

# **UK Prostitution Legislation and the Implementation of the Nordic Model**

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## **Abstract**

The law of prostitution in the United Kingdom (UK) fails in many instances. By focusing primarily on the nuisance of prostitution, UK law does not offer any indication that a prostitute is a vulnerable party in the transaction. Although progress has been made through s.53A Sexual Offences Act 2003, this article argues that UK law requires reform to implement policies that recognise that prostitutes are victims of gender inequality. Originally implemented in Sweden in 1999, the Nordic model is the first to criminalise the purchase but not the sale of sex, reflecting the radical feminist idea that prostitutes are victims of the patriarchal belief that men have a right to on-demand sex. However, while the model reduces on-street prostitution, this does not outweigh the increased risks of violence prostitutes face. Additionally, prostitution as a whole has not reduced, with buyers and sellers using other means to organise the transaction. Although ultimately concluding that the model has far too many negative effects, the article acknowledges the near impossibility of producing a perfect prostitution policy. However, in order to sufficiently protect prostitutes from harm, the law needs to do more than send a message of disapproval. Instead, more social interventions should be implemented to support sex sellers in all aspects of their lives. Prostitution exists and will continue to exist because patriarchy allows it to do so. To eliminate prostitution, patriarchy and the patriarchal belief that men have an intrinsic right to women's bodies must first be dismantled.

**Keywords:** Prostitution; UK; Nordic model; Patriarchy

## **1. Introduction**

Throughout history, prostitution has been discussed extensively with scholar Nicki Roberts stating that, if prostitution is the world's oldest profession, men engaging in

discussions of prostitution is the second.<sup>1</sup> This has led to many theories about the existence of prostitution over time, ranging from the belief that prostitution serves a function in society that is natural and unavoidable,<sup>2</sup> to prostitutes themselves being born with an ‘unresolved personality problem’<sup>3</sup> that requires eradication.

Different jurisdictions have different policies and laws on prostitution, ranging from complete criminalisation to total legalisation. UK prostitution legislation focuses on the nuisance prostitution causes to the public. The law aims to remove prostitution, and thus the nuisance, from the public eye by criminalising activities surrounding selling sex.<sup>4</sup> This stance has been criticised as being confusing and ineffective.<sup>5</sup> This paper will analyse the shortcomings of UK laws on prostitution and discuss the potential for a new approach to be implemented. In particular, the paper will discuss the Nordic model which, based upon principles of radical feminism, criminalises the purchase of sex, but not the sale. The effects and consequences will be analysed and this paper will discuss the potential for similar legislation in England and Wales before ultimately concluding that prostitution will always exist no matter the legislative system in place.

## 2. Prostitution in the UK

An estimated 72,800 people sell sex in the UK, with 32,000 of those selling sex in London.<sup>6</sup> Of this figure, it is approximated that 88% of prostitutes are women.<sup>7</sup> Whilst it is not disputed that male prostitutes exist, as the majority of people who sell sex are women, the majority of those who are exploited in the sector are women and thus this paper will focus on the exploitation of female prostitutes. Furthermore, the majority of those who

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<sup>1</sup> Nicki Roberts, *Whores in History: Prostitution in Western Society* (HarperCollins 1993) xi.

<sup>2</sup> Kingsley Davis, ‘The Sociology of Prostitution’ (1937) 5 *The American Sociological Review* 744.

<sup>3</sup> Carol Smart, *Law, Crime and Sexuality: Essays in Feminism* (Sage 1995) 59.

<sup>4</sup> John Wolfenden, ‘Report of the Committee on Homosexual Offences and Prostitution. Presented to Parliament by the Secretary of State for the Home Department and the Secretary of State for Scotland’ (1957).

<sup>5</sup> All-Party Parliamentary Group on Prostitution and the Global Sex Trade (APPG), ‘Shifting the Burden’ (2014) 5.

<sup>6</sup> Belinda Brooks-Gordon and others, ‘Prostitution, Income, and Expenditure in Commercial Sexual Activity as a Measure of GDP in the UK National Accounts’ (2015).

<sup>7</sup> *Ibid.*

purchase sex in the UK are male, with 11% of respondents in a study admitted to purchasing sex at least once.<sup>8</sup>

Prior to the introduction of the Sexual Offences Act 2003 (SOA 03), prostitute was defined under common law. In *De Munck* (1919),<sup>9</sup> the definition of prostitution was not limited to acts of vaginal intercourse. Instead, a prostitute only needed to engage in acts of 'lewdness'. Later, the Court of Appeal in *Webb* (1964)<sup>10</sup> concluded that a person offering themselves to indecent acts is a prostitute. S.54(2) of the SOA 03 introduced a standard definition of prostitute as a person who 'offers or provides sexual service for payment'.<sup>11</sup> S.78 SOA 03 defines an activity as being sexual if it is sexual because of its nature, or because of the circumstances and purpose surrounding the activity.<sup>12</sup>

Historically, the UK has had a limited view of prostitution as a public nuisance. This can be observed in the 1957 report conducted by the Wolfenden Committee which aimed to introduce legislation that would reduce any nuisance created by prostitution and homosexuality.<sup>13</sup> The Committee concluded that the law has no place interfering 'with the private life of the citizen' but does have an obligation to preserve public decency.<sup>14</sup> Although prostitution was determined to be a private matter, the Wolfenden Committee described the visibility of prostitution as an interference with public decency and thus concluded legislation was necessary to prohibit public acts relating to prostitution.

Following the Wolfenden Report, prostitution legislation was implemented to reduce public nuisance. The Street Offences Act 1959 (SOA 59) introduced an offence prohibiting loitering and soliciting in a street or public place for the purposes of prostitution. S.1(4) provides a wide, non-exhaustive list of places that may be considered a street including a bridge, lane, square, or passage that is open to the public. Furthermore, in

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<sup>8</sup> Kyle G Jones and others, 'The Prevalence Of, and Factors Associated With, Paying for Sex among Men Resident in Britain: Findings from the Third National Survey of Sexual Attitudes and Lifestyles (Natsal-3)' (2014) 91 *Sexually Transmitted Infections* 116.

<sup>9</sup> *De Munck* [1919] 1 KB 635 637.

<sup>10</sup> *Webb* [1964] 1 QB 357 358.

<sup>11</sup> Sexual Offences Act 2003, s 54(2).

<sup>12</sup> Sexual Offences Act (n 11) s 78.

<sup>13</sup> Wolfenden (n 4).

<sup>14</sup> Wolfenden (n 4) 9.

*Smith v Hughes* (1960),<sup>15</sup> the Court of Appeal (CoA) determined that a prostitute does not have to be on the street herself, but if she is directing her attention to passers-by, this constitutes a public nuisance, which the Act intended to avoid.<sup>16</sup> The definition of public place was discussed in *Kane* (1965)<sup>17</sup> as 'a place where the public can and do have access'.<sup>18</sup>

Legislation continued to be introduced that focused on the public nuisance aspect of prostitution. Replaced by s.51A SOA 03 as a soliciting offence, kerb-crawling was introduced as an offence in s.1 and s.2 Sexual Offences Act 1985 (SOA 85). Kerb-crawling originally was the persistent solicitation of prostitution by a potential buyer from a vehicle in a street or public place. S.51A SOA 03 removed the persistency requirement and widened the scope to include the solicitation of prostitution whilst not in a motor vehicle. A man driving up and down the street with the purpose of purchasing sex was determined to cause a nuisance to the members of the public in the street. S.51A SOA 03 further avoided public nuisance by allowing an offence to be caused after one instance of solicitation.

Although primarily focused on the nuisance of prostitution, the UK has begun to introduce legislation that focuses on the safety of the prostitute. The SOA 03 introduced legislation prohibiting third-party activities relating to prostitution. S.52 prohibits a third-party intentionally causing or inciting another person to become a prostitute in the expectation of gain. Similarly, s.53 prohibits a third person controlling the activities of a prostitute in expectation of gain. In *Massey*,<sup>19</sup> the CoA concluded that control includes, but is not limited to, forcing, compelling, or coercing a prostitute to engage in activities, but there is no requirement that the prostitute acted without free will.<sup>20</sup> As the definition of control is

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<sup>15</sup> *Smith v Hughes* [1960] 1 WLR 830.

<sup>16</sup> *Smith v Hughes* (n 15) 832.

<sup>17</sup> *R v Kane* [1965] 1 All ER 705.

<sup>18</sup> *R v Kane* (n 17) 708 per Barry J.

<sup>19</sup> *R v Massey* [2008] 1 Cr.App.R 28 CA

<sup>20</sup> *R v Massey* (n 19) para 21.

wide, there have been instances where prostitutes themselves have been prosecuted<sup>21</sup> simply because they work together<sup>22</sup> as they control each others' activities.<sup>23</sup>

Following the publication of the Home Office's report 'Tackling the Demand',<sup>24</sup> recommendations for the further protection of prostitutes were discussed. Whilst the review had a strong focus on human trafficking, there was an acknowledgement that to 'tackle the problem of commercial sexual exploitation', those who pay for sex must be targeted.<sup>25</sup> Although the potential to introduce legislation criminalising the purchase of sex was reviewed, it ultimately recommended implementing legislation to criminalise those who pay for sex from someone subject to force by a third-party.<sup>26</sup> The following year, the Policing and Crime Act 2009 implemented these recommendations under s.53A SOA 03.<sup>27</sup>

Although the introduction of s.53A SOA 03 seemed to be a positive step to reduce the exploitation of prostitutes, the Act is not as effective as intended. Those who purchase sex are most likely to notice any third-party exploitation of women but may not wish to report to the police for fear of prosecution. Furthermore, according to Kingston and Thomas, as of 2014, the majority of police forces throughout England and Wales had not utilised the offence.<sup>28</sup>

Moreover, prostitution violence is extremely common in the UK. Prostitutes are the population group most likely to be murdered in the UK with approximately 180 prostitutes murdered between 1990 and 2016.<sup>29</sup> Furthermore, UK prostitutes often experience other

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<sup>21</sup> Maya Oppenheim, 'More British People Support Sex-Work Law Reform than are Against it, Study Finds' (*The Independent*, 26 August 2019) <<http://independent.co.uk/news/uk/home-news/sex-worker-rights-decriminalisation-law-reform-brothels-uk-a9076731.html>> accessed 17 August 2023.

<sup>22</sup> 'No Bad Women, Just Bad Laws – How the Laws Prevent Women Working Together for Safety' <<https://www.issuesonline.co.uk/articles/no-bad-women-just-bad-laws-how-the-laws-prevent-women-working-together-for-safety>> accessed 17 August 2023.

<sup>23</sup> E.g. one prostitute may make a booking for the other.

<sup>24</sup> Home Office, 'Tackling the Demand for Prostitution: A Review' (2008).

<sup>25</sup> Home Office (n 24) 9.

<sup>26</sup> Home Office (n 24) 4.

<sup>27</sup> Policing and Crime Act 2009, s.14.

<sup>28</sup> Sarah Kingston and Terry Thomas, 'The Police, Sex Work, and Section 14 of the Policing and Crime Act 2009' (2014) 53 *The Howard Journal of Criminal Justice* 255, 266.

<sup>29</sup> Scott Cunningham and others, 'Sex Work and Occupational Homicide: Analysis of a UK Murder Database' (2018) 22 *Homicide Studies* 321.

forms of violence from sex buyers,<sup>30</sup> police,<sup>31</sup> and third parties.<sup>32</sup> A 2001 study<sup>33</sup> reported that, out of the women interviewed, 50% of outdoor and 25% of indoor prostitutes in three British cities had violent encounters within the last six months,<sup>34</sup> with many prostitutes reporting violence being perpetrated by clients.<sup>35</sup> 991 reports were made to National Ugly Mugs in 2019.<sup>36</sup> Of these reports, 41% involved violence including rape, 23% stalking, and 12% robberies.<sup>37</sup>

UK laws on prostitution are confusing, complicated, and ineffective.<sup>38</sup> They are primarily focused on the visibility and nuisance of prostitution and unfairly target women working as prostitutes<sup>39</sup> who face risks of fines<sup>40</sup> and injunctions.<sup>41</sup> Although the introduction of kerb-crawling laws and s.53A did begin to change this, the law does not do enough to tackle the root cause of prostitution - the demand. Instead, UK law demonises and stigmatises women. UK prostitution laws are not suitable in modern society and drastic change is needed in order to protect women in prostitution and punish perpetrators of violence.

Recommendations have been made to update the laws related to prostitution on multiple occasions. Globally, laws vary from the prohibition of prostitution<sup>42</sup> to decriminalisation<sup>43</sup> and regulation.<sup>44</sup> The Nordic model of prostitution, which criminalises the purchase of sex,

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<sup>30</sup> Julia Bindel and others, 'Breaking down the Barriers: A Study of How Women Exit Prostitution' [2012] Eaves/London South Bank University.

<sup>31</sup> Amanda Nunn, '100 Arrested for Prostitution Related Offences in Ilford Lane, Ilford' (*Ilford Recorder* 6 September 2023)

<[http://www.ilfordrecorder.co.uk/news/crimecourt/100\\_arrested\\_for\\_prostitution\\_related\\_offences\\_in\\_ilford\\_lane\\_ilford\\_1\\_2369256](http://www.ilfordrecorder.co.uk/news/crimecourt/100_arrested_for_prostitution_related_offences_in_ilford_lane_ilford_1_2369256).> accessed 23 December 2023.

<sup>32</sup> Tiggey May, Alex Harocopos and Michael Hough, 'For Love or Money : Pimps and the Management of Sex Work' (2000) 18.

<sup>33</sup> Stephanie Church and others, 'Violence by Clients Towards Female Prostitutes in Different Work Settings: Questionnaire Survey' (2001) 322 *BMJ* 524.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> National Ugly Mugs, 'Impact Report' (2020) 8.

<sup>37</sup> *Ibid.*

<sup>38</sup> APPG (n 5).

<sup>39</sup> APPG (n 5) 18.

<sup>40</sup> Street Offences Act 1959, s1(2).

<sup>41</sup> Anti-Social Behaviour, Crime and Policing Act 2014.

<sup>42</sup> Prostitution in all forms is illegal. E.g. The Republic of Lithuania Code of Administrative Offences 2015, Chapter 13 Article 182.

<sup>43</sup> No criminal penalties for prostitution. E.g. New Zealand, Prostitution Reform Act 2003.

<sup>44</sup> Prostitution regulations are implemented. E.g. Germany, Prostitutionsgesetz (Prostitution Act 2001)

has been recommended to replace the current UK legislation numerous times. The next part of this paper will analyse the positive and negative effects of the Nordic model in different countries to discuss whether similar legislation should be implemented in the UK.

### 3. The Nordic Model

The Nordic model, or the Sex Buyer law, refers to the criminalisation of the purchase of sex/ sexual services as originally introduced by Sexköpslagen (Sex Purchase Act) 1999 (SPA 99)<sup>45</sup> in Sweden. The Nordic model aims to reduce prostitution by targeting the demand and criminalising the purchase of sex. The Nordic model targets those who purchase sex, as opposed to those who sell it. This criminalisation of sex purchasing in Sweden was originally raised in 1977 by the Prostitution Inquiry Report.<sup>46</sup> The Report concluded that prostitution was incompatible with the idea of freedom of the individual and gender equality.<sup>47</sup> The Inquiry recommended increasing education, support, and social measures to reduce prostitution.<sup>48</sup> Although the Inquiry did not lead to legislation, the Sex Trade Report<sup>49</sup> published in 1993 built upon the social recommendations of the 1977 Inquiry and further proposed the criminalisation of the purchase of sex. The Report made clear that prostitution cannot be accepted by society and necessary steps must be implemented to ensure the safety of women and girls in prostitution.<sup>50</sup>

The SPA 99 was greatly influenced by the radical feminist view of prostitution. Radical feminism denounces the patriarchy and the belief that men are the superior gender.<sup>51</sup> Patriarchy reinforces the difference between men and women by encapsulating the idea of the subordinate woman to the dominant man. Although the majority of modern society has progressed past the physical ownership of women, women and their sexuality are still non-consensually abused, objectified, and exploited by the patriarchy by routinely

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<sup>45</sup> Later incorporated into 6.11 Swedish Criminal Code 1962.

<sup>46</sup> Skarhed Report (Skarhed) SOU:2010:49 summary 31.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Sex Trade: Report of the 1993 Prostitution Investigation SOU 1995:15.

<sup>50</sup> Ibid.

<sup>51</sup> Simone De Beauvoir and HM Parshley, *The Second Sex* (Vintage Books 1949).

reducing them to their sexual attractiveness.<sup>52</sup> Jeffreys described prostitution as a system that allows men to remain superior as it further reduces women to sexual objects.<sup>53</sup> Prostitution is regarded as ‘intrinsically abusive’ and harmful to all women and efforts must be made to eradicate prostitution.<sup>54</sup>

By focusing on and criminalising the demand side of prostitution, the Nordic model takes the view that prostitution should not be regarded as a type of work.<sup>55</sup> This reflects the radical feminist perspective that prostitution is not work as it is not voluntary. Although some may split prostitution into voluntary and non-voluntary,<sup>56</sup> radical feminism sees all forms of prostitution as non-voluntary. Even women who have “chosen” to enter prostitution are still reliant on men and the idea that men are entitled to the female body. The prostitution exchange takes place with a considerable difference in power in favour of the client, making the transaction between the client and the prostitute worker ‘intrinsically coercive’<sup>57</sup> and the ‘vehicle through which men transform their natural right over women into the security of a civil patriarchal right.’<sup>58</sup> Radical feminists such as Barry<sup>59</sup> argue that prostitution cannot be a choice ‘when the human being is reduced to a body’ as ‘violation of the human being has taken place’ regardless of whether the prostitute did consent.<sup>60</sup> Claiming that prostitution is a type of work legitimises the disparity of power, reinforcing the patriarchal acceptance of male dominance and female subordination.<sup>61</sup>

The idea that prostitution is a natural response to male sexual deprivation is rejected in radical feminism. Whilst sexual urges are a natural part of the human experience, it is not

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<sup>52</sup> Richard Elliott and others, ‘Overt Sexuality in Advertising: A Discourse Analysis of Gender Responses’ (1995) 18 *Journal of Consumer Policy* 187.

<sup>53</sup> Sheila Jeffreys, *The Idea of Prostitution* (Spinifex 2008) 211.

<sup>54</sup> Tammy Schultz, ‘Prostitution Discourse: The Sexuality as a Commodity Debate and a Christian Response’ (2017) 37 *Journal of Psychology and Christianity* 256, 257.

<sup>55</sup> Jeffreys (n 53) 3.

<sup>56</sup> Bob Wallace, ‘The Ban on Purchasing Sex in Sweden: The So-Called ‘Swedish Model’ 6 <<https://maggiecmneill.com/wp-content/uploads/2011/06/the-ban-on-purchasing-sex-in-sweden-the-so-called-swedish-model.pdf>> accessed 23 December 2023.

<sup>57</sup> Schultz (n 54).

<sup>58</sup> Kinneri Patel, ‘Towards a Policy of Regulated Prostitution - A Radical Feminist Defence’ (2008) 13 *UCL Jurisprudence Rev* 1, 6

<sup>59</sup> Kathleen L Barry, *The Prostitution of Sexuality* (NYU Press 1996) 23.

<sup>60</sup> *Ibid.*

<sup>61</sup> L Flynn, ‘The Body Politics(s) of E.C. Law’ as cited in Jo Bridgeman and Susan Millns, *Feminist Perspectives on Law: Law’s Engagement with the Female Body* (Sweet & Maxwell 1998) 756.



right to assume that men possess an instinct to have sexual intercourse with women on demand. Men can and do engage in periods of time without sex, with no effects.<sup>62</sup> As only a minority of men purchase sex, it cannot be concluded that seeking prostitution is an inevitable result of male sexual deprivation.<sup>63</sup> Explaining sex-seeking behaviour as a natural male response to deprived sexual desires exempts men from accepting accountability for problems associated with prostitution for which they are responsible.<sup>64</sup> Men use prostitution as male dominance tells them it is their right,<sup>65</sup> not because of a biological necessity.

Former Swedish Prime Minister Margareta Winberg rejected the belief that men have a natural right to female sexuality by stating 'women and girls cannot and must not be bought'.<sup>66</sup> By criminalising those who purchase sex, the SPA 99 acknowledges the radical feminist idea that the purchase of sex is exploitative and encourages increased gender equality.

The SPA 99 aimed to reduce prostitution by targeting demand. According to Ekberg, in 1999, around 125,000 men had purchased sex<sup>67</sup> and by 2004, the majority of buyers had disappeared.<sup>68</sup> This was substantiated by Gripenlöf who reported the number of clients reduced by 75-85%.<sup>69</sup> Furthermore, in a 2010 report, police and social workers reported clients had become more cautious and paid for sexual services less often.<sup>70</sup> Additionally, despite similar economic and social factors, the number of men purchasing sex was significantly lower than that in Denmark and Norway which both had different legislation regarding prostitution.<sup>71</sup> A recent study comparing the number of sex purchasers across

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<sup>62</sup> Peter Ueda and others, 'Trends in Frequency of Sexual Activity and Number of Sexual Partners Among Adults aged 18-44 in the US, 2000-2018' (2020) 3 JAMA Network Open.

<sup>63</sup> Martin A Monto, 'Female Prostitution, Customers, and Violence' (2004) 10 Violence Against Women 160, 164.

<sup>64</sup> Ibid.

<sup>65</sup> Jeffreys (n 53) 3.

<sup>66</sup> Margareta Winberg (2001) as cited in Gunilla Ekberg, 'Abolishing Prostitution: The Swedish Solution. An Interview with Gunilla Ekberg' (2008) 41 Rain and Thunder: A Radical Feminist Journal of Discussion and Activism 1208.

<sup>67</sup> Ekberg (n 66) 25.

<sup>68</sup> Ibid.

<sup>69</sup> Gripenlöf and others, (1991-2002) Yearly reports from the Stockholm Police Prostitution Group. The County Police of Stockholm.

<sup>70</sup> Skarhed (n 46) 9.

<sup>71</sup> Ibid.

European countries found that those who had implemented the Nordic model had the lowest number of purchasers.<sup>72</sup>

Despite these claims, following the criminalisation of sex purchasing in Northern Ireland,<sup>73</sup> 53.5% of people who purchased sex reported they would continue to purchase with 'the same frequency as before'<sup>74</sup> and 27.1% of respondents claimed they will continue to pay for sex but 'not as much'.<sup>75</sup> Of the respondents who agreed they would continue to purchase sex, 44.8% stated they started to take more precautions to avoid detection when visiting a prostitute such as visiting prostitutes who operate alone and booking visits online.<sup>76</sup>

A reason for the contradiction in findings between Sweden and Ireland could be partly attributed to the way research was conducted. Sex purchasers are a significantly under-research area, causing great difficulties determining the true extent of sex purchasing. Additionally, when researching sex purchasers, many men do not wish to admit to buying sex out of regret, guilt, or shame.<sup>77</sup>

Looking at the supply side, prior to the enforcement of SPA 99, it was approximated that 2,500 women had sold sex in Sweden,<sup>78</sup> with 650 as street prostitutes.<sup>79</sup> By 2002, 1,000 prostitutes were estimated to have exited the industry.<sup>80</sup> Only two years later, in 2004, Ekberg approximated that the number of women in prostitution exceeded no more than 500.<sup>81</sup> Additionally, Ekberg declared no new women had entered prostitution, and recruitment of new prostitutes had halted completely.<sup>82</sup> This leads to the conclusion that the SPA 99 achieved its aim of reducing prostitution. The significant drop in the number

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<sup>72</sup> Sofia Jönsson, 'Does Criminalizing the Purchase of Sex Reduce Sex-Buying? Evidence from a European Survey on Prostitution' (2023) 56 *European Journal of Law and Economics* 91, 107.

<sup>73</sup> The Sexual Offences (Northern Ireland) Order 2008 64A.

<sup>74</sup> Susann Huscke and others, 'Research into Prostitution in Northern Ireland' (2014) 8.

<sup>75</sup> *Ibid.*

<sup>76</sup> Huschke (n 73) Table 11.

<sup>77</sup> Luba Fein, 'Has the Nordic Model Worked? What does the Research Say? (*Nordic Model Now!*, 22 December 2019) <<https://nordicmodelnow.org/2019/12/22/has-the-nordic-model-worked-what-does-the-research-say/>> accessed 30 March 2022.

<sup>78</sup> Ekberg (n 66) 1193.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

of prostitutes implies the criminalisation of sex did reduce the demand, and in turn, reduced the number of prostitutes, and must therefore be hailed a great success.

Despite these results, Dodillet and Östergren claim the research was improperly conducted, with the bias that sex purchasing must remain illegal<sup>83</sup> and therefore the data was misrepresented in such a way. The number of prostitutes who stopped selling sex was not as significant as implied in earlier research. One of the prevailing reasons for this is the prevalence of online prostitution. Although the number of women selling sex on the street reduced, the number of women selling sex online increased.<sup>84</sup> Harris suggested that the Sex Purchase Act was specifically designed for an era prior to the use of the internet to sell sex<sup>85</sup> and so quickly became outdated as internet prostitution grew in popularity.

However, the internet was already an established place to purchase sex after the implementation of similar legislation in Northern Ireland under Article 64A Sexual Offences (Northern Ireland) Order 2008. In a study prior to the introduction of Article 64A, 84% of respondents reported they located sexual services through the internet<sup>86</sup> with only 5% using street prostitution.<sup>87</sup> After the implementation of sex purchasing legislation, the internet made up 99% of the market for sexual services.<sup>88</sup> Whilst the number of street prostitutes did reduce, it cannot be said that the introduction of Article 64A was the main contributing factor.<sup>89</sup>

Therefore, though the criminalisation of sex purchasing does help to reduce the number of women selling sex on the streets, it would be incorrect to conclude that prostitution in all forms is reduced.<sup>90</sup> Online prostitution has gained prevalence since the introduction of

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<sup>83</sup> Susanne Dodillet and Petra Östergren, 'The Swedish Sex Purchase Act: Claimed Success and Documented Effect' (2011) 2 <<http://www.petraostergren.com/upl/files/54259.pdf>> accessed 23 December 2023.

<sup>84</sup> Scott Cunningham and Todd D Kendall, 'Prostitution 2.0: The Changing Face of Sex Work' (2011) 69 *Journal of Urban Economics* 273.

<sup>85</sup> ACC Harris Northern Ireland Assembly 2014b 12.

<sup>86</sup> Huschke (n 73) Table 22.

<sup>87</sup> *Ibid.*

<sup>88</sup> Huschke (n 73) [6.14.5.].

<sup>89</sup> Huschke (n 73) [6.14.1.].

<sup>90</sup> Phil Hubbard, Roger Matthews and Jane Scoular, 'Regulating Sex Work in the EU: Prostitute Women and the New Spaces of Exclusion' (2008) 15 *Gender, Place & Culture* 137.

the Nordic model and has been described as an 'important and growing arena for prostitution'.<sup>91</sup> The model did not remove a prostitute's ability to sell sex; it simply changed where and how the transaction took place.<sup>92</sup>

Furthermore, the risks of violence experienced by women selling sex were not diminished. Following the criminalisation of sex purchasing in France, prostitutes reported moving into dark and remote areas in order to complete a transaction without an increased risk of client prosecution.<sup>93</sup> This has led to women working alone, unable to quickly inform someone if they encounter a dangerous client.<sup>94</sup>

Additionally, due to the fear of police interception, the length of the negotiation stage reduced.<sup>95</sup> As the prostitute has less time to set her conditions for the transaction, she may inadvertently accept terms she would not accept in other circumstances, for example not wearing a condom or engaging in acts or fetishes.<sup>96</sup>

Although the model may deter the purchase of sex, those who remain have no desire to follow the law. It stands to reason that prostitutes do not want to attract clients that are interested in the consequences breaking the law.<sup>97</sup>

In order to reduce the harm of prostitution, police in Sweden were instructed to intervene before a potential offence could be committed.<sup>98</sup> However, reports suggest that in order to secure a conviction, police wait until after the offence has begun before interfering.<sup>99</sup> As the prostitution exchange is considered exploitative, it could be suggested that the

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<sup>91</sup> Skarhed (n 46) 8.

<sup>92</sup> Huschke (n 73) 164.

<sup>93</sup> H el ene Le Bail, Calogero Giametta and No mie Rassouw, 'What Do Sex Workers Think about the French Prostitution Act: A Study on the Impact of the Law from 13 April 2016 Against the 'Prostitution System' in France?' (2018) 44 <[https://nswp.org/sites/default/files/web\\_en\\_rapport-prostitution-finale.pdf](https://nswp.org/sites/default/files/web_en_rapport-prostitution-finale.pdf)> accessed 23 December 2023.

<sup>94</sup> Sandra Ka Hon Chu and Rebecca Glass, 'Sex Work Law Reform in Canada: Considering Problems with the Nordic Model' (2013) 51 *Alberta Law Review* 101 106.

<sup>95</sup> Jay Levy and Pye Jakobsson, 'Sweden's Abolitionist Discourse and Law: Effects on the Dynamics of Swedish Sex Work and on the Lives of Sweden's Sex Workers' (2014) 14 *Criminology & Criminal Justice* 599.

<sup>96</sup> Le Bail H, Giametta and Rassouw (n 93) 6.

<sup>97</sup> Allison Escobar, 'In Defense of Sex Work Decriminalization: A Case against the Nordic Model' (Thesis, Georgia State University 2021).

<sup>98</sup> Ekberg (n 66) 1195.

<sup>99</sup> Skarhed (n 46) 11.

police endorse and participate in the exploitation of prostitutes and women by waiting to interfere.

The Nordic model built upon radical feminism to create a system that criminalises the purchase of sex. As prostitutes are perceived to be victims of male dominance, the Nordic model does not believe they should be punished for something they cannot consent to. Whilst the Nordic model did successfully reduce street prostitution, the majority of women moved from street prostitution to online or indoor prostitution, working conditions became more dangerous and the risk of violence increased. The criminalisation of sex purchasing did not eradicate the patriarchal belief that men have a right to on-demand sex, but instead suggested that, unless more is done, this belief will continue and male sexual demands will be dominant over women's autonomy. Overall, the Nordic model was suited to the time it was created. However, society and technology have progressed. As seen in Northern Ireland and France, the Nordic model did not do anything to dissuade men from using prostitution. If the principle aim of radical feminism is to help remove women from prostitution, the Nordic model is not the most effective way of doing so.

#### **4. The Transfer of the Nordic Model**

Following the introduction of the Nordic Model in 1999, Sweden aimed to encourage other jurisdictions to implement similar legislation. As mentioned above, in the last 20 years, Norway (2009), Iceland (2009), Canada (2014), Northern Ireland (2015), France (2016), the Republic of Ireland (2017), and Israel (2018) implemented legislation criminalising the purchase of sex. Additionally, the European Parliament implemented a non-binding resolution recognising prostitution as a form of exploitation and recommends the Nordic model as a way of improving gender equality.<sup>100</sup>

It is important to be aware that even similar legislation may operate differently depending on the context and background of each jurisdiction. A country may borrow legislation from

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<sup>100</sup> Motion For a European Parliament Resolution on Sexual Exploitation and Prostitution and its Impact on Gender Equality (2013/2103(INII)).

another without having sufficient knowledge of how that legislation operates.<sup>101</sup> Furthermore, the legislation may not be as effective if key elements of the legislation are not transferred. For example, a key part of the Nordic model is the implementation and enforcement of the law. In Norway, after the implementation of the Nordic Model, there was a distinct lack of support and enforcement by the police,<sup>102</sup> causing the effectiveness of the law to be reduced. Lastly, the transfer of legislation may not be appropriate for the circumstances of the borrowing jurisdiction. Social, economic, and legal factors impact the effectiveness of similar policies across different jurisdictions.

As discussed, in the UK, the main focus of legislation has historically been on the public nuisance caused by prostitution in local communities. Whilst this differs from the perception in Sweden, views on prostitution are beginning to alter in the UK.<sup>103</sup> For example, when debating increased legislation of prostitution, Fiona Mactaggart stated that anyone who opposed increasing legislation is 'more concerned about the right of men to purchase women's bodies' than the safety and protection of exploited women.<sup>104</sup>

Radical feminist principles were further utilised in the All-Party Parliamentary Group inquiry on prostitution titled 'Shifting the Burden'. In this, there was an effort to move the focus away from the belief that prostitutes are at fault for immorality and nuisance and towards the view that they are victims.<sup>105</sup> Furthermore, the failure of the law to recognise the gender imbalance of prostitution that contributes to the perpetuation of violence against women was acknowledged.<sup>106</sup> Ultimately, the paper calls for the introduction of an offence that would criminalise the purchase of sex, mirroring the Nordic model.<sup>107</sup>

The Nordic model does have some potential to be advantageous in the UK. The Nordic models' greatest success lies in the reduction of street prostitution, thus reducing the

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<sup>101</sup> David P Dolowitz and David Marsh, 'Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making' (2000) 13 *Governance* 5, 18-19.

<sup>102</sup> Ane Stø and Asta Håland, 'The Crusade of the Pro-Prostitution Lobby' (2014) 7 <<https://sisters-ev.de/wp-content/uploads/2019/07/2013-The-Crusade-of-the-Pro-Prostitution-Lobby-1.pdf>> accessed 23 December 2023.

<sup>103</sup> Anna Carline, 'Criminal Justice, Extreme Pornography and Prostitution: Protecting Women or Promoting Morality?' (2011) 14 *Sexualities* 312, 319.

<sup>104</sup> HC Deb 19 January 2009 col 549.

<sup>105</sup> APPG (n 5).

<sup>106</sup> APPG (n 5) 8.

<sup>107</sup> APPG (n 5) 47.

visibility and nuisance prostitution brings. Although prostitutes in Sweden simply moved online, online prostitution is not a cause of concern in UK law as the effects on public nuisance are slim. Many UK prostitutes work online,<sup>108</sup> but street prostitution still exists and causes nuisance.<sup>109</sup> The introduction of the Nordic model may push the remaining prostitutes away from the streets towards online or indoor prostitution.

Despite this, the removal of street prostitution is not enough to justify the increased violence experienced by prostitutes. If the model were to be implemented in the UK, much more would need to be done to ensure the exploitation of women did decrease. For example, more social and educational efforts should be implemented to allow women a place to go if they need help.

This is not to say that the Nordic model is a bad prostitution policy. To the contrary. The criminalisation of sex purchasing does put forward a clear message that prostitutes are victims of male exploitation and gender inequality. The law incorporates radical feminist values that drive a country towards full gender equality. Unfortunately however, the model did not live up to the standards that it strived to achieve. The Nordic model may be an effective tool to implement radical feminist ideology into UK legislation and impact social perception to work to reduce the exploitation of women, but in and of itself, it would not reduce the exploitation of prostitutes. The model has a clear allure that adopting countries use to highlight beliefs that women in prostitution are victims of the patriarchy. However, according to Kingston and Thomas, implementing countries do not effectively utilise the laws.<sup>110</sup> The model, therefore, becomes a symbol of radical feminism and gender equality, but does not actively decrease the vulnerability of women selling sex. The Nordic model is one of many models that create policy on prostitution. Policy models and prostitution laws can range from criminalisation as seen in the USA<sup>111</sup> to regulatory models seen in Victoria, Australia<sup>112</sup>. Some jurisdictions such as Germany legalise and regulate

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<sup>108</sup> Home Affairs Committee, 'Prostitution Third Report of Session 2016-2017' (House of Commons 2016) [18].

<sup>109</sup> Brooks-Gordon and others (n 6) Table 3.

<sup>110</sup> Sarah Kingston and Terry Thomas, 'No Model in Practice: A "Nordic Model" to Respond to Prostitution?' (2018) 71 *Crime, Law and Social Change* 423, 424.

<sup>111</sup> Except Nevada, which legalised prostitution in regulated brothels.

<sup>112</sup> Sex Work Decriminalisation Act 2022.

brothels<sup>113</sup> whereas others criminalise brothels, as seen in the UK.<sup>114</sup> Prostitution policy and law varies widely across the world. Despite the introduction of different legislative measures, prostitution survives, adapts and hides, but still exists. The Nordic model shows this clearly, as street prostitution may have reduced, but prostitution in general did not, it simply moved. Online prostitution is much harder to regulate due to the fact it is 'more difficult to verify and assess'.<sup>115</sup> Both prostitutes and clients can use the internet anonymously making the prosecution of offenders much more difficult. Additionally, as the internet is a private sphere, it is questioned whether what people say and do online could or should be regulated in such a way. In the UK, the recently passed Online Safety Act 2023 aims to limit access to harmful and illegal content on the internet. Schedule 7 outlines what content is deemed illegal with s.27 incorporating s.52 SOA 03 causing or inciting a prostitution for gain and s.53 SOA 03 controlling prostitution for gain. As discussed above, controlling prostitution is widely interpreted and many women have been prosecuted for working together.<sup>116</sup> The English Collective of Prostitutes predict advertising platforms will remove prostitution advertisements to avoid the risk of prosecution.<sup>117</sup> Despite this, due to the way prostitution works in the real world, it is not unreasonable to assume that online prostitution will move further "underground" on the internet to harder-to-find websites.

## 5. Conclusion

Prostitution laws in the UK are not at an acceptable standard that promotes the equality of genders. Having been described as confusing and ineffective,<sup>118</sup> the current legislation surrounding prostitution simultaneously discourages and encourages prostitution. By not criminalising the act of selling sexual services, but criminalising the activities associated

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<sup>113</sup> Prostitutionsgesetz (n 44).

<sup>114</sup> Sexual Offences Act 1956, s 33 and s 33A.

<sup>115</sup> Skarhed (n 46) 8.

<sup>116</sup> English Collective of Prostitutes, 'Briefing: Online Safety Bill - Criminalising Sex Workers' Online Adverts Will Undermine Safety' (3 March 2022) <<https://prostitutescollective.net/briefing-online-safety-bill/>> accessed 23 December 2023.

<sup>117</sup> Ibid.

<sup>118</sup> APPG (n 5).



with prostitution, the UK forms a stance that the protection of public comfort is more important than the removal of the exploitation of women.

Many have called for the Nordic model of prostitution to be implemented in UK legislation. First introduced in Sweden, the model is based upon the radical feminist principles of increasing gender equality by criminalising the purchase but not the sale of sexual services. Although the model showed promising results by removing the majority of women from street prostitution, when observed closely, prostitutes began to sell sex online. Additionally, the risk of violence increased due to women working alone in fear of police interception. Overall, the model was based on important principles of gender equality but could not implement those principles in a real-life setting.

Creating effective legislation on prostitution is virtually impossible. Although the Nordic model sends a message of gender equality, more should be done to provide sex sellers with support to improve the physical and mental healthcare, financial position, and protection from violence and discrimination.<sup>119</sup> Unless further support is provided to those who the Act claims are vulnerable, male clients will have the ability to exploit those vulnerabilities.

Introducing legislation that states prostitution should be regulated or viewed in a certain way does not implement the same values nationwide. Due to lack of research, the majority of policy is based upon the morals and influence of the ruling elite which can be moulded to support certain morals<sup>120</sup> even if, in reality, the policy raises consequences that do not adhere. For example, the Nordic model supports the radical feminist idea that prostitution is a form of male violence but in practice, the violence increased.

Every model of prostitution policy has advantages and disadvantages that differ from one another. But all policies have 'mostly negative, unintended consequences'.<sup>121</sup> Prostitution has existed for thousands of years and will continue to exist despite what is put forth into legislation. It would be unreasonable to believe that prostitution would be eradicated just

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<sup>119</sup> Alexandra Oliveira and others, 'Understanding the Impact of EU Prostitution Policies on Sex Workers: A Mixed Study Systematic Review' (2023) 20(4) Sexuality Research and Social Policy 1, 16.

<sup>120</sup> Ibid 228.

<sup>121</sup> Ibid 229.

because an Act of Parliament considers it illegal. As stated by Bresler: 'one stands as much chance of ending prostitution by Act of Parliament as King Canute did of stopping the waves of the English Channel coming in...merely because he ordered them not to'.<sup>122</sup>

As suggested by radical feminists, prostitution exists because society is patriarchal. In a patriarchy, male sexual demand will always outweigh the health, safety, and freedom of women. Women will always be expected and forced to give up their autonomy in order to please men. Criminalising the purchase of sex does not eliminate this deep-rooted belief as the patriarchy does not allow it. Legislation and policy will only work so far before the patriarchy seizes power away from women by forcing them into situations that do not give them the freedom to decide their autonomy. Until full gender equality is created, and the patriarchy is abolished, prostitution will exist and men will act on what they believe is their right to receive sex whenever they want.

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<sup>122</sup> Bresler F, *Sex and the Law* (Muller, 1988) p.49 quoted in Selfe and Burke, *Perspectives on Sex, Crime and Society* (Cavendish, 2001) 215-216.

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