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Exploring the Prostitution Laws in Ghana: Criminalizing the Buyer and Protecting Prostitutes

Background

Ghana was on track to achieving ahead of time the Millennium Development Goal (MDG) 1 target of reducing by half the proportion of people living in extreme poverty at the national level, and in rural and urban areas. Ghana attained a lower middle-income status in 2010. Statistics also show that extreme poverty within that period, specifically between 2006 and 2013 rapidly declined from 16.5 percent to 8.4 percent. Yet, the inequality gap is still widening and pushing many down the red line of poverty. Although government has implemented various social protection programmes such as the LEAP (Livelihood empowerment against poverty programme); targeting is poorly done and the people who really deserve help to cushion them out of poverty are not benefiting.

The deepened inequality rate in Ghana is depriving many of their human rights and dignity. The family unit which is the fundamental unit of society continues to suffer hardship and breakdown in the absence of protection and support from the State. As a result of economic hardships, the extended family system which supported the nuclear family is breaking down. In the absence of support from the extended family, over-burdened nuclear families are also breaking down and failing to undertake their responsibilities, especially towards children. Also, the rapid urbanization and population growth has led to a rise in the movement of people across borders in such of better lives. These has pushed many to engage in harmful and illegal ventures to meet their basic needs.

These challenges have led to an increase in commercial sex trade in Ghana. Although the legal status of prostitution varies from country to country, its existence is global and not peculiar to developing countries such as Ghana. However, in

Ghana, the large number of prostitutes has become a major source of concern. This unprecedented growth of the sex industry may not be connected with the rapid and wide socio-economic changes and globalization which has affected the value structure of Ghanaian society. This alarming rate of prostitution in Ghana is seen as a deviant sub-culture which has several root causes embedded in both social and economic spheres. Equally too is the fact that this profession is associated with diverse social problems. The objective of this paper is to examine the meaning and nature of prostitution while identifying its socio-economic causes. Effort will be made to bring to the fore, the consequences of the practice of prostitution while situating the role of the law within the framework of prostitution in Ghana.

Introduction

The basic understanding of prostitution differs across various jurisdictions. In many jurisdictions the definition of prostitution connotes the commercial exchange of sex for money, goods, service, or some other benefit agreed upon by the transacting parties.

This is illegal, while in others it is legal. Also soliciting in a public place, operating a brothel, and pimping is also illegal in many jurisdictions. In many jurisdictions where prostitution is legal, it is regulated; in others it is unregulated. Where exchange of sex for money is criminalized, it may be the sex worker (most commonly), the client, or both, who are subject to prosecution. Prostitution is a human rights abuse, and an attack on the dignity and worth of human beings.

There are different schools of thought on prostitution. Firstly, one of the positions argues that prostitution is as a result of deficiency in one's moral character¹. This position is drawn typically out of patriarchal and religious traditions that view female sexuality with temptation and male sexuality with dominance and

¹ 4 MACKINNON, *supra* note 2.

sanctioned insatiability². Another position argues that prostitution is a valid form of labour and that it is not harmful to women. It is the view of this position that women have the right to decide what to do with their bodies. As such sex work, which is oppressive to some, potentially is both lucrative and empowering for other women. The next position argues that prostitution is a consequence of social, political and economic inequality and that women are in prostitution due to their social vulnerability³. The regulation of prostitution varies according to a nation's underlying social justice commitments.

There are three main legislative responses to prostitution that have emerged in response to these commitments:

- (1) criminalization,
- (2) legalization/decriminalization, and
- (3) the Nordic model.

Criminalization

Judeo (Christian)⁴ immorality position explains prostitution as a result of the sinful nature of women⁵. The immorality position in the Judeo-(Christian) tradition argues and explains that the existence of women's sinful nature⁶ and views women as

² Susan Griffin, *Pornography And Silence: Culture's Revenge Against Nature* 22–24 (1981); Sibyl Schwarzenbach, *Contractarians and Feminists Debate Prostitution*, in *Prostitution And Pornography: Philosophical Debate About The Sex Industry* 212 (Jessica Spector ed., 2006)

³ Vednita Carter & Evelina Grobbe, *Duet: Prostitution, Racism, and Feminist Discourse*, 10 *HASTINGS WOMEN'S L.J.* 37, 43–45 (1999)

⁴ Christian beliefs are based on the teachings of Jesus Christ and less on laws on the Old Testament of the Bible hence the theory may better stand alone as Judeo. The writer is therefore use the term "Judeo-Christian" based on it as an established school of thought or theory

⁵ "And the daughter of any priest, if she profanes herself by playing the whore, she profaneth her father: she shall be burnt with fire." Leviticus 21:9

⁶ "And the daughter of any priest, if she profanes herself by playing the whore, she profaneth her father: she shall be burnt with fire." Leviticus 21:9

responsible for tempting men⁷. Criminalization policies, instituted within this context, view women as criminals and disproportionately target them for arrest⁸. Advocates of the sex work position advocate for the legalization or decriminalization of all prostitution-related activities by asserting that prostitution like any other regular market or economic variable can advance the well-being and interests of women⁹. Advocates of the sex work position base their argument on Neoliberalism thought; which seeks to bring all human action within the domain of market. Their views have influenced national and international prostitution discourse¹⁰. This economic model frames prostitution in the terms of:

1. Personal choice and individual freedom and
2. Market contracts made between rational, consenting adults with equal power¹¹

Neoliberals define women in prostitution as freely choosing agents in a free market responding to a market demand for sex¹². Thus, the neoliberal model terms prostitution as sex work; a labour practice that purportedly arises from a woman's choice to sell sexual access to her body to men¹³.

⁷ “If a man finds a damsel that is a virgin, which is not betrothed, and lay hold on her, and lie with her, and they be found; Then the man that lay with her shall give unto the damsel's father fifty shekels of silvers, and she shall be his wife; because he hath humbled her, he may not put her away all his days.” Deuteronomy 22:28–29.

⁸ Donna Hughes, *Race And Prostitution In The United States 1* (2005), available at <http://www.uri.edu/artsci/wms/hughes/pubtrfrep.ht>

⁹ 13 Spector, *supra* note 3, at 8–9.

¹⁰ David Harvey, *A Brief History Of Neoliberalism 3* (2005).

¹¹ Carole Pateman, *Defending Prostitution: Charges Against Ericsson*, 93 *ETHICS* 561, 561–62, 564 (1983); D.A. Clarke, *Prostitution for Everyone: Feminism, Globalisation, and the ‘sex’ industry*, in *Not For Sale Feminists Resisting Prostitution And Pornography* 166–171 (2004)

¹² D.A. Clarke, *Prostitution for Everyone: Feminism, Globalisation, and the ‘sex’ industry*, in *NOT For Sale Feminists Resisting Prostitution And Pornography* 169–171 (2004)

¹³ See Schwarzenback, *supra* note 5, at 221.

Advocates of neo-liberal position of prostitution assert that, legalization will serve the best interests of both buyer and seller. Health, safety and well-being of prostituted women¹⁴ are protected.

Much of the international discourse around prostitution proceeds from a framework that divides prostitution into two distinct categories: “sex work” and “sex trafficking”; the former is intended to represent choice-based or ethical prostitution, and the latter, is intended to represent forced or unethical prostitution.

Forms of Prostitution in Ghana

Prostitution can be classified into four different forms, in spite of the different names such as hookers, call-girls, harlots, sluts and courtesans that those involved in it are called. These forms are discussed below:

Institutional Prostitution

Refers to the act of exchanging sex for financial or other favors in the hotels, brothels and bars where the prostitutes themselves have rented rooms to render solicited services to their patrons.

Freelance Prostitution

It is a single sex operator who usually stays in her home and goes out when there is a request for her services. Most regrettably, this form of prostitution has become the order of the day amongst female students in tertiary institutions in Ghana. Those who are involved in this line of business consider it as a matter of survival degree where starvation or other serious deprivation is imminent.

¹⁴ The use of “Prostituted women” is not with the derogatory intent

Corporate Prostitution

This occurs when girls are compelled into sleeping with their bosses to get jobs, promotions or even keep their jobs. It also takes the form of female workers sleeping with clients to achieve their target. Some have pointed to the banking industry as a typical example where female workers engage in this form of prostitution due to target setting. This can actually be regarded as a form of sexual harassment at work place.

Cross Border Prostitution;

This is where humans are smuggled or trafficked to mainly European countries. Sadly, Ghana occupies an unenvied reputation in this kind of prostitution as many of its female citizens have been trafficked to several European countries with the sole purpose of selling them into prostitution. This form of prostitution is also known as sex trafficking.

The Legal Framework of Prostitution in Ghana and the Mystery of the Buyer

In some countries, the act of prostitution is punishable under the law, while in others, what is criminalized is the act of soliciting prostitution, arranging for prostitution, and operating a brothel. In Ghana, the latter appears to be the situation. In Ghana, prostitution is a criminal act which attracts a fine or misdemeanour or both. The Criminal Code, 1960 (Act 29) defines prostitution to ‘(include) the offering by a person of his body commonly for acts of lewdness (sex) payment although there is no act of ordinary sexual connection.’ Section 276 of the code (as amended by section 14 of Act 554) provides that, “any person who persistently solicits or importunes in any public place or in sight of any public place for the purpose of prostitution shall be liable for a first offence to a fine and for a second or subsequent offences shall be guilty of a misdemeanour.” According to section 275, ‘any person who in any public place persistently solicits or importunes to

obtain clients for any prostitute or for any other immoral purpose shall be guilty of a misdemeanour.’

Understanding Ghana’s Law on Prostitution

Theoretical Explanation of Prostitution in Ghana

Over the years the issue of the buyer of sex has been contested on whether the buyer should be criminalized or not. Criminalization of clients might represent a tentative shift away from the patriarchal assumption that prostitution is a problem about women, thereby ensuring that the other participant in prostitution escapes scrutiny. Globally, many states have responded to the demand for commercial sex by criminalizing women and in a few cases, buyers.¹⁵ Theoretically, the approach is founded on the belief that prostitution is as a result of immoral decision and therefore requires regulation with the public order offenses. Criminalization as a model recognizes all forms of prostitution and technically comprise the following;

1. brothel keeping or pandering, which is knowingly encouraging or compelling a person to sell sex for money,
2. Pimping, receiving something of value knowing that it was earned through an act of prostitution,
3. Prostitution, engaging in sexual intercourse for money, and
4. the purchase of sexual intercourse. Each of these is subject to regulation as a criminal offense and is technically illegal. This legislation is often gender

¹⁵ Katherine T. Bartlett & Deborah L. Rhode, Gender Law And Policy 485–86 (2010); See Unaid, Making The Law Work For The Hiv Response: A Snapshot Of Selected Laws That Support Or Block Universal Access To Hiv Prevention, Treatment, Care And Support (2010), available at http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/priorities/20100728_HR_Poster_en.pdf

neutral. However, based on patriarchal and Judeo (Christian)¹⁶ norms, it is women who culturally face the higher arrest rates for selling prostitution than men do.

Based on the principles and thought of neo-conservatism like neoliberalism, there is limited intervention on matters related to state economy. Nevertheless, the two which differ on governments should regulate social practices of which prostitution is a part¹⁷. In neo-conservatism, individual freedom should be checked collectively by social norms, values and morals.¹⁸ Social issues that are identified by neoconservatives as a morality issue require regulation by an interventionist government and military presence to maintain social coherence and stability. Neoliberalism focuses on the chaos of individual interests driving the market whereas neo-conservatism has paraded against moral permissiveness that individualism commonly promotes. The ideology this seeks to restore some sense of moral purpose, higher values that will form the stable centre of the body politic. In general, these said moral values that guide neo-conservatives has Judeo-Christian ethics seem antagonistic toward contemporary social movements like feminism.

According to this school of thought, Judeo-Christian ethics assert that women are gatekeepers of sexual responsibility, and that women who, in wielding significant sexual power over men, choose to tempt men into committing immoral sexual acts that may be held accountable for prostitution. In Ghana, prostitution is largely treated as an issue of traditional morality.

¹⁶ Christian is in brackets because it is the view of the writer that Christian beliefs are based on the teachings of Jesus Christ predominantly over laws of the old testament. The usage of Judeo-(Christian) is being used here as a widely form of accepted thought or theory.

¹⁷ Manfred B. Steger & Ravi K. Roy, *Neoliberalism: A Very Short Introduction* 22–3 (2010).

¹⁸ Harvey, *supra* note 14, at 82.

In Ghana, based on the principle of neo-conservatism, women are criminalized on engaging sexual intercourse for money or offering to do so. So, criminalization laws on prostitution fall largely on women (the sellers) than men (the buyers). Feminists have argued that the criminalization of individuals sold into prostitution as though they were equal parties to a crime with buyers of prostitution sex and third-party profiteers is violation of the human rights of women sold into prostitution. Feminists further argue that the criminalization of these individuals prostituted is an added violation of their human rights and failure of the criminalization as a policy model.

The Ghana law: Criminalizing the seller, not the buyer

Per Ghana's legal frame work on prostitution, there is a reinforcement of an age-old culture of blaming victims of prostitution for their exploitation. Deducing from this, criminalization portrays prostitution as a victimless crime, committed by immoral sexual deviant. This school of thought is further entrenching cultural norms silent on "pimping" while denigrating and encouraging violence against women with "whore" language and attitude. The portrayal of a victimless crime creates a state of paradox of Ghana's laws on prostitution which clearly states the protection of arrested prostitutes.

In cultural realms like Ghana and the United States; who are guided by neo-conservative thoughts on the criminalization of prostitution, the law holds less relevance in criminalization of prostitutes. In states, where buyers face illegal sanctions, laws are largely unenforced. Buyers often escape punishment despite their critical role of driving the economy of commercial sex. Studies in the United States, where the act of buying commercial sex is criminalized; only 10-30 percent of all prostitution arrests are sex buyers, while 70-90 percent of arrests target prostituted adults¹⁹ Punishment of the prostituted individual fails to acknowledge

¹⁹ 48 HUGHES, supra note 11, at 1.

but conscription into prostitution is driven by a plethora of factors which include racist and heterosexist social structures, homelessness, poverty, unemployment and experiences of violence.

The state of criminal laws in criminalization regimes on prostitution, indirectly enforces women's social inequality²⁰.

Despite laws on protecting prostitutes in Ghana and other criminalization regimes, the prevailing culture enshrined around Judeo-Christian thoughts has led to violence against women in all classes of prostitution often far from police misconduct. In Ghana, women in prostitution are deprived of food, sleep and money. In extreme cases they are raped, tortured and threatened to death and these area acts that pimps are paid for.

In other criminalization regimes like the United States, prostituted women and girls are the perils of sexual and physical violence.²¹ A study in Colorado Springs of 1,969 prostituted individuals between the years of 1967-1999 revealed that individuals actively involved in prostitution face a murder rate that is 18 times higher than the average persons²². Again, as proven by Gary Ridgeway, a convicted American murderer, serial killers often target women in prostitution because of the conviction that they may get away with murder more easily.²³

²⁰ Catharine Mackinnon, Prostitution And Civil Rights, In *WOMEN'S LIVES, MEN'S LAWS* 155 (Harv. Univ. Press, 2005).

²¹ Melissa Farley & Vanessa Kelly, Prostitution: A Critical Review Of The Medical And Social Sciences Literature 10, 16–17 (2000).

²² Waltman, *supra* note 23, at 453

²³ Transcript of CNN Live Event/Special, Wolf Blitzer, Gary Ridgeway Pleads Guilty to Green River Murders, CNN (Nov. 5, 2003), available at <http://www.cnn.com/TRANSCRIPTS/0311/05/se.04.html>.

Recommendation

One might view prostitution as a market where the demand side comprises individuals who purchase sex and where the supply side includes both voluntary prostitutes and trafficking victims. Nevertheless, few prostitution laws criminalize the buyer. Ghana's law on prostitution is also silent on criminalizing the buyer.

Below are some recommendations to further enhance prostitution laws in Ghana for the protection of prostitutes.

The Nordic Model

The theoretical foundation and intervention that the Nordic Model of legislation mandates differ significantly from the policy approaches of criminalization and legalization/decriminalization. The Nordic Model is consistent with social democratic approach used by governments to advance equality²⁴

The Nordic model proceeds out of the school of thought that believes prostitution is a form of gendered violence. This creates a very different framework than those that identify prostitution as either labour or a consequence of female immorality. The conceptualization of prostitution as gendered violence led Sweden to enact extensive social interventions for the treatment of women²⁵

The Nordic model penalizes persons with power who demand the prostitution transaction, the buyer with money or the pimp owner who profits. However, it is to be noted that this is not decriminalization model; rather it is quite the opposite of it. Significant number of social democrats believe that women's attainment of equity necessitates that structural barriers to women's full economic, social and political inclusion be excised: Classical liberals on the other hand hold the belief that wanting to free the individual from the constraints of others.

²⁴ TAYLOR, *supra* note 26, at 52–54

²⁵ EKBERG, *supra* note 21, at 1–2.

On the other hand, social democrats believe that freedom is dependent on the need for some equality. Inequality is viewed as a barrier to freedom²⁶

Sweden views the sex industry as a thriving off the social inequality between women and men, adults and children , “ white people and people of color, wealthy states and colonized states as an unacceptable practice rather than a market opportunity.²⁷ Due to Sweden’s position on prostitution as a consequence of structural injustices (including sexism, racism and heterosexism), called for the provision of social service support to survivors of prostitution and the criminalization of those abusing their greater socioeconomic power by buying prostituted women. Sweden called for the provision of social service support to survivors of prostitution and the criminalization of those that abuse their greater socio-economic power by buying prostituted women.

Ghana’s social protection policies, laws, mechanisms and government machineries makes her an advocate of the social democratic theory which argues that “*society is free to the extent, and such, its institutions and policies must enable its member to grow their full stature*²⁸ Social democracies tend to use policy initiative but not market incentives that further the societal wellbeing of all citizens. A country that is committed to the advancement of the welfare of the majority would not economically institutionalize the sexual subordination of women to men. The paper recommends Ghana’s adoption of the Nordic model due to its consistency with our institutional direction on social policy.

²⁶ TAYLOR, *supra* note 26, at 55.

²⁷ EKBERG, *supra* note 21, at 1–2.

²⁸ TAYLOR, *supra* note 26, at 55.

Protection of Sex Workers

Prostitution remains a criminal offence under the Criminal Offences Act; however, efforts have been made to ensure the protection of sex workers as part of the country's broader legal framework. Chapter 5 of the Constitution guarantees a wide range of fundamental rights and freedoms. The Police – who often confront sex workers are mandated by the Police Service Act to perform their functions as proscribed by law. Section 10 of the Act prohibits torture, violence, ill treatment and conforms this to article 15 of the Constitution.

The Police are therefore required to respect, maintain and protect human rights and human dignity of all persons, and are supposed to act impartially and in accordance with the law. Section 97 of the Criminal Offences Act also prohibits rape and section 247 prohibits extortion by Police Officers – act commercial sex workers often complain about. Furthermore, government and civil society organisations should ensure that key populations receive targeted comprehensive HIV and AIDS Services to reduce vulnerability and spread of the epidemic among this sub-population.

Social Protection

For women who want to quit prostitution, the Government should strengthen its social protection programmes and coverage. The rising level of unemployment and the widening inequality gap is pushing many young girls and boys into illicit activities. Government should therefore ensure that various loan schemes are provided to assist people who would want to venture into small scale business etc.

Raising Punitive Measures on Prostitution

In Ghana, Prostitution remains a criminal offence under the Criminal Offences Act. Section 276 of the code (as amended by section 14 of Act 554) provides that, “any person who persistently solicits or importunes in any public place or in sight of any public place for the purpose of prostitution shall be liable for a first offence to a fine and for a second or subsequent offences shall be guilty of a misdemeanour. The punitive measure on prostitution is less weighty and since prostitution is a lucrative

business; payment of a fine would not deter people who are determined to engage. Therefore, government should consider reviewing the punitive measure on prostitution.

Enforcing International Treaties on Movement of People

Recalling the *Protocol, A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment*, which provides for the free movement of persons, residence and establishment.

This protocol; which seeks to resolve the cross-border obstacle that people face, particularly at the frontier where the processing of documents is extremely cumbersome and fraught with harassments, intimidation and, often times, plain extortion. Nevertheless, the free movement of people provided by the protocol has led to the influx of people from neighbouring countries. These people upon arrival in Ghana, are engaged in illicit activities such as prostitution and to a larger extent sex trafficking.

Recent report in the media stated of the arrest of foreigners engaged in prostitution at a town called La in the Greater Accra Region. The rise in these illicit acts are as a result of the failure to enforce **article 3 (1) (2) of the protocol which states that** “Any citizen of the Community who wishes to enter the territory of any other Member State shall be required to possess valid travel document and international health certificate. “A citizen of the Community visiting any Member State for a period not exceeding ninety (90) days shall enter the territory of that Member State through the official entry point free of visa requirements. Such citizen shall, however, be required to obtain permission for an extension of stay from the appropriate authority if after such entry that citizen has cause to stay for more than ninety (90) days.” To ensure to protection of borders and the prevention of transnational organised crimes, it is imperative for Ghana to strengthen its efforts in enforcing international protocols and treaties and domestic laws.

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