Protection of Women in the Sex Industry
A Comparative Study of Sweden's and Canada's Prostitution Legislations

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ABSTRACT
The purpose of this thesis is to come to an understanding of the reasoning behind the enactments of Sweden's Sex Purchase law and Canada's Bill C-36. Furthermore, to discuss how the two legislations regarding prostitution have changed the protection for women in the sex industry. The methods used in this study is a Comparative Method, specifically, a Most Similar System Design, and an Argumentation Analysis. These methods are used in conjunction with three theories — History of Prostitution Models, Sociology of Law, and the Paradoxes of Rights. The result of the analysis shows that Canada's Bill C-36 is based on conservative reasoning with a focus on the abolishment of prostitution. The Swedish Sex Purchase law focuses on the criminalization of the purchase of sexual services instead of the seller. They reason that by shifting the responsibility on the purchaser, social norms and stigma regarding sex workers will change.

KEYWORDS
Prostitution, Sweden, Canada, The Sex Purchase Law, Bill C-36, Protection

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LIST OF ABBREVIATIONS

BRÅ  Brottsförebyggande Rådet/ Crime- Prevention Council
CASW  Canadian Association of Social Workers
CEDAW  The Convention on the Elimination of All Forms of Discrimination against Women
MSSD  Most Similar System Design
MDSD  Most Different System Design
RCSW  The Royal Commission on the Status of Women in Canada
RFSL LGBT  Riksförbundet för Homosexuellas, Bisexuellas, Transpersoners och Queeras Rättigheter/
The National Association for the Rights of Gay, Bisexual, Transgender and Queer
SOU  Statens Offentliga Utredningar/ Swedish Government Official Reports
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1. INTRODUCTION

1.1. Introduction of Topic

Prostitution is one of the oldest professions in history, derived from ancient times. In today's modern society, one might have hoped that the possibility of purchasing a person body for one's own bodily pleasure would have been abolished, however, that is not the reality. Abolishing prostitution is likely to be impossible in the near future. There are, however, four different approaches to handling prostitution. These models are Full Decriminalization, Legalization, Partial Decriminalization, and Criminalization. Some countries claim that the criminalization of prostitution is the best way of handling the "issue". Others believe that directing the criminalization towards the buyer would be more ideal and therefore, applies the Partial Decriminalization model. There are also people who consider prostitution as a legitimate form of work and a sign of female sexual liberation, which should be legalized. Nevertheless, regardless of which type of model a state is to adopt, the protection of women in the sex industry should be prioritized. Women who are part of the industry, freely or not, are often exploited and subjects to violence.

In 1999, Sweden introduced a new model of legislation. The focus was on the criminalization of the purchaser. By doing this, Sweden aimed to attack the demand for sex services and change the norms where women were just subjects of male sexual pleasure. In 2014, Canada introduced a new legislation, Bill C-36, which criminalize both ends of the prostitution business, the seller and the purchaser. The focus of this thesis is to compare and analyze Sweden's and Canada's two legislations, influenced by the Partial Decriminalization, and Criminalization models, in order to understand the reasoning behind the two legislations. Also, to analyze the effects of the two legislations to gain an understanding of how the two models can affect the lives of sex workers. Previous studies have discussed the Swedish Sex Purchase Law in accordance to a criminalization model. However, by comparing and analyzing Sweden's and Canada's policy models through the perspective of three various theories, which will be presented in a later chapter, this thesis will add understanding and fill an existing gap in research.
1.2. Research Problem and Aim

Prostitution is a business which in various ways can be dangerous to women and violate their bodies. There are four main models of legislation surrounding sex work, which very much differ from each other. Some countries, although being quite similar in ideas of women's rights and equality, have chosen to handle the situation of prostitution differently. The research problem of this thesis is, therefore, to search for the underlying reasons for why those particular models have been chosen. Also, to understand the effects of protection which the two models, *Criminalization* and *Partial Decriminalization*, results in and the two legislations possible weaknesses and strengths.

This thesis aims to come to an understanding of how the nature of reasoning behind two distinct policy models of prostitution looks like, also, how the two different models are able to protect women in the sex industry.

1.3. Research Questions

The two questions which have been chosen for this thesis are,

1. What reasoning was the enactments of Sweden's legislation, *the Sex Purchase Law*, and Canada's legislation, *Bill C-36*, based on?
2. How has *the Sex Purchase Law* and *Bill C-36*, changed the protection for women in the sex industry?

1.4. Human Rights Relevance

Human rights relevancy on this topic is connected to women's rights, such as the right to non-discrimination, bodily integrity, and equality. The convention which is compatible and advocates these rights is *The Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). The two relevant articles are article 2 and article 6. Both Sweden and Canada have ratified this convention. Canada ratified CEDAW October 18, 2002, and Sweden ratified the convention April 24 2003 (United Nations 1999). Article 2 states;

*Every state parties should pursue all appropriate means to eliminate all types of discrimination against women.* (United Nations 1979).
The relevant sections of article 2 is section 2b, 2c, and 2f. These sections states that every state party should establish legislation, regulations, and legal tools which would protect women from all kinds of discrimination\(^1\) (United Nations 1979). The second article of CEDAW which is relevant is article 6. This article states;

\[
\text{States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of the prostitution of women (United Nations 1979).}
\]

This thesis will discuss the legislation which has been introduced in order to protect the human rights of women in the sex industry. In the General Recommendation no. 12 (8th session, 1989) on the subject of violence against women, the Committee on the Elimination of Discrimination against Women wrote and provided recommendations in connection to articles 2, 5, 11, 12 and 16. These articles all act to protect women against violence of all kinds in every sphere, private, workplace, and social life. These recommendations state that state parties which adopted CEDAW and the General Recommendations should enforce legislation which protects women against any forms of violence in everyday life. Also, to provide support services for women in need of assistance ("General recommendations made by the Committee on the Elimination of Discrimination against Women": n.d.). No. 19 (11th session, 1992) of the General Recommendations also gave some directions regarding the subject of the prostitution of article 6. Section 13, 15 and 16 states that State parties must take measures to suppress and protect women against all kinds of exploitation and prostitution of women\(^2\) ("General recommendations made by the Committee on the Elimination of Discrimination against Women", n.d.).

\(^{1}\)Article 2, States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
(g) To repeal all national penal provisions which constitute discrimination against women.

\(^{2}\)13. States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.
1.5. Method and Material

The methods used in this thesis are a Comparative Study and an Argumentation Analysis. The specific Comparative Method which has been chosen is a Most Similar System Design (MSSD) inspired by Todd Landman's book, *Issues and methods in Comparative Politics: An Introduction*. This particular design was chosen since the two countries which will be compared are two states which are similar in social and economic circumstances, especially in regards to equality. However, the legislation regarding prostitution has very different outcomes. In other words, this comparative study design seeks to compare two similar systems which have had different legal outcomes within certain fields. As for the Argumentation Analysis, Kristina Boréus book, *Textens mening och makt*, has been used as inspiration. The purpose of using this method is to analyze the different argumentations for and against Sweden's and Canada's legislation.

The material which will be compared and analyzed are mainly legal documents and academic literature. The primary sources are *The Convention on the Elimination of All Forms of Discriminations against Women (CEDAW)*. Also, legal documents regarding Sweden's and Canada's legislation on prostitution. Secondary sources are academic literature, reports, and newspapers or articles.

1.6. Previous Research

The previous research made within the study of sex work and prostitution designs can be divided into two categories. These categories are *Evaluating Policies* and *Normative Reasoning*.

1.6.1. Evaluating Policies

Some of the previous literature discussed prostitution by evaluating policies, in this case, mainly the policies of Sweden or Canada. Either Sweden's policy which criminalizes only the purchaser or Canada, which criminalized both the seller and purchaser of prostitution. Some also discussed the policy in the Netherlands where prostitution is legal and regulated by the state. An example where Canada's policy was evaluated in contrast to the Swedish policy was
in S. Guy's report, *Prostitution Policy in Canada: Models, Ideologies, and Moving Forward*. In this report on Canada's prostitution policy, Guy discusses the value to search for the effects of criminalization and decriminalization. These effects are an indication of the importance of creating legislation which would protect women in the industry. The legislation of Nordic countries is used to discuss the contrast between the criminalization in Canada with the decriminalization in Sweden (Guy, 2014). While Guy's report spoke of the Swedish model of policy as the better version of prostitution legislation, Levy and Jakobsson's article, *Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and the lives of Sweden's sex workers*, focus on the flaws of the Swedish legislation. They claim that there is a misconception that the Sex Purchase Law works in favor of sex workers since it criminalizes the buyer rather than the seller. According to their study, the actual effects of the legislation are slightly different. Instead, it limits the workers and their ability to earn a living in a safe environment (Levy and Jakobsson, 2014).

### 1.6.2. Normative Reasoning

There was also much material which used a normative reasoning to argue for their view on the matter. The literature within this category was either pro-or against the criminalization of prostitution. However, a majority of the research discussed the negative aspects of criminalizing prostitution as it criminalizes the women which already are seen vulnerable and exploited from the sex industry. Some of this material was an article written by J.C Dunn, *It's Not Just Sex, It's a Profession*, which discusses prostitution as a legitimate workforce and the stigmatization surrounding it. By letting prostitution be legalized and seen as a form of business, women are able to use prostitution as a tool of empowerment rather than exploitation. Moreover, instead of letting stigma and negative stereotypes affect their work, sex work would be able to create sexual liberation for women (Dunn, 2012). There were also articles which discussed both sides of prostitution, one of these sides were that the only way to stop prostitution is to criminalize it entirely and that it should never be legal to sell not buy another person body for sexual services. These articles argued that while decriminalization can liberate women's sexuality, some claim that it normalizes practices which are seen as oppressive towards women. One of these articles are, *Prostitution and Sex Trafficking: What Are the Problems Represented to Be? A Discursive Analysis of Law and Policy in Sweden and Victoria* (Carson and Edwards, 2011).
1.7. **Delimitations**

As presented earlier in the introduction, there are in total of four main models of prostitution policies, however, I have decided to limit my work to two models which have influenced the creation of Sweden's and Canada's policies. Although it would have been interesting to add the Netherlands as a third country and representative for the legalization model, it was simply not possible due to the lack of space.

I am aware that prostitution is not exclusively an enterprise for women, and that it exists a significant number of male prostitutes. This thesis does, however, focus on the female part of prostitution as the male prostitution might be very different from the prostitution business which women are engaged in (both free and forced into). Also, most of the material in this thesis focuses on prostitution from the perspective of women as the primary seller and men as the primary purchaser of sexual services. This thesis has a quite binary point of view, and despite the value of discussing non-binary and transgender persons in the sex industry, it is not possible with the word count given for this bachelor thesis, and the circumstances might be very different from those of women in the industry. Due to the sensitive subject which prostitution is, the language used has been evaluated to reflect ethical considerations. The thesis use terms such as *sex work/worker* and *prostitute/prostitution*. These terms reflect the language which is commonly used in documents on the relevant legislation, literature, government proceedings, and by policymakers.

1.8. **Chapter Outline**

The thesis begins with an introduction which includes Introduction of Topic, Research Problem and Aim, Research Questions, Human Rights Relevance, Method and Material, Previous Research and Delimitation. The second chapter introduces two methods, Comparative Method, and Argumentation Analysis. The theories which will be applied in this thesis are then discussed and introduced in the third chapter. The thesis then continues with a background chapter where different models of legislation of prostitution are presented, followed by two longer subchapters of Sweden and Canada's history regarding its past prostitution policies, its motivation to the current legislation and the effects. After the background chapter, an analytical section can be found, where the methods and theories are applied to the analysis. The thesis ends with a conclusion and summary of the result gained from the analysis. In this chapter, further research is discussed and the points which the result of this thesis can add to the research field on prostitution policies.
2. METHOD

2.1. Comparative Method: Most Similar System Design (MSSD)

In this comparative study, I have decided to focus on two countries which are similar in the legal system, politics, and population. However, their policies regarding prostitution and the sex industry are two opposites. While Sweden's policy is influenced by the Partial Decriminalization model, Canada's model is created after the model called Criminalization. The primary method used in this thesis is a comparative most similar system design method. The most similar system design is focused on two similar cases with a different result. In the case of this study, the two examples are Sweden and Canada, which are two democratic countries which often seem to be in similar social and economic positions especially in regards to thoughts on women's rights and equality. However, in regards to prostitution, the outcome is very different.

This thesis will analyze the differences in reasoning and outcome using a comparative method inspired by Todd Landman's monograph Issues and methods in Comparative Politics: An Introduction. According to Landman, since the comparison is made between two countries, a middle level of understanding is achieved from the study. In order to abstract a higher level of understanding, several states would have to be compared and analyzed. This type of research is usually referred to as a case-oriented study since the countries chosen for the study are the units of analysis and focuses on potential similarities or differences between countries. This technique is meant to uncover what factors of common ground to each state would be responsible for the observed political outcome (Landman 2003: 27). The system design which has been chosen for this thesis is the most similar system design. This method tries to compare political systems which are similar to each other and then try to identify the key features which are different and accounted for the political outcome which one has observed (Landman 2003: 28). In the case of this study, that would be the comparison between Sweden and Canada, and what differences and similarities of reasoning were relevant for the apparent difference in their prostitution policy model. When choosing countries for the most similar system design, there must be some common ground, such as language, politics, religion, or history (Landman 2003: 29). By analyzing the material gained from Canada and Sweden, especially comments by the governments of Canada and Sweden regarding the legislation and the reasoning behind the

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3 There is also a Most Different System Design (MDSD). This design compares countries which does not share common features. The countries does however share similar political outcomes. MDSD seeks to identify features that are similar among various different countries in order to account for a particular outcome (Landman 2003: 28).
introduction of the legislation. This method will positively assist with interpretation of the material which has been collected and compared for analyzation.

2.2. Argumentation Analysis

This method is inspired and guided by Kristina Boréus, *Textens Mening och Makt*. She divided the purpose of argumentation into different categories. The first category is *descriptive*. This category tries to understand and find the structure of the arguments by reconstructing the arguments and relations between them in texts and debates. The second category is *evaluative*. By reviewing the arguments from the strength of the pro- and con- argumentation (Boréus & Bergström 2018: 94). The third category is *prescriptive*. This category focuses on formulating norms for good argumentation. These arguments are mainly directed towards finding arguments with objectivity and rationality. When using an argumentative analysis, the pro and contra-model are commonly used (Boréus & Bergström 2018: 95). By using this method, this thesis will weight the pro and contra argumentation to the different legislation models. Also, look at the empirical and normative statements for Sweden's and Canada's legislation. When looking at the normative statements, the goal is to search for the values and norms which have led to the implementation of prostitution legislation, for example, the previous legislations, background of the enactments, and what the two legislations entails. While studying the empirical statements, the ambition is to find the support which is used to explain Sweden's and Canada's choice of legislation model, for example, how the legislation has changed the protection for women and how it has affected society.

2.3. Material

Primary sources are legal documents such as *The Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), Sweden's legislations regarding prostitution, such as the Sex Purchase Law, and the Penal Code. Also, Canada's legislation, specifically the legislation regarding the prostitution policy, Bill C-49 and Bill C-36. The secondary sources are gathered through online university libraries such as Malmö University, Libsearch. Google Scholar was also used to collect material. The majority of sources are academic journals, articles, and monographs. Also, reports such as the *Swedish Government Official Reports* (SOU), reports from the Swedish *Crime-Prevention Council* (BRÅ), and the *Canadian Association of Social Workers* (CASW). However, since the thesis focuses on both the motives and the effects of the policies, other sources which are not academic nor legal were also used.
Those sources are newspapers and other articles regarding the political debate and the possible effects of the policies both in Sweden and Canada.

3. THEORY

3.1. History of Prostitution Models

Discussion regarding women's integrity and protection, especially in relation to prostitution, are subjected to several strong opinions. These opinions create several equally charged political policies and debates. The central discourse is concerned with deciding if prostitution is empowering, a consequence of immorality or exploitative of women. There are mainly three positions of views on prostitution. Most people take one of these three positions in the debate. The first position is that sex work is a consequence of low moral character. This idea is heavily inspired by the religious traditions and patriarchal society which connects female sexuality with temptation and the male sexuality with that of sanctioned insatiability and dominance over the women. This position wishes to abolish prostitution and can, therefore, be connected with the idea of the Criminalization model. The second position considers prostitution as a legitimate profession and claims that sex work is not directly dangerous or harmful to women. The idea is that women had control over their own body, and prostitution could be both empowering and lucrative for women. This position is connected to the notion of the Legalization or Full Decriminalization model. The third position argues that the sex industry and specifically prostitution is a consequence of political, economic, and social inequality. Women are mainly forced into the prostitution profession due to their social vulnerability. This position can be connected to the Nordic model or also known as the Partial Decriminalization model. The regulation of prostitution is different depending on nations own underlying social and economic justice commitments (Mathieson, Branam & Noble 2015: 368).

Judeo-Christian traditions consider prostitution to be a result of the sinful nature of women. Connected to this view is the underlying approach of the criminalization model, which considers prostitutes to be criminals and should be targeted for arrest. Men, on the other hand, have historically been far less accountable as buyers of sexual services than women has been as sellers. Those who advocate the Legalization or Full Decriminalization model claims that prostitution should be normalized likely to any other human interaction profession. This view is similar to the western liberalism, which frames prostitution as a personal choice and freedom of the individual (Mathieson, Branam & Noble 2015: 369). The Partial Decriminalization
model grew from the social democratic theory, radical feminism, and Marxism. This model is built on the understanding that women's justice is dependant on the social barriers which hinders the possibility of economic, political and social equality (Mathieson, Branam & Noble 2015: 371).

3.2. Sociology of Law

The strengths of law should be studied in the context of the interdependence of the state, science, and law, as it works as the source of legitimacy and the means of the governance. Law can be used in order to shape the behavior of citizens through sanctions and surveillance. By implementing policies, the state can control the distribution of resources and burden on its citizens, for example, laws regarding taxation and welfare. Law also includes an academic discipline which claims its theories and methods. Laws are used to educate citizens of the expectations which lawful citizen consists of and express values and ideals (Banakar 2000: 280). Laws are built on the idea of a normative system, and a law can secure its authority and domination by applying a normative closure, which means, creating a monopoly on the production of value judgments within legal matters (Banakar 2000: 284). Sociology of law can be described and distinguished from other forms of sociology by breaking it into three modes, Mode of Domination, Mode of Communication, and Mode of Legitimacy. The first mode explains how law manifests its domination by applying institutional normative control. The second mode is the Mode of Communication. The laws interest on institutional normative aspects cannot be separated with the importance of communication and its conceptual apparatus. These apparatus is in many ways resembling the factors of sociology. The third and last one is, Mode of Legitimacy. This mode explains how law expresses itself by the creation of its autonomy and identity in terms of the acts which it fulfill through an official source of social order. The laws truth is expressed through its autonomy and identity. This can be linked both its ability to secure itself against any possible alternative definitions and its ability to protect the professional and occupational bases (Banakar 2000: 292). This theory is used to understand the functions of law in society and how it is connected to norms and values. Sociology of law use social theories and then applies it to social scientific methods in order to study law, legal institutions, legal behavior, political discourse, and societal context. With those tools, one can then analyze a legal phenomenon in social, historical, and cultural contexts (Banakar & Travers 2013: 3). The idea is to use this theory to understand the legal behavior, which led to the application of the various policy models which Sweden and Canada decided
to create their legislation from. The foundation of sociology is the recognition that humans are shaped and affected by other humans, and at the same time, they influence other people (Banakar & Travers 2013: 4).

3.3. The Paradoxes of Rights

Human rights are rights, which we can claim based on being part of a human community. Human rights are considered to be equal rights, meaning, one either is or is not a human being and therefore are entitled to those rights the same way as other human beings (Donnelly 2013: 10). Some human rights can be seen as a standard of political legitimacy, for example, the human rights written in the *Universal Declaration of Human rights* are presented as a set of standard rights which all human beings should be able to benefit from. Human rights are also able to empower citizens to claim their rights if a state should fail to do so. Moreover, human rights do not merely suggest and recommend change for countries, they are rights which demand universal change (Donnelly 2013: 12). Women's empowerment cannot be fulfilled in a society built on injustice, human rights are therefore crucial for the possibility of women's liberation (Ferree & Tripp 2006: 47) Human rights have through various legal tools tried to implement some of the requirements which feminists consider as crucial for women's liberation. Some of these rights are bodily integrity, abortion rights, protection against human trafficking, and the demolition of the patriarchal society (Ferree & Tripp 2006: 52). One can, therefore, see connections between human rights and feminism, especially concerning women's rights and various feminist theories working for women's liberation and protection. One theory which argues for the protection of women's rights, especially in regards to prostitution, is radical feminism. The radical feminism considers prostitution to be a profession which upholds systematic violence towards children and women. This feminism partially grew from the critique of the liberal view on sex work. They consider prostitution to be harmful and exploitative towards women. It focuses on the gendered structures, inequalities, and power relations (Carson & Edwards 2011: 67)

The purpose of Wendy Brown's text, *Suffering Rights as Paradoxes*, is to discuss the inequality of women's rights, especially in regards to the rights of women's living under liberal constitutional regimes. Gayatri Spivak describes liberalism as that *which we cannot not want* while explaining problematic factors of liberalism and its true non liberal powers which are hidden behind the positive discussion on freedom and equality for all (Brown 2000: 230). Women live in a world where they constantly are exposed to exploitation, objectification, and
sexual violence. As a result, women need rights, and therefore, just as Spivak described the need for liberalism, rights appear as a factor which we cannot not want. The right to work, be paid equally to men, not to be sexually harassed and to be free from domestic violence are rights which women cannot not want. The rights for women over the years have not changed the way which is needed for human rights to be equal to both men and women. Rights currently work as a limitation for violence and soften the male dominance which women live with, they do not change the destructive social structure. When the rights for women are specified as right for just women, it separates those rights from the rest of society and is more likely to create a definition of women as subordinates in the transhistorical discourse of liberal jurisprudence (Brown 2000: 231).

The first paradox of rights is that when rights are created based on people's identity and gender, it does not free people from being subordinated by gender. It maintains the destructive structure instead of changing the core of the issue. This structure can be seen in regards to the right to abort unwanted pregnancies. Women are constantly judged by clinics, agencies, and mass media despite women legally having the right over their body. The second paradox brings up the discussion on rights and power. Human rights that exist today are created to be equally enjoyed by everyone. However, that is often not the case. Rights work as means to empower different social groups depending on the groups' ability to use the right and enjoy the power it can give. Socially vulnerable groups will not be able to exercise a right in an equal manner. The power is not in the right itself but how one can use that right. Some rights can also work as tools by groups to oppress other people. For example, the right to free speech can be used to work against women right, especially in situations on free abortion (Brown 2000: 232). The main points of Brown's text are that rights can enhance the subordination of women and other vulnerable groups of society. Human rights are created to give people freedom and protection, however, when gender norms have not changed, women will not be able to enjoy those rights without being suppressed. Also, there is an issue when creating women's rights since instead of creating freedom for women, they create a fence which upholds women's subornation. When rights are designed for women, they have often influenced by heterosexual gender norms, which affect the definition of what women are, their vulnerability and violability (Brown 2000: 233). The purpose of using the theory of paradoxes of rights is to be able to gain a deeper understanding of the effects which Sweden's and Canada's legislation have had on women's rights and safety.
4. BACKGROUND

Traditionally, prostitution has commonly been understood as a heterosexual business, where the woman sells a sexual service, and men are the purchaser. As a result, prostitution is often associated with the exploitation of women. Although most of the people selling sexual services are girls and women, boys and men are also used in the industry. Moreover, women also purchase sexual services. However, the majority of purchasers are men. Nevertheless, regardless of the gender of the seller and purchaser, prostitution represents an unequal business where one person, the purchaser, buys the rights to use another person's body as an object for their own sexual pleasure (SOU 2010:49: 61). There are four main directions of prostitution policy. The first model represents a system where prostitution and the sex industry are legalized and regulated, and this model is called Legalization. The second one is called Full Decriminalization, using this model, prostitution is to be made legal, however, in contrast to the Legalization model, it is not regulated by the state (Mathieson, Branam & Noble 2015: 370). The third is where the selling and purchase of sexual services are criminalized, this model is called Criminalization (Mathieson, Branam, & Noble 2015: 372). Partial Decriminalization, with this model it is illegal to purchase sexual services, and for third party involvement, such as pimps. It is, however, legal to sell sexual services. This model is often known as the Nordic Model (Mathieson, Branam & Noble 2015: 371). This thesis will focus on the two latter models, Criminalization and Partial Decriminalization.

Despite the fact that the member states in Europe have very different views on the structure of legalization, the prohibition on child prostitution is still considered illegal in all European states. The Legalization model is used by countries such as Germany, the Netherlands, Hungary, and Austria. In these states, prostitution is recognized as a legitimate profession, and the business is considered as an economic activity which should run legally (European Parliament's Committee on Women's Rights and Gender Equality 2014: 31). The first country in Europe to legalize prostitution was the Netherlands. It was on October 1st, 2000, that the ban on brothels was lifted, and the legalization came into effect. Some of the main reasons for the adoption of a new model and lifting the ban on brothels was to protect sex workers, protect minors of sexual abuse, sever the links between prostitution and crime and reduce prostitution by foreign nationals living illegally in the Netherlands (European Parliament's Committee on Women's Rights and Gender Equality 2014: 33). The result of the Legalization model, however, is according to some evaluation reports performed by the state is not as positive as
intended. Due to the lack of contracts and policies within the brothels many women are not protected and cannot enjoy social benefits (European Parliament's Committee on Women's Rights and Gender Equality 2014: 34). The social protection of prostitutes are low, and many women are still controlled and exploited by pimps. Pimps control the business, and the sex workers usually work in poor conditions without any social protection (European Parliament's Committee on Women's Rights and Gender Equality 2014: 35).

The *Criminalization model*, or as it also can be called, the *Abolitionist model*, are used in various countries around the world, Canada is one of them. In Europe, Spain, Poland, Slovakia, and Denmark use this model (European Parliament's Committee on Women's Rights and Gender Equality 2014: 31). The *Partial Decriminalization model* is also known as the *Nordic model*. Sweden is one of the few countries in Europe where only the purchase of sexual services are criminalized and punishable with up to a year of imprisonment while the selling is legal. The Sex Purchase Law has set an example to other countries. Other Nordic countries, such as Norway and Iceland, have adapted their legislation to the *Partial Decriminalization model* to be able to attack the demand for prostitution. Countries such as Ireland, Scotland, and France have tried to change their legislation to the *Partial Decriminalization model* (European Parliament's Committee on Women's Rights and Gender Equality 2014: 32).

### 4.1. Sweden

In 1999 Sweden became the first country in the world to criminalize the purchase, but not the sale, of sexual services. The penal provision, the *prohibition of the purchase of sexual services*, can be found in chapter six, section eleven of the Penal Code (Justitiedepartementet 2008: 1). In 1918, the legislation forced sex workers to twice a week visit a clinic for a phytosanitary inspection, to make sure that they did not carry any sexually transmitted diseases was abolished. Until 1965, women in the sex industry could be evicted to forced labor according to the legislation called *Vagrancy legislation* (Brottsförbyggande rådet 2000: 13).

#### 4.1.1. 1977 prostitution investigation

After 1965, the discussion regarding the legislation of prostitution had shifted, and during the 70s people were debating whether or not prostitution should be criminalized. This change of tone was due to the altered view on sexuality and social changes. In 1977 started an

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4 lösdriverilagstiftningen
investigation on prostitution to get a clearer picture of the current situation in Sweden. The report was published by Swedish Government Official Reports (SOU) (SOU 2010:49: 64). The investigation produced an extensive survey to show that prostitution is not only a women's issue but rather an issue for all humans regardless of gender as prostitution is not compatible with the general idea on individual freedom and gender equality. The inquiry tried to expand the understanding of prostitution. They chose to define prostitution as an act between at least two parties where one purchase and one sell in return for financial compensation (SOU 2010:49: 66).

The report concluded that criminalization would create a restricting factor for potential purchasers and that it could affect the selling aspect as well. However, a criminalization could be harmful towards the women, in aspects such as social help and increase the risk of abuse due to the prostitution business working underground. There was also concern that criminalization would become dependant on class. In the way that only the visible prostitution such as the women selling their service on the street while the more hidden and considered high-class prostitution does not get affected in the same way due to the difficulty in surveillance. This ineffectiveness would lower the respect of other legislation and rules (SOU 2010:49: 67). As a conclusion, the arguments against a criminalization outweighed the discussion. Instead, it was suggested to prohibit sex clubs showing pornographic performances due to these clubs being a common ground for criminality and gateway for young women involving themselves in prostitution and the sex industry. The prohibition took effect on July 1st, 1982\(^5\). The SOU also recommended trying to criminalize landlords, which allows prostitution business being performed at their apartments. The legislation to increase the responsibility of landlords took effect in 1984\(^6\) (SOU 2010:49: 68).

### 4.1.2. 1993 Prostitution Investigation

Another prostitution investigation was executed in 1993 to determine the nature of the criminalization of prostitution. To be more exact, should the purchaser or/and the seller be criminalized. This investigation began after several motions had been put forward. The investigation resulted in a report named *Könshandel* (Sex Trade) commanded by SOU. In this report, a similar discussion to the 1981 report was brought up. The government was once again

\(^5\) 2 kap. 14 § ordningslagen (1993:1617) 4 6 kap. 8 § 2 st brottsbalken
\(^6\) 6 kap. 8 § 2 st brottsbalken
discussing whether or not prostitution should be criminalized. In this case, however, the arguments for a criminalization was stronger and higher in number. After a discussion, the investigation concluded that the criminalization of both sellers and purchasers would be the ideal legislation. This conclusion was motivated by the unjust factors of the sex trade and that the criminalization should limit both sides of the business. Sex trade would be deterrent if both parties were to be criminalized. This would also lower the possibility of violence and extortion (Brottsförebyggande rådet 2000: 14).

4.1.3. The Sex Purchase Law

During the 1980s and the 1990s, the concern regarding the sex industry and human trafficking were growing. Some believe that the Sex Purchase Law was an effect of that concern. By engaging in the issue of gendered violence and sex work with new legislation, the Sex Purchase Law, the government hoped to attack some of the issues of violence against women and the growing sex industry (Levy 2014: 33). Abolitionist Radical Feminism had much influence in the introduction of the new prostitution legislation, and many believe that a feminist discourse inspired the law. This theory assumes that prostitution is an issue of male conduct and a form of male patriarchal violence towards women. However, most radical feminists believe that the Sex Purchase Law upholds oppression towards women and that all types of sex work are a form of violence. Sex work should, therefore, be eradicated (Levy 2014: 30).

The Sex Purchase Law (1998:408) was introduced on January 1st, 1999. In connection to the sex crime reform in 2005, the Sex Purchase Law was repealed and replaced by a new penalty regulation, which can be found in chapter 6§11 of the penal code. The new penalty regulation was just like the previous one regarding the prohibition of sex purchase and are, therefore, still called the Sex Purchase Law (Justitiedepartementet 2008: 1). The legislation is gender neutral, which means that regardless of gender, one would be able to be punished by the law. The seller would not be prosecuted, not for the selling of sexual services nor the assistance of a crime (Justitiedepartementet 2008: 2). The Sex Purchase Law which was introduced in 1999 states the following:

§Anyone who, with compensation, obtains a temporary sexual association, is sentenced - unless the act is punished according to the Penal Code - for the purchase of sexual

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services to fines or imprisonment for a maximum of six months. For attempt, is sentenced to liability according to chapter 23. of the Penal Code⁹ (translated by the author) (Lag (1998:408) om förbud mot köp av sexuella tjänster: 1999).

The 2005 legislation chapter 6§11 of the penal code states;

§Anyone who, with compensation, obtains a temporary sexual association, is sentenced to fines or imprisonment for a maximum of one year¹⁰ (translated by the author) (Justitiedepartementet: n.d.).

The voting for the Sex Purchase Law was held in the Parliament, called Förbud mot köp av sexuella tjänster, were divided into those against the legislation and those in favor of new legislation. Out of the total 273 members that were voting, 92 members of the Parliament were against the new legislation while 181 members were in favor of the Sex Purchase Law. While 13 members refrained from the voting and 63 members were absent, the majority of members in favor of the legislation were parties of the left wing, such as the Social Democrats (Socialdemokraterna) with 113 votes in favor and one vote against¹¹. The majority of members against the legislation were parties of the right wing and conservatives, (Moderaterna), with 73 votes against and no votes in favor of the Sex Purchase Law (Riksdagens snabbprotokoll 1997/98:115 Fredagen den 29 maj Protokoll 1997/98:115 - Riksdagen: 1997). The prohibition of purchase of sexual services was introduced due to the importance of fighting prostitution as it was a growing social concern both nationally and internationally. The new legislation was used by Sweden to send a message and be an example to other countries. The Sex Purchase Law pointed out the harms which prostitution leads to, not only on the individual but on the society as a whole. The hope was that the criminalization would create a deterrent effect on those who were purchasing sexual services and also reduce the various illegal organizations abroad from establishing human sex trade in Sweden ( SOU 2010:49: 13). The government discussed the question of criminalization in connection to the report, Kvinnofrid (women's serenity). The report gave the criminalization of prostitution as an example of increasing the

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⁹ §Den som mot ersättning skaffar sig en tillfällig sexuell förbindelse, döms - om inte gärningen är belagd med straff enligt brottsbalken - för köp av sexuella tjänster till böter eller fängelse i högst sex månader. För försök döms till ansvar enligt 23 kap. brottsbalken.

¹⁰ §Den som, i annat fall än som avses förut i detta kapitel, skaffar sig en tillfällig sexuell förbindelse mot ersättning, döms för köp av sexuell tjänst till böter eller fängelse i högst ett år.

¹¹ In favor: Socialdemokraterna: 133, Centerpartiet: 19, Folkpartiet: 2, Vänsterpartiet: 15, Miljöpartiet: 12
Against: Socialdemokraterna: 1, Moderaterna: 73, Centerpartiet: 1, Folkpartiet: 16, Vänsterpartiet: 1
equality between men and women. Also, to be able to limit the violence towards women. In Prop. 1997/98:55, the report explained that it would be unacceptable in an equal society that the body of women would be able to be bought by men. The government of Sweden concluded that the ideal solution to this issue would be to criminalize only the purchase of sexual services (SOU 2010:49: 74). The reason for this standpoint is that it would not seem reasonable for the vulnerable part of the prostitution industry to be criminalized, in this instance, the delicate part would be the women selling her body to men whom which to satisfy their sexual desires. The Swedish National Board of Health and Welfare got an order by the government to investigate the situation of prostitution and gain an understanding of the situation both nationally and internationally. The National Criminal Police was selected as a national rapporteur of questions regarding the sex trade of women (Brottsförebyggande rådet 2000: 16).

The purpose of the new legislation was to attack the severe social issue which prostitution was considered to be, both for the individual and for society. The people who were engaged in prostitution were in a difficult social position, and other criminal acts were often performed in connection to prostitution and the sex industry. The prohibition of purchasing sexual services was supposed to highlight societies view on prostitution and fight prostitution. The hope was that the new legislation would to create a deterrent effect on the purchase and function as a normative change of sex trade (SOU 2010:49: 75). “The same thing as the Social Democratic Women propose legislation of you can't hit your children. It's very hard to control it. But it's a norm, and prostitution is also a norm.” This was said by a politician of the Social Democratic party, and a proposer of the Sex Purchase Law in 2010. Both members of the Social Democratic party and the left party believed that the legislation could change the norms of prostitution, perhaps not instantly but in the long term, similar to the norm of using physical violence on children as a way to educate one's children (Levy 2014: 62)

#### 4.1.4. The Effects of the Sex Purchase Law

The legislation, according to a Swedish non-governmental television show named Uppdrag Granskning (Mission Inspection) aired 24 January 2018, inspected the 1999 legislation which was supposed to prosecute people who buy sexual services from a person over eighteen years old. In reality, it is very unlikely to be prosecuted by this legislation, and the conviction rate is very low. It has been forbidden to purchase sexual services for twenty years, the penalty is either a fine or jail for up to one year. According to BRÅ (crime-prevention council), few people have been convicted since 1999 when the legislation was released and 2016 by the sex
purchase legislation. In those cases, the sex purchase has not been the sole reason for conviction. Usually, other factors or crimes have been the main argument of conviction. According to Simon Häggström, a police officer and specialist at the National Operations Department Human Trafficking Group, the root of the issue is the high demand for sexual services by men in Sweden. Thousands of men purchase sexual services by women each year. Despite this low result in convictions, the legislation has been important for the change of norms regarding prostitution. It has changed the view on prostitution, and in comparison to countries without a Sex Purchase Law, crimes of violence towards women in the sex industry and human trafficking is much lower. According to Simon Häggström, one should not solely concentrate on the number of convictions when evaluating the value of legislation. The Sex Purchase Law is one of the most essential tools for the fight against human trafficking as it makes it more difficult for trafficking networks to get established in Sweden, despite the low result in convictions. The legislation itself is not a failure, it is the system of penalty that fails to live up to its expectations (SVT: 2018).

If the purpose of the Sex Purchase Law was to send signals internationally and show the stand which Sweden takes on prostitution, one might consider the Sex Purchase Law to be a success. After all, it has demonstrated Sweden's non-tolerance on the purchase of sexual services. However, The law has not changed much for the women who are active in the sex industry. According to an interview of The prostitution unit in Stockholm performed in 2010, the legislation is neither protecting or helping women who are selling their bodies. They believe that the legislation is more likely to be effective in the long term. They are, however, still unsure of the positive effects of the legislation will arise. Another interview, also performed in 2010, of the RFSL LGBT12 (The National Association for the Rights of Gay, Bisexual, Transgender, and Queer) organization, believes that the legislation looks good in theory. However, it failed to perform. They thought that the people who decided on the implementation of the new law did not consider the effects which it would have on individuals lives. The politicians are still ignorant of the impact and seems to ignore the facts. The author of the book *Criminalising the Purchase of Sex: Lessons from Sweden*, Jay Levy, interviewed a sex worker on the effects which the legislation has had on women in the sex industry. She explained that the women in the industry often suffer from mental health illnesses, have social problems, or are addicted to drugs. If a hundred sex workers disappear from the streets, some might consider that as a

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12 Riksförbundet för homosexuellas, bisexuellas, transpersoners och queeras rättigheter
successful effect of the legislation. But the question that arises is, where are these women now? The women in the sex industry are vulnerable in many ways and need help and protection. According former sex workers, women who disappeared from the streets had to be sacrificed for there to be a positive result in the long-term and to send a message to society. Many consider the legislation to eminently be a symbolic law. It tries to shift the focus from the sex workers lives and from Sweden's somewhat shameful history of dealing with prostitution and gendered violence. It can there be seen as an easier option rather than focusing on the protection and well-being of the sex workers. After the implementation of the Sex Purchase Law, no additional funds were given to social services which work to assist sex workers in need of help (Levy 2014: 64).

4.2. **Canada**

In February 1957, due to pressure by the women's liberation movement, the Canadian federal government announced the appointment of the Royal Commission on the Status of Women in Canada (RCSW). The feminist movement in Canada was trying to develop an understanding of what means the state served to strengthen and enforce the patriarchal privilege in society. Feminists in Canada demanded that social policies and criminals laws which were sexist and based on gender inequality should be removed and changed. The RCSW investigated the impact which federal practices and legislation had on women in Canada. The commission reviewed any legal matter which would be relevant to women, for example, federal labor laws, criminal law, marriage, and divorce legislation and federal tax laws, also, the position of women in education and work skills, labor force, citizenship, and immigration policy. The RCSW assignment was the first attempt by the federal government to address the gender inequality of Canada. The commission's report was released in September 1970 (Brock 2009: 28). One of the legislation which was criticized was the one regulation of street prostitution. Prostitution was considered as a form of vagrancy under section 164 (1)(c) of the Criminal code. Also known as *VAG C*. The legislation stated that those who are prostitutes or night-walkers and are found in a public space and can not give a liable account for her actions are to be guilty of vagrancy. This was one of the legislation which was considered discriminatory due to the language which was directed towards women. The RCSW regarded the *VAG C* as a form of restriction of women's right to move freely in a public place and the possibility of abuse of power by police officers. The law labeled women as prostitutes due to the criminal record. This hindered the possibility of rehabilitation for women. Women were not prosecuted for what they did but for what they were considered to be. The RCSW did a study to see public opinion on
prostitution. While the majority found prostitution to be morally wrong, they were not in favor of the introduction of legal punishment. The commission saw prostitution as a social issue, not a criminal one (Brock 2009: 29).

4.2.1. The Street Solicitation Statue

In 1972 the legislation called VAG C was abolished with the argument that all vagrancy legislations were to be repealed. Canada's Justice minister at the time, Otto Lang, explained that the change of view on the vagrancy legislations were partly due to the recommendations given by the RCSW. A new statue of the prostitution legislation was introduced. It referred to the street solicitation and was passed by the House of Commons. The new section 195.1 states, “Every person who solicits any person in a public place for the purpose of prostitution is guilty of an offense punishable on summary conviction.”(Brock 2009: 32). It was expected that the feminist would be pleased with the newly introduced statute, due to the absence of a legal definition of prostitution as a status offense. The statue was also gender neutral and did not directly focus on women and the common prostitute, as the previous legislation did. A male member of the parliament considered this change of statue as “a noble victory for man's liberation.”(Brock 2009: 32). The new statue fulfilled the obligations of creating legislation which formally built on equality. It did not, however, recognize the much more profound and fundamental discrimination against women which could not be changed solely on a gender-neutral language expressed in the legislation. The politicians who were supporters of the new statute did not consider the reasons for why women become prostitutes in the first place (Brock 2009: 32). The majority of arrests and prosecutions were of women. Some judges did not even recognize the possibility that the Street Solicitation Statue could be applied to male customers. Throughout the 1970s, the regulation of prostitution was intense and would increase, especially on a local level. The sex industry expanded in the 70s, creating strip clubs, pornographic book stores, movie houses, massage parlors, and other various fronts for prostitution business (Brock 2009: 33). Politicians began a so-called clean up campaign trying to hinder the sex industry to expand and ruin neighborhoods and streets with its massage parlors and other establishments. When the Tories won the election, they assisted further with the clean up campaign. In July 1975, the Tories implemented a Municipal Act and Theatres Act, which would criminalize massage parlors which were engaged in the prostitution business (Brock 2009: 35).
4.2.2. The Frasers Committee

In 1983, a special committee on Pornography and Prostitution was created to investigate all aspects of prostitution. Not only how effective the 1970s Street Solicitation Statute was. The committee was named the Frasers Committee from its chairperson (Brock 2009: 64). The mandate of the Frasers Committee was to consider the current prostitution in Canada. Especially on the subject of street soliciting and loitering, the operation of bawdy houses (brothels) and the exploitation of sex workers. Also, the legislation regarding these subjects. They also had to report findings and give recommendations of possible solutions to issues with prostitution in Canada, no later than 31st of December, 1984. The Frasers Committee tried to understand what potential harms prostitution could create and which role the law should have to prevent those harms. In November 1983, the committee released a so-called Issues Paper to the public (Brock 2009: 67). This report presented the debate on the role of the law in regards to regulation of morality, potential social and legal strategies for dealing with the issue of prostitution in Canada (Brock 2009: 68).

The committee commented on the difficulty of balancing guidelines and principles, especially on the subject of individual liberty and social equality. While some feminist scholars would consider all forms of pornography harmful to women in general, some might believe that watching pornography is an individual's rights to liberty (Brock 2009: 69). The Frasers Committee provided some recommendations on how to deal with prostitution. They tried to consider social methods rather than legal ones. However, the main focus was on Canada's criminal code. The federal government of Canada was mostly interested in how to deal with prostitution through legislation. The committee's recommendations acknowledge the issue of social inequalities for women and young people, gender inequalities, and sexual exploitation is deeply rooted in the social structure of Canada. The recommendation to the government was to commit to removing inequalities based on gender by creating social programs which would help women and young people, also to help prostitutes who were both still active and removed from the business (Brock 2009: 70). During its course of work, the committee realized the impossible task which they had taken on. Instead, they focused on trying to create compromise solutions which would be able to balance both people which were pro-criminalization and those who were against it. They stated that it would be in the best interest of sex workers if the legislation were minimized. Prostitution at the time was not illegal per se, however, most activity related to prostitution was unlawful, and there was no space for the profession of sex
workers. The committee argued that the legislation regarding prostitution-related activities should be removed from Canada's Criminal Code (Brock 2009: 71). The Fraser Committees recommendations should however not convince, nor overpower local politicians, police forces and residents organizations which had a different idea on the regulation of prostitution. The recommendation was, therefore, not suitable in Canada with the growing influence of conservative politicians (Brock 2009: 80).

4.2.3. Bill C-49

In 1985 Bill C-49 was introduced and passed due to the majority of conservative votes (Brock 2009: 83). It states the following,

(1) Every person who in a public place or in any place open to public view(a) stops or attempts to stop any motor vehicle, (b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place, or (c) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.

(2) In this section, ‘public place’ includes any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public area or any site open to public view (Brock 2009: 81).

This bill was welcomed by those who supported the idea of criminalization of prostitution in Canada. Many pro-criminalization followers used the right to property as a tool to argue for the criminalization of prostitution. It was a powerful tool to pressure the federal government of Canada. Many also combined this argument with the usage of need to protect women in the communities from the dangerous influence of prostitution (Brock 2009: 82). The bill C-49 was considered unconstitutional and the commuting law, which prohibited any form of

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13 Example of letter: The prostitution problem in Toronto has reached epidemic proportions ... the police have been totally emasculated by the current lack of legal muscle ... Ours is a mixed neighbourhood, consisting of expensive renovated homes interspersed with a few older rooming houses. Our taxes are the highest in Metro and still rising ... Our wives and daughters are continuously afraid to walk these streets alone after dark ... it is patently unfair for taxpayers to be held hostage in this manner while our elected representatives leisurely discuss the philosophical question of possible impingement upon the personal freedoms of these poor creatures ... consider our freedoms also, gentlemen. Pass Bill C-49 and give us back our streets.
communication in a public place with the purpose of the prostitution business, was struck down by the supreme court of Canada in December 2013 (Ferris 2015: 206).

4.2.4. Bill C-36

In December 2013, the Supreme Court of Canada announced that three of the criminal codes addressing prostitution were unconstitutional and the Government needed to create new legislation. The Supreme Court considered three of the previous legislation to violate section seven of the Canadian Charter of Rights and Freedoms. Section seven discusses individuals rights to life, liberty, and security. The three Criminal Codes which were considered unconstitutional were,

prohibition on keeping or being in a "bawdy house" for purposes of prostitution (section 210); prohibition on living on the avails of prostitution (paragraph 212(1)(j)); and, prohibition on communicating in public for purposes of prostitution (paragraph 213(1)(c)). ("Technical Paper: Bill C-36, Protection of Communities and Exploited Persons Act": 2017).

The Parliament had twelve months to introduce new criminal code. Otherwise, Canada would have no regulation on prostitution. On November 6, 2014, Bill C-36, the Protection of Communities and Exploited Persons Act, revived Royal accepted. Bill C-36 makes the practice of prostitution itself illegal, and those involved can be prosecuted. It tries to focus on reducing the demand, with the goal of abolishing prostitution from Canada. Bill C-36 also criminalizes the communication between individuals for the purpose of purchasing sexual services, communication with the purpose of providing and selling sexual services, and the advertisement of selling sexual services. Also, knowingly receiving material and financial benefits from the business of sexual services ("Technical Paper: Bill C-36, Protection of Communities and Exploited Persons Act": 2017).

October 6, 2014, during the 41st Parliament 2nd Session, sitting no.123 the voting for Bill C-36 were executed. The total votes were 280, 156 in favor and 124 against the of the new legislation. The majority of votes in favor of Bill C-36 were from members of the Conservative party, and the majority of votes against were by members of the NPD\(^{14}\) (New Democratic

\(^{14}\) In favor: Conservative: 154, Independent: 1, Conservative Independent: 1
The new legislation in Canada, known as the Protection of Communities and Exploited Persons Act, was introduced on December 6, the year 2014. The same day as Canada's National Day of Remembrance and Action Against Women day (Cao, Lu & Mei 2015: 1171). The new legislation was created for eradicating violence against women. The legislation was cleared by a congress which was dominated by conservatives. The Canadian Supreme Court in unison agreed to invalidate the previous federal prostitution legislation in December 2013. Those who were against the legislation argued that the new legislation would make the life of sex workers more difficult by intimidating good clients. The result will be that sex workers will have to keep connections with sketchy clients and make the work more dangerous. Sex workers are also less likely to go to the police if prostitution is criminalized (Cao, Lu & Mei 2015: 1172).

The purpose of the law to protect those who sell their body for sexual services, protect communities from harms inflicted by prostitution, and to reduce the demand for the purchase of sexual services. It goal is to protect the equality and dignity of all Canadian citizens by prohibiting and prosecute the purchase of sexual services, all forms of exploitation of prostitution, and the expansion of economic activity such as the institutionalization of prostitution — for example, strip clubs, escort agencies, and massage parlors which offers sexual services. The Bill also encourage victims of violence to report to the police and leave the sex industry. Approximately 20 million dollars of funding have been devoted to helping individuals leave the sex industry and prostitution. Section 286.1\(^{15}\) of the Bill criminalizes for the first time in Canadian law the purchaser of sexual services. Section 286.4\(^{16}\) criminalized, also for the first time in Canadian criminal legislation, the advertising or sale of sexual services. Those individuals who sell their sexual services are not criminally liable ("Fact Sheet - Prostitution Criminal Law Reform: Bill C-36, the Protection of Communities and Exploited Persons Act": 2014).

\(^{15}\) Section 286.1: Obtaining sexual services for consideration, or communicating in any place for that purpose (section 286.1) Those who sell their own sexual services are protected from criminal liability for participating in the commission of this offence if the offence relates to their own sexual services (subsection 286.5(2))

\(^{16}\) Section 286.4: Knowingly advertising an offer to provide sexual services for consideration (section 286.4) Those who sell their own sexual services are protected from criminal liability for committing this offence if they advertise their own sexual services (paragraph 286.5(1)(b)), or for participating in the commission of this offence if the offence relates to their own sexual services (subsection 286.5(2))
4.2.5. The Effects of Bill C-36

The features of the new legislation came as a surprise to the Canadian public. Citizens believed that the legislation would be created with the resemblance of the Nordic Model. In other words, decriminalize the seller of sexual services and criminalize the purchaser. Instead of this, the Parliament introduced legislation which criminalized prostitution and, specifically the sex worker. The Canadian Association of Social Workers (CASW) were appreciative with the attention with the question regarding the regulation of prostitution that the Canadian federal government were giving. However, the CASW is concerned with some aspects of the 2014 legislation (Guy 2014: 3). According to the CASW, the policymakers did not consult with those who work in the sex industry and obtains meaningful information which would have been useful for the implementation of new legislation. Bill C-36 was created to fit the needs of the government. Many active sex workers in Canada have united to protest against the new legislation, in ways such as public protests, petitions, and rallies. The legislation has according to some active workers in the sex industry “fuel violence, abuse and exploitation and, quite frankly, […] lead to the killing of more sex workers” (Guy 2014: 4).

There is also another side of the discourse. Some argue that criminalization would be the only way to force people to leave the prostitution profession. One of the individuals who support Bill C-36 is the former sex worker Katrina MacLeod. She considers the prostitution profession to be dangerous regardless of which policy model a country adopt. Even among feminist scholars disagreements regarding the question on prostitution policy models are many, and on an ideological level. Some radical feminists consider the profession of sex work always to be an act of generated violence. As opposed to this, liberal feminists believe prostitution to be a legitimate form of work and supports the normalization of sex work (Guy 2014: 4). The criminalization of sex workers is very likely to establish a hostile relationship between the workers and the police force. As a result, sex workers rarely report abuse or safety concerns. The criminalization also makes it more difficult for the sex worker to gain sexual and physical healthcare, due to the stigmatization of prostitution. The criminalization legitimized discrimination against prostitutes and withheld stigmatized norms in society (Guy 2014: 11). According to the CASW, Bill- 36, “creates a confusing and, frankly, unhelpful model, it is inconsistent of the government to establish new legislation whereby prostituted individuals are regarded as victims in certain situations but not in other instances. If sex workers are victims in need of assistance, how might they also be criminals?” The current legislation which
criminalized the sex worker does not reflect a human rights response to prostitution policy (Guy 2014: 13).

Is the current prostitution legislation in Canada achieving its goals? Many news reports claim that Bill-36 fail to achieve what the government promised. These news reports believe that the government aimed to make the sex worker healthier and safer. However, some claim that this was not the aim which the government tried to achieve. Their intention was to create an derrering effect and abolish prostitution. The Parliament did not consider prostitution to be without harm if it were to be legalized and would not make the profession safer for the workers (Haak: 2018). Another newspaper claims that Bill C-36 has made it more dangers and difficult for sex workers to practice their profession. A conservative government created the Bill, but the liberal party, which is the current government, has not done much to change the situation for the sex workers, despite their promises. Justin Trudeau (leader of the Liberal party) ruled Bill C-36 to be unconstitutional, and during the 2015 election campaign, he vowed to fix the legislation. However, three years have passed, and nothing has changed. Prostitutes are being targeted and charged with crimes due to their profession. Instead of a decrease in police harassment, the number has increased for sex workers. In 2013, sex workers were optimistic due to the Supreme Court's ruling that the previous legislation was unconstitutional and harmful to sex workers. However, that optimism ended when Bill C-36 was introduced. Once again, sex workers seem to have been forgotten by the government, and people are now starting to protest due to the lack of outcome and protection by the Liberals (Ling: 2019).

5. ANALYSIS

This analysis will be divided into two sections. The first section will analyze the material from *the History of Prostitution Models* and *Sociology of Law*. The purpose of these theories are to understand the reasoning behind the introduction of the two legislation which have been discussed in section 4, Background. The second section will be discussed from Wendy Brown's theory, *Paradoxes of Rights* in order to understand how the legislations have changed the lives of sex workers in Canada and Sweden.

5.1. Reasoning Behind the Implementation of Bill C-36 and the Sex Purchase Law

The Canadian legislation on prostitution, Bill C-36, *the Protection of Communities and Exploited Persons Act*, was introduced after the Supreme Court ruled the previous criminal
codes as unconstitutional. The public expected the new legislation to be constructed after the Nordic model, where only the purchase of sexual services was criminalized. Instead, the parliament introduced legislation which in regards of content were similar to that of the previous legislation. Bill C-36 did criminalize, for the first time, the purchase of sexual service. However, the activities relating to selling sexual services remained and once again placed the seller in a position as a criminal. As can be seen both in the past and in the present context, sex workers are in a vulnerable position where they are constantly subjects to harassment, violence, and discrimination. One might, therefore, wonder why the Parliament of Canada decided to keep the legislation which will uphold norms of the sex worker as a criminal and subject of sinful behavior. Previous legislation focused on the effect of prostitution had on the communities where such business was active. The main concern was the quality of the community rather than the protection of women. By criminalizing prostitution, women were forced to leave those specific areas. As a result, street prostitution might have decreased, but what happened to those women? As mentioned in chapter 4.2.5, The Effects of Bill C-36, the new legislation places the women in two contrasting positions. Firstly, as the victim who is in need of protection and whose bodies are exploited. Secondly, as the criminal who sells their body in return of financial support. If these women are in need of protection and assistance, how can they also be regarded as criminals?

As can be seen in the voting for the new legislation which was executed in October 2014, the majority of voters were, similar to the voting for Bill C-49, members of the Conservative party. It should also be noted that the majority of voters who are against Bill C-36 were members of the socialist party, NDP. It is possible to see similarities to that of traditional values on prostitution. As can be seen in the theory, History of Prostitution Models, the majority of people who leans towards a Criminalization model are conservative and in the mindset that prostitution should be abolished. The parliament of Canada does claim that the reason for Bill C-36 is to protect women from the dangerous profession of prostitution. It could, however, be discussed if criminalization is the correct policy, considering the past effects of a criminalization where the women are harassed by the police force and society as a whole. Criminalization upholds the destructive norms which restrict the sex worker from receiving the assistance and protection needed. The conservative parliament which held up the majority of votes in parliament were given the opportunity to implement policies which would set the standard of a lawful citizen.

17 New Democratic Party
By criminalizing the sex workers, the parliament was able to uphold traditional values and ethics on prostitution.

Those who are in favor of Bill C-36 argue that the ideal way of abolishing prostitution is by criminalizing it completely. They consider prostitution to always be a form of female subordination and a dangerous profession. Those in favor of this legislation are often either a traditional and conservative part of society or the radical feminists. As for conservative and traditional people, there might be underlying ideas of women as the weaker and subordinating gender. Men are therefore responsible of protecting women and their dignity. These perspectives are the base of the conception of women's sexuality. The radical feminists argue that sex work will always be a form of gendered violence and exploitation of women. This argument is reasonable as prostitution often is a dangerous profession where the women are in a vulnerable position. There are two positions which argue against Bill C-36. The individuals supporting the first position agree that prostitution is a dangerous profession which should be abolished. However, they do not approve of the nature of criminalization which Bill C-36 entails, as it further puts the women in a vulnerable position by stigma and destructive norms. The second position argues that prostitution is a legitimate form of work and are an expression of female sexual liberation. Therefore, the legalization of prostitution would be the ideal way of protecting and liberating women.

The introduction of the Swedish Sex Purchase Law had two purposes. The first one was to eradicate prostitution from Sweden. The second purpose was to change and redefine the norms of prostitution and sex purchase in Swedish society. In the past, Sweden used to treat prostitutes as part of the outcasts of society, with the legislation forcing sex workers to do phytosanitary inspections twice a week and the so-called Vagrancy legislation. Sex workers purpose was to satisfy male sexual needs. It was, therefore important that those women were clean. These past legislations is evidence of the control which the government tried to enforce with the help of policies and legal tools. However, in the late 20th century, Sweden's attitude towards sex work started to shift. The reasoning of the introduction of the Sex Purchase Law was the need for the protection of vulnerable individuals of society. By creating a new direction of legislation, Sweden became the first country only to criminalize the purchaser. The Partial Criminalization model is an effect of the pressure from Abolitionist Radical feminism. While the majority of members in the Canadian parliament were part of the conservative party, the Swedish parliament was at the time in a left-wing direction, and the majority of voters in favor of the
new legislation were the Social Democrats. The majority of members who were against the new legislation were part of the conservative party. As discussed earlier in this analysis, similar to this was the voting for Bill C-36, where the conservatives were in favor, and the NDP were against the legislation. One is therefore able to make an observation where the left wing parties are against the criminalization of prostitution and are much more favorable to a *Partial Criminalization model*, while the conservative parties are in favor of the *Criminalization model*.

The normative change with the Sex Purchase Law has tried to introduce would seem likely to help women in the sex industry as it removes the stigma of sex workers as criminals. Sex workers are already in a vulnerable position, and by instead focus on the purchaser, the responsibility shifts. Instead of accepting sex purchase as part of society, the responsibility to be a proper and lawful citizen is put on those who are not in a vulnerable citizen. This legal shift by the Swedish policy creates shows the change of Swedish legal behavior. Those in favor of the Sex Purchase Law argues that due to the shift in responsibility it's created a deterrent effect and will, therefore, lower the purchase of sexual services. Those who are against the legislation argue that the legislation is weak and does not give the expected result. Instead, it becomes more difficult for sex workers to find proper clients and the market move from the street to the internet or underground business. Instead of attacking the high-class prostitution, women on the streets are losing their income and therefore face economic difficulties. This created an issue of class where street prostitution is an easy target, and the high-class prostitution is more or less unaffected. Some also argue that the Swedish government has not provided sufficient financial aid to sex workers in need of assistance.

### 5.2. The Paradoxes of Rights

Human rights are implemented in order to protect all human beings and are therefore considered to be equal rights. Those rights are supposed to put pressure on member states to create legislation which fulfill the rights which are written in various conventions and treaties. Brown's theory on the paradoxes of rights presents rights and legislation as factors in life which we *cannot not want*, for example, laws which are introduced to protect equality between men and women in the workplace and protection from domestic violence. Both of these legislations are factors which women *cannot not want*, and are meant to protect women, but instead to

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18 Socialdemokraterna
19 Moderaterna
changing the root of the problem which is a destructive social structure, they limit violence and softens male domination over women. The harmful social structure are built up by norm work against the possibility of female liberation and gender equality. In this, one might be able to see a positive aspect of Sweden's legislation as they try to change the norms which are harmful to women in the sex industry. As they believe that women who are active in the prostitution business already are in a vulnerable position and an ideal way to protect those women would be to remove the stigma of sex workers, which would possibly remove some of the discrimination which sex workers are affected by daily. In reality, it does not seem likely for the legislation to be as effective as the Swedish government might have hoped. As mentioned earlier, the Sex Purchase Law has not prosecuted many purchasers of sexual services, and due to the difficulty of gaining evidence, the wanted result has not been as successful as expected. Another issue concerning legislation and policies introduced explicitly for the protection of women is the subordination of women which they uphold. Those legislations separates women from the rest of society and are likely to create a vision of women as vulnerable. The Sex Purchase Law has, however, according to some people engaged in the prevention of prostitution been a norm changing legislation which has been inspirational to several countries around the world to change their prostitution policies from Criminalization to Partial Criminalization.

The issues which Canada's Bill C-36 entails, are the fact that criminalization of women in the sex industry will not protect women. Women are constantly judged by society, despite them having the law on their side. Therefore, a criminalization would instead create an even more complicated situation for sex workers. Rights and legislation are supposed to be equal. However, the enjoyment of those rights and laws are dependant on one's ability to use them. If a person is already in a difficult social and economic position, it might be difficult for them to exercise those rights in an equal manner to the rest of society. Therefore, the possibility to enjoy rights and legislation becomes a question of class and gender equality. As women in the sex industry already are in many ways in a vulnerable position, a criminalization would place those women in another vulnerable position, that is as criminals. Those women will possibly feel even more reluctant to seek help from the police force and medical centers due to fear of prosecution. Another issue with Bill C-36 and the parliament which introduced this legislation is the fact that the reasons for why these women decided to involve themselves in the sex industry in the first place have not been considered. As a result, the social vulnerability which these individuals are in were not evaluated before the introduction of Bill C-36.
As society has not changed enough to make legislation sufficient to protect women, it becomes a problem for the possibility of equal rights for all human beings. Some of the main points of Brown's theory is that due to gender norms remaining unchanged women are not able to enjoy laws and rights without being suppressed. Instead of liberation, they create a fence with upholds female subordination. In terms of the effects of the different legislation, there are many disagreements on which are the ideal one. However, there seems to be a common opinion among many that criminalization instead creates a further vulnerable position for sex workers by aligning prostitution with other criminal activities. The Criminalization model is instead a tool to abolish the profession than to protect those who are active in prostitution and need of assistance from the state institutions. With these discussions in mind, power holders and policymakers should give space for heterogeneous voices and those with experience in the sex industry. Prostitution is closely tied with racism, human trafficking, poverty, sexual violence, colonialism, and organized crime. Therefore it can be concluded that it is an issue which should be discussed outside the realm of value judgments.

6. CONCLUSION

6.1. Summary of Result

In the analysis, the first section studied the material to be able to answer the first research question, what reasoning was the enactments of Sweden's legislation, the Sex Purchase Law, and Canada's legislation, Bill C-36, based on? In the case of Sweden, the reasoning behind the introduction of the Sex Purchase Law was to change destructive norms which are harmful to women in the sex industry, also to create an example for other countries around the work to follow their choice of prostitution policy model. The Parliament of Sweden was at the time based on a majority of socialist party members which voted for the adoption of the Sex Purchase Law. It was also shown that a radical feminist discourse was involved in the implementation of new legislation. One can, therefore, conclude that the reasoning was partially based on socialist ideas of the ideal policy and radical feminists pressure for a new legislation, a legislation which would be able to change social norms and protect the sex worker and criminalize the purchaser. Resulting in a shift of responsibility and hoping to deter the demand for purchasing a woman's body for one's own bodily pleasure. In the case of Canada's legislation, the reasoning was to implement legislation which would abolish prostitution, the legislation would therefore also deter women from involving themselves in dangerous
professions. This reasoning was, however, based on a conservative parliament and traditional beliefs which ruled that criminalization would be the ideal model. The public reason for Bill C-36 was to protect women and criminalize the purchaser, similar to the Nordic model. However, The legislation criminalized all acts related to the selling and the profession of prostitution, which results in the criminalization of the sex workers as well.

As for the second research question, how has the Sex Purchase law and Bill C-36, changed the protection for women in the sex industry? Sweden's legislation had positive ideas involving norm changing possibilities. However, the legal strength of the law is weak and the possibilities of conviction are low due to the difficulties of gaining proof of a crime. As a result, much has been left unchanged for women in the industry. If anything, sex workers claim that the possibilities of finding reliable customers have become more complicated, with results in economic issues and Sweden has in many cases failed to provide financial aid to those in need of various forms of support from health institutions. Regarding Canada's Bill C-36, the situation for sex workers has not changed. Similar to the impacts which the previous legislation have had on sex workers, women are harassed by the police force and are reluctant to report rape or other crimes. They rarely seek assistance from medical institutions for physical or psychological illnesses. The criminalization puts the women in a more difficult position with economic and social issues, while at the same time, facing the risk of becoming a criminal.

6.2. Further Research

With the reason of the limitations which were needed to be made for this thesis, further research could be to study and compare additional countries or to add a state with another policy model, such as the Legislation model. As discussed in chapter 1.7. Delimitations, a study of the Netherlands where prostitution is legal and regulated by the state, would keep a similar theoretical framework but would have added a broader understanding of the various prostitution policy models. Further, by doing a comparative study which would include additional countries would create a thesis where one could make a more reliable generalization from the result. It would, therefore, be interesting to do a study were at least three countries representing each of the four models of prostitution policy.

As for the knowledge which this thesis has added to the research of prostitution policies, this study provides an understanding of the connection between a states political tendency and the choice of prostitution policy model. Also, a discussion on the flaws of rights and legislation
from the perspective of Wendy Brown's theory, *the Paradoxes of Rights*. This theory brings a broader understanding of the complexity of the protection of women's rights. As mentioned at the beginning of this thesis, several studies have been made on the topic of prostitution, Sweden's legislation, and the various policy models. However, his thesis is different as it compared Sweden's and Canada's legislation, which are more or less complete opposites. Also, the result shows the difficulty of introducing legislation which is truly able to protect women from harms such as, physical violence and social alienation.
BIBLIOGRAPHY

PRIMARY SOURCES


SECONDARY SOURCES


ELECTRONIC SOURCES


