Barnett, Catherine Healy, Anna Reed and Calum Bennachie “Lobbying for Decriminalisation” Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor (ed) Taking the crime out of sex work (The Policy Press, Bristol, 2010) 57.

D Parliamentary and government materials

(19 February 2003) 606 NZPD 3607.

(14 May 2003) 608 NZPD 5739.

(25 June 2003) 609 NZPD 6585.

New Zealand Immigration <https://www.immigration.govt.nz/new-zealand-visas/options/work/all-work-visas>

New Zealand Immigration < https://www.immigration.govt.nz/new-zealand-visas/options/live-permanently/things-to-consider/residency>

E Journal Articles

Bridie Sweetman, “Reflection from The Field, The judicial system and sex work in New Zealand” (2017) 31.2 WSANZ 61

Carisa R. Showden “From human rights to law and order: The changing relationship between trafficking and prostitution in Aotearoa/New Zealand policy discourse” (2017) 31 WSJ 1173.

Catharine A. MacKinnon “Prostitution and Civil Rights” (1993) 1 MJGL 13.

Catharine A. MacKinnon “Trafficking, Prostitution, and Inequality” (2011) HCRCLLR 271.

Elisabeth McDonald "The Law of Contract and the Taking of Risks: Feminist Legal Theory and the Way It Is" (1993) 23:2 VUWLR 113.

Cecilia Benoit, Michaela Smith, Mikael Jansson, Priscilla Healey, Doug Magnuson “The Prostitution Problem: Claims, Evidence, and Policy Outcomes” (2018) 48 ASB 1905.

Johanna Schmidt “The regulation of sex work in Aotearoa/New Zealand: An overview” (2017) 31.2 WSJ 35.

Kade Cory-Wright “Sex work in New Zealand – A case for repeal of section 19 of the Prostitution Reform Act, 2003” (2019) NZWLJ 277.

Katharine T. Bartlett “Feminist Legal Methods” (1990) 103 HLR 829.

Kim Brooks “Why Feminism Matters to the Study of Law” (2015) 27 CJWL.

Marija Urlich "A Short Topology of Feminist Legal Theory" (1993)7.2 AULR 483.

May-Len Skilbrei, Charlotta Holmström “Is there a Nordic Prostitution Regime” (2011) 40 CJ 479.

Ronald Weitzer “Sex Trafficking and the Sex Industry: The Need For Evidence-Based Theory And Legislation” (2011) 101.4 TJCLC 1337.

F Papers and reports

Gillian Abel, Michael Roguski Migrant Sex Workers In New Zealand Report MBIE (Ministry of Business, Innovation, and Employment, Wellington 2018).

G Internet Materials

Prostitution: le Parlement adopte définitivement la pénalisation des clients (06 April 2016) Le Monde https://www.lemonde.fr/societe/article/2016/04/06/prostitution-le-parlement-adopte-definitivement-la-penalisation-des-clients_4897216_3224.html

Global Gender Gap Report (2020) World Economic Forum <http://www3.weforum.org/docs/WEF_GGGR_2020.pdf>.

Paying for sexual services. Nidirect <https://www.nidirect.gov.uk/articles/paying-sexual-services>

Samantha Gee “Migrant sex workers in top of the south deported” (05 November 2019) Stuff <https://www.stuff.co.nz/national/crime/117188869/migrant-sex-workers-in-top-of-the-south-deported>

Aotearoa New Zealand Sex Workers' Collective <https://www.nzpc.org.nz/About-NZPC>.

H International Materials

Convention on the Elimination of All Forms of Discrimination Against Women I-20378 UNTS (opened for signature 1 March 1980, entered into force 3 September 1981)

Universal Declaration of Human Rights UNTS 8547 (opened for signature 10 December 1948, entered into force 23 Mar.1976), art 23.