

“To be or not to be?”: The decriminalisation of sex work in South Africa



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COMPULSORY DECLARATION

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List of Acronyms

AIDS	Acquired Immunodeficiency Syndrome
ANC	African National Congress
DA	Democratic Alliance
EFF	Economic Freedom Fighters
GBV	Gender-Based Violence
HIV	Human Immunodeficiency Virus
HR	Human Rights
STDs	Sexually Transmitted Diseases
SW	Sex Work
SWEAT	Sex Work Education and Advocacy Taskforce
VAW	Violence against women

Abstract

President Cyril Ramaphosa in his speech at the launch of the Gender-Based Violence (GBV) and Femicide Declaration in 2019, made the commitment to working towards decriminalising sex work in South Africa as a means to also fight GBV. This in-line with what organisations that advocate for sex work such as the Sex Workers Education and Advocacy Taskforce (SWEAT) and Sonke Gender Justice have been fighting for.

The plight of sex workers and the urgent requirement for sex work legislative reforms has been highlighted by the documented increase or the spotlight on GBV. Sex work is predominantly a profession taken up by women and thus the effects of its criminalisation are mostly experienced by women. Therefore, there is a close link between the struggles of sex workers the struggle against GBV.

The thesis explores the reasons why advocacy groups such as SWEAT support decriminalisation as opposed to legalisation and partial decriminalisation. Drawing an understanding as to why other sex work modules do not appeal to the needs of sex workers and why they are viewed to lead back to the infringement on basic human rights. Furthermore, it looks at the impact of using the GBV platforms to address the decriminalisation of sex work in South Africa.

Chapter One: Introduction

1.1 Introduction

“To be or not to be” is the opening line to one of William Shakespeare famous plays titled *Hamlet*, the play speaks on the choice between life and death. This is much like the realities of a sex worker’s lives, in trying to navigate their industry (Wilson, 2018:341). It denotes the heated debate and image of philosophy to continue criminalising, decriminalising or legalising sex work in countries like South Africa (Human Rights Watch, 2019). The challenge, which can be described as violence against sex workers is a phenomenon which requires the consideration of law enforcement and perceptions of the South African citizens with an interest in the sex industry. With regards to law enforcement, the 2017 South African Law Reform Commission (SALRC) Report constituted the third leg of the investigation into sexual offences. Despite hopes for decriminalisation-oriented reforms, the report did not support the decriminalisation of sex work, thereby thwarting advocacy efforts by activists such as Peters and Wasserman (2018).

This thesis explores how the criminalisation of sex work in South Africa is ineffective, wastes government resources, and most importantly, leads to an infringement on the human rights of sex workers. Furthermore, there’s been an increase in stigma, police abuse, lack of access to justice, barriers to health services, abuse from clients and other individuals with whom sex workers transact, and lack of labour rights (which is illegal in South Africa) (Mgbako, Bass, Bundra, Jamil, & Keys, 2013: 1425).

The title “*To be or not to be*” *The decriminalisation of sex work* also resembles the choice between legislation that might work and save the life of a sex worker and legislation that might only leave the sex worker more vulnerable (SALRC, 2017). This title embraces the importance of choice and its after effects, thus this opening phrase has been selected as the title of this thesis.

Legislation on sex work is tackled differently around the world. For instance, ProCon (2018) studied sex work policies in over 100 countries and found that 53 of them have legalised sex work, while 12 have partially legalised sex work and 35 countries have kept sex work illegal. South Africa is one of the 35 that have kept sex work illegal. Sex work in South Africa is criminalised under the Sexual Offences Act (Act No. 23 of

1957). This act previously known as the Immorality Act as explained by the South African Government (2021) was “to consolidate and amend the laws relating to brothels and unlawful carnal intercourse and other acts in relation thereto”. The Act was later amended and became what is now known as the Criminal Law Amendment Act (No. 32 of 2007). This Act not only criminalises the act of selling sex but bans the act of buying or making any sort of financial gain from the act of trading sex.

Sweat (2019:12) explains that the high unemployment rate in South Africa, specifically looking at black females, results in the trading of sex for many, as a means for individuals to provide for themselves and their families. However, the criminalisation of sex work in South Africa as discussed by the Sonke Gender (2021:3) Justice Factsheet argues that “criminalisation contributes to sex workers vulnerability to police abuse, obstructs their access to public healthcare, and exposes them to high levels of discrimination and stigmatisation”. Therefore, It is difficult to fulfil decriminalisation in the absence of much-needed law reforms. Research has revealed that efforts are underway to review criminalisation (Sanders, 2007: 92)Some of the changes took place on the 11th of March in 2016, at the launch of a historic plan to aid sex workers. Then Deputy President, Cyril Ramaphosa, stated that: “Whatever views individuals may hold about sex work. Whatever the statutes may say about the legality of sex work. We cannot deny the humanity and inalienable rights of people who engage in sex work” (Mlamla, 2016: 5). His statement reflected a shift towards bringing about change to the industry to improve the lives of sex workers.

Ramaphosa added that: “In launching the plan, we call on all sex workers to recognise the enormous power they have to help our nation in making AIDS a thing of the past” (Launch of the historic plan to aid sex workers 11 March 2016). He therefore acknowledged the role that sex workers could play in reducing the spread of HIV/AIDS in the country, ultimately contributing to the saving of the country’s financial and health resources. However, sex work remains a criminal offence in South Africa as none of the legislative statutes that govern sex work have been retracted. The Sexual Offences Act (Act No. 23 of 1957) and the Criminal Law: Sexual Offences and Related Matters Amendment Act (Act No. 32 of 2007) are still in place. South African law defines sex work as an offence which means that sex work and associated activities are punishable offences. Current president, Cyril Ramaphosa, has since committed

himself and his government to decriminalising sex work in South Africa. This commitment was made at the launch of the gender-based violence and femicide declaration in 2019.

The thesis explicates why the gender-based violence platform has become the driving force for sex worker advocacy groups to push for the decriminalisation of sex work. Furthermore, President Ramaphosa and his government engage with sex work advocacy groups through this platform. The study also examines how legislative reforms globally can contribute to South Africa's legislative reforms. In addition, the role of public perceptions on decriminalisation and legalisation cannot be overlooked as citizens play a huge role in informing legislative changes.

Specific terminology - sex work and sex workers – was applied to the study to refer to the community and their industry instead of popular social terms prostitution and prostitutes. The Open Society Foundation (2019) explains that “The term ‘sex worker’ recognises that sex work is work. Prostitution, on the other hand, has connotations of criminality and immorality”. This simply means that the term “Prostitution” is demeaning to those in the industry and does not regard or view the work sex workers do as proper work. Rather, it stigmatises the industry. This negative connotation is one of the main reasons why sex workers are excluded from many public services by members of society.

The Commission for Gender Equality (2013: 2) also explains why the terms sex work and prostitution should not be used interchangeably. The Commission of Gender Equality (2013:2) in an article based on *Decriminalisation of Sex Work in South Africa* explained that “prostitution is viewed as coerced sex work where women have no choice in the matter and is necessarily demeaning as it sees women as victims”. Sex work on the other hand “indicates agency and therefore allows for women’s decision-making power in capitalist systems.” The Commission for Gender Equality (2013: 2). This dissertation when speaking about legislative change and decriminalisation of sex work only refers to those engaging in the industry out of their free will, consensually (those who have not been coerced or forced to take part in the trading of sex).

1.2 Problem Statement

Previous and current legislation on sex work in South Africa have not protected sex workers. Previous attempts to regulate the industry before criminalisation in South Africa have always been about other interest groups and not sex workers. Under the current legal framework, sex workers are unprotected thus they fall victim to various forms of inhumane treatment and abusive behaviour. As highlighted by the Sonke Gender Justice Factsheet (2021: 2) “between 2020 and 2021, 70.4% of female sex workers in South Africa experienced physical violence, and 59.9% were raped by policemen”. This simply shows how current legislation that is meant to protect everyone in the country neglects the sex workers who tends to fall victim to criminal exploitation.

Coetzee et al. (2017: 15) also highlights that current legislation that criminalises sex work leaves sex workers vulnerable to many injustices. In addition, Coetzee et al. (2017:15) explains that sex workers carry the highest burden in terms of HIV/AIDS in South Africa, due to their vulnerability to physical and sexual violence. Coetzee et al. (2017:15) further noted that “this situation is compounded by the continued criminalisation of sex work, which hampers sex workers’ ability to report rape and assault, and perpetuates discrimination, which often incites violence against sex work”. This once again puts emphasis on the view that criminalisation of sex work exposes sex workers to even more risks that include health risks because of the restriction of access to public services, which sex workers have limited access to since the industry is criminalised.

The role of gender in discussions about sex work is also of great importance for this study as gender dynamics have largely contributed to the ways in which sex work has been addressed in South Africa. Historically, sex work has been widely characterised by the offering of sexual favours by females to males, in exchange for money. Thusi (2015: 242) explains that this has caused an economic threat to the gender superiority of men as power dynamics were found to be threatened. Thusi (2015: 242) states that “female prostitution issues a challenge to masculinist capital economies who resist women's attempts to generate and control their own labour and earning”. This also attests to the manner in which sex work is currently regulated, thereby limiting the

ability of women (who mostly dominate the sex work industry), to provide for themselves and emancipate themselves from a patriarchal society.

Tradition and religion are two factors that are heavily embedded in the history of South Africa. These have also played a role in the rejection of women emancipating themselves from patriarchal dominance. Generally, women have not been granted the advantage of choice over their own bodies and their independence in making sex decisions. In her latest book, *Female Fear Factory*, Pumla Gqola writes that this factory is “a theatrical and public performance of patriarchal policing and violence towards women and others cast as female, who are therefore considered safe to violate”. This issue, surrounding gender, contributes immensely and thus stands as a problem to be addressed in this dissertation which emphasises the need gives sex workers voice, in the process of legal framework reforms relating to the sex work industry. Decriminalisation of sex work is a reform that has not been adopted in South Africa, but calls for it have been reinforced in current debates on sex workers and their industry.

1.3 Background of study

Before going further it is important to establish the scope of the sex work industry in South Africa. Konstant et al (2015) explained that there is an estimate of 131 000 – 182 000 sex workers, or 0.76 - 1% of adult women in South Africa’s sex work industry. When trying to analyse sex workers and their industry it is important to look at what research has revealed through numbers of how sex workers have been affected by the results of criminalisation. This draws a clearer view of how there is such a direct link between sex work and gender-based violence. Vidima et al. (2020: 5) referred to the findings of the Sex Workers Education and Advocacy Taskforce (SWEAT) released on behalf of the #sayhername campaign – a study that speaks about female and transwomen sex worker deaths in South Africa between the years 2018 and 2019. Vidima et al. (2020: 13) explained that nearly half of the sex workers who had died during the said period had died due to non-natural causes; “101 females had died in that year, and more than half of the deaths were non-natural, of which 48.5% of those non-natural deaths were murder cases”, thus revealing how vulnerable sex workers are to being murdered.

Vidima et al. (2020:13) highlighted that out of these numbers “three of the victims were Transwomen and the rest were all women” thus drawing a clear link between sex work, gender, violence and who is mostly affected. Vidima et al. (2020:11) also undertook a more centralised study which focused on violence against sex workers in Johannesburg Soweto. They referred to how many of the sex workers who participated in the study had experienced violence as a result of their work. “The study was conducted on 508 sex workers and only 14% of those sex workers had never experienced any violent crimes due to their work in their lifetime” (Vidima et al., 2020:21). The study also explained how 86% of participants identified “as victims of violence against sex workers”, thereby revealing that many sex workers are exposed to different types of abuse as a result of criminalisation (Vidima et al., 2020: 21). These numbers have shown the vulnerability imposed by criminalisation of sex work in South Africa. The threats and challenges posed by GBV and femicide in the sector contributed to the President’s commitment to decriminalise sex work at the launch of the Gender Based Violence and Femicide Declaration in 2019. According to the South African Government (2021), the Gender Based Violence and Femicide Declaration (GBVF) came as a response to the GBV Total Shutdown that happened in 2018. This brought about the development of the National Strategic Plan on GBVF 2020-2030.

According to The National Strategic Plan 2020-2030 by the Republic of South Africa (2020:36) “the focus is to collectively respond to this chronic crisis of GBVF towards a vision of a South Africa free from all forms of GBV directed at all women, children and LGBTQIA+ persons”. This aimed at creating a safer environment for those prone to GBV.

1.4 Aim of the study

The aim of this dissertation is to analyse and evaluate the impact of historical debates on sex work in South Africa in relation to different legislative reform proposals (Partial decriminalisation, Full Decriminalisation and Legalisation) and what they would mean for South Africa. Their suitability and sustainability should be studied. Furthermore, the researcher sought to evaluate the role of advocacy efforts towards legislative reform by examining why decriminalisation is the model most supported by local advocacy groups. Lastly, the study sought to assess the role of different perceptions regarding this industry and the role they play in the process of legislative reform in South Africa.

1.5 Research question(s)

President Cyril Ramaphosa in 2019 committed himself and his government to decriminalise sex work in South Africa, which is in line with what sex worker advocacy groups have been advocating for. Considering demonstrated hesitancy to decriminalise sex work, it was important for the researcher to investigate the impact of historical debates on current laws, and analyse the role of different perceptions in the process of legislative debates. In addition, it was important to consider what different alternative legislative models (Partial decriminalisation, Decriminalisation and Legalisation) would mean for South Africa.

In line with the above, the study was guided by the following questions:

Main question

What is the impact of historical debates around the sex industry on current laws and what would the different legislative models in sex work (Partial decriminalisation, Decriminalisation and Legalisation) mean for South Africa? Furthermore, what is the role of different perceptions in the process of legislative change?

Sub-Questions

1. Why was the commitment to decriminalise sex work made on a Gender-Based Violence platform instead of a Human Rights platform?
2. What are the perceptions of South African citizens with regards to the decriminalisation of sex work in South Africa?

1.6 Objectives of study

When conducting a study it is important to highlight what the objectives of the study are. These are the objectives that pose as steps to guide the study to answer the overall research question in the end. The research objectives of this study are as follows:

1. To analyse the South African governments commitment to decriminalise sex work which was made on a Gender-Based Violence platform instead of a Human Rights platform and the debates that surround it.

2. To evaluate the perceptions of South African citizens with regards to the decriminalisation of sex work in South Africa.
3. To evaluate why most interest groups are advocating for decriminalisation, as opposed to the other models.

1.7 Significance of study

The rate of Gender-based violence (GBV) cases in South Africa is a matter of great concern to all South Africans and their government. Mile (2020: 5) explains that “*1 in 3 women will experience sexual assault attacks in their lives while 2 in 5 women will be beaten by their domestic partners*”. This statistic demonstrates the likelihood of a South African women to experience sexual or physical abuse in their lifetime in South Africa. In addition, Nduna (2020:5) explains that “*the majority of sex workers are cisgender women, similarly, women in sex work are victims of violence perpetuated*”, sex workers are not excluded from the risk of gender-based violence that other women experience. Nduna (2020:5) further elaborates that because of the criminalisation of sex work in South Africa sex workers are unable to report their cases and they are further exploited for their money and forced to give free sex to their abusers, which at times include police officers who are meant to protect them. This study will therefore highlight the plight of sex workers in relation to GBV.

The Sonke Gender Justice factsheet (2021:2) discusses that “*female sex workers are found to be 18 times more likely to be murdered than any other woman.*” This provides a clear reason why sex work and gender based violence are inextricably linked. The extremely high rate of GBV against sex workers makes it highly unjustifiable to separate sex work from discussions about gender based violence. This reality further confirms the urgency required to address the sex worker’s community’s concerns, particularly in a study of this nature. This dissertation is of great importance because it highlights the impact that the neglect of the sex worker’s industry has on GBV statistics. Through better legislation, and management of the sex industry can ensure creation of a healthier working environment for sex workers. A better justice system can be more accessible for sex workers, granting them the right to safety and security, whilst also attempting to ensure that sex workers have open and accessible healthcare like all other citizens in the country, and contributing to combating GBV. This study is

also of great significance because it explores models implemented globally, in three areas, as a means of tackling sex work industry challenges.

Lastly this study will explore why President Cyril Ramaphosa has committed himself and his government to decriminalising the industry instead of legalising or partial decriminalisation. The researcher hopes that the findings of this study will influence law reforms and policy changes in national, provincial and local spheres of the South African government.

1.8 Limitations of the study

The major limitations of this study were experienced during the data collection stage. These limitations were mostly influenced by the effects of the Covid-19 pandemic and the restrictions that were implemented between March 2020 and December 2021. There was limited access to active respondents due to people working remotely. Furthermore, many potential participants did not respond to emails, thus making it difficult to engage with relevant stakeholders. Secondly, the financial implications of Covid-19 also contributed to the limited access to respondents. Many individuals are reluctant to participate in studies that do not bring them any financial gain. Many individuals from the sex worker organisations were welcoming to the idea of being interviewed for the study until they found out that participation was voluntary and no remuneration would be paid. Thus some of them stopped responding to emails. Another major limitation was the repetition of opinions and views by those chose to participate in the study. The researcher associates this with the limited number of respondents who availed themselves for the study.

1.9 Methodology

The researcher adopted a qualitative approach for in-depth advocacy and experience based insights since the decriminalisation of sex work is a relatively new phenomenon in South Africa. Secondary data was collected through desktop research, by analysing relevant South African legislation, policies and acts including books, journals, social media, podcasts and articles. Primary data was collected through an interviews that were based on a schedule that was developed by the researcher which can be found in (See Appendix A). A population sample in the sex work industry in the Western Cape and Gauteng provinces was selected for this study. Ethical clearance for the study was granted by the University of Cape Town's Department of Political Studies.

The researcher approached potential participants following this process. Most participants were associated with Sonke Gender Justice, and an advocacy group called Asijiki Coalition. In addition, some participants with interest in the study were also included. Individuals that are 21 years and younger were not included. An interview schedule with a web based link (<https://forms.gle/bK3qcty8BLGZJWtm9>) was piloted and distributed to a target of 15 participants, between 21 December 2021 and 28 December 2021. A snowballing technique was used to collect the primary data by using the Zoom meeting tool and Google Docs tool. The researcher targeted a response rate of 70%. The Zoom meetings were between 35-45 minutes. The data collected from the interviews was analysed using Google Docs Forms tools to derive charts, graphs, tables and themes. Thematic analysis was also used to create codes and themes for the study.

1.10 Theoretical framework

The theoretical framework selected for this study is the Feminist Theory. Crossman (2020) defines this theory as a main part in the field of sociology which causes a paradigm transformation away from male dominant viewpoints towards female viewpoints, experience and beliefs. Furthermore, Crossman (2020) argues that the Feminist Theory illuminate's social problems trends and challenges which are ignored misunderstood by male figures.

Arguably, this means that the Feminist Theory focuses on the previously ignored realities of women due to the impact of patriarchy in society. As explained by Global Network of Sex Work Projects (2017:7) "*Sex work stigma is a result of patriarchal societal norms surrounding sexuality*" this confirming the link between the fight against patriarchy, sex work and the role of women. This theory was selected because it speaks directly to the population of this study which consists of sex workers. The sex industry is historically dominated by women and reflects the exclusion and oppression of women on the basis of sex and male supremacy.

1.11 Ethical Clearance

Ethical clearance was obtained from the UCT ethics committee and a copy is attached as Appendix B. An interview schedule was developed by the researcher for this study and is attached as Appendix A. The participants' confidentiality was guaranteed to the participants and the information will be kept in the researcher's laptop and office cupboard with keys and passwords.

1.12 Format of the study

The study consists of the following chapters:

Chapter one: Introduction

This chapter provided an introduction for the study. It also included the background of the study, the problem statement, as well as the aims and objectives of the study. The research questions guiding the study are stated, and their significance discussed. Furthermore, the chapter explored the limitations experienced during the process of conducting the study.

Chapter two: “The oldest profession” Understanding the sex industry.

This chapter provides a review of literature on the topic of Sex Work by exploring the history of sex work, influential voices in the South African sex industry, the effects of criminalisation, and lastly the impact of platforms used to address the industry’s challenges.

Chapter three: “Sex work is work” Journey to a policy framework.

This chapter discusses the journey to legislative reform in South Africa. It also discusses case examples of how sex industry challenges have been tackled in different countries, through the adoption of alternative legislative frameworks (models). The chapter also looks at what different political parties in South Africa have said about sex work. Lastly, it explores perceptions that could contribute to hindering sex work decriminalisation.

Chapter four: Presentation, analysis of findings

This chapter explains how thematic analysis of the primary and secondary data aided the researcher to answer the study’s key questions.

Chapter five: Findings, conclusions, and recommendations

This chapter provides an overall conclusion and recommendations based on the study’s findings. It also points out further research implications.

1.13 Conclusion

In this chapter the research topic was introduced and a brief background of what the research topic is about was explored. This chapter has given the problem statement of the study, what the aim of the study is, the research objectives of the study, the

significance of the study and lastly has stated what the research question for this dissertation is. This chapter has furthermore provided the reader with the limitations experienced in the process of collecting data for the study and has explained the methodology of the study and the theoretical framework of the study. Lastly this chapter has given an outline of chapters that will follow throughout the progression of the dissertation.

This chapter has given a brief overview of why this topic is of importance and why it is to be explored. In this chapter the importance in the President Cyril Ramaphosa's commitment to decriminalise and on what platform this will be done has been discussed.

Overall, chapter one provided background information the role of historical practices that foreground sex work in South Africa and how they have led to the highly stigmatised industry due to long lasting moral and political practices. This has thus also contributed to the low representation of the voices of sex workers and has thus contributed to high levels of GBV against sex workers due to criminalisation. This chapter stressed the importance of drawing insights from other countries' legislative frameworks and policy decisions. In conclusion, the chapter introduced the link between history, gender, public perceptions, government policy choices and the voices of sex workers that need to be explored when discussing legislative alternatives.

Chapter Two: “The oldest profession” understanding sex work industry

2.1 Introduction

This chapter provides a review, analysis and evaluation of relevant literature on the topic of sex work. The focus is on the historical context of sex work, working conditions of sex workers, types of sex work, negative effects of not decriminalising the industry and the role gender has played in this process.

2.2 Defining and understanding sex work and its complexities

Before the discussion of what policies and laws can be implemented in South Africa for sex work to be an active field of work which ensures protection of human rights of those participating in it in South Africa, it is important for a full understanding of what the terms sex work actually entails to be drawn up. This definition can be drawn from an academic point of view and from an advocacy point of view, both options are explored below.

Harcourt and Donovan (2005: 201) define sex work as “the provision of sexual services for money or its equivalent.” This implies that sex work is the participation of individuals in the trade for sex at an agreed fee. Harcourt and Donovan (2005: 201) go further to explain that “a sex worker has no specific gender”, meaning that sex workers can be male, female, or transgender, and their sexual orientation is not limited to heterosexuality. Furthermore, Harcourt and Donovan (2005: 201) state that “the boundaries of sex work are vague, ranging from erotic displays without physical contact with the client, through to high risk unprotected sexual intercourse with numerous clients”. Therefore, the act of sex work cannot be simply identified as just the participation of two individuals in sexual intercourse, thus revealing how broad the field of sex work is.

Harcourt and Donovan (2005: 201) in their closing remarks on what sex work is, also explain that sex work or the trading of sexual practices in exchange for remuneration are typically criminalised in most countries due to the fact that the field carries negative stigma. Most people find those who trade for sex or sexual favours to have a lack of morality, especially for those who view it from a religious point of view. This definition by Harcourt and Donovan (2005:201) is important because it gives the reader an

understanding of the term sex work and what it entails. This is important to this dissertation because without this scholarly definition it is difficult to understand what the argument of this dissertation is and thus difficult to make a substantial argument.

In addition to the academic definition drawn from the work of Harcourt and Donovan (2005:201) it is important to understand how sex workers and the organisations that advocate for them define the term. This approach highlights the voices of the sex workers themselves. Masvawure et al. (2015:892) define sex workers as “female, male and transgender adults aged over 18 years who sell consensual sexual services in return for cash or payment in kind, and who may sell sex formally or informally, regularly or occasionally”. Furthermore, an article by The Open Society Foundation (2019) titled *Understanding Sex Work in an Open Society* explains that it is important to understand that the term sex work should not be used interchangeably or confused with the term prostitution. The Open Society Foundation (2019) explains that “The term ‘sex worker’ recognises that sex work is work. Prostitution, on the other hand, has connotations of criminality and immorality”. This means that the word “Prostitution” is demeaning to those in the industry and does not regard or view the work sex workers do as proper work. It rather stigmatises the industry. This negative connotation is one of the main reasons why sex workers are excluded from public services that other members of society have access to.

The Commission for Gender Equality also explains why the terms Sex Work and Prostitution should not be used interchangeably. The Commission of Gender Equality (2013:2) in an article based on *Decriminalisation of Sex Work in South Africa* explains that “Prostitution is viewed as coerced sex work whereby women have no choice in the matter and is necessarily demeaning as it sees women as victims”. Sex work on the other hand “indicates agency and therefore allows for women’s decision-making power in capitalist systems.” This information contributes to this study immensely because it reveals how much using the incorrect terminology to describe the industry takes away from its wholeness. Furthermore using the incorrect terminology takes away from any developments that have been made towards ending stigma and reforming how society and policy makers alike think about making changes to the industry.

2.2.1 Types of sex work

Harcourt and Donovan (2005: 201) draw some attention on two categories of sex work, namely, direct and indirect sex work. Direct sex work is described by Harcourt and Donovan (2005: 201) as “an interaction between individuals with the primary purpose to exchange sex for a specific fee, sex workers included under direct sex work include sex workers that are found operating in the streets, sex workers that are found in brothels and sex workers who are hired as escorts.” Indirect sex work on the other hand is described by Harcourt and Donovan (2005:202) as “sex work that is not done as the primary source of income but rather an additional means of income for low paid or irregularly paid individuals. Individuals that can be identified as indirect sex workers include Lap dancers, hostesses, individuals who trade sex for drugs and individuals who just take the opportunity to sell sex when it is presented to them for money.” Furthermore, Operario et al (2008:101) concur with the above mentioned assertions as they explain that “sex work operates in many forms, including the direct trade of sex for money and indirect exchange of sex for goods and services”, thus proving the broadness sex work.

This section on understanding sex work and its complexities is important to this dissertation as it speaks to the importance of terminology and creates a basis to understand sex workers before attempting to unpack where sex work in South Africa is headed and the influencing factors of this outcome. Without this knowledge this knowledge, the researcher could not have fully explored the topic as it would then lack substance and direction and thus would not be able to fully articulate the debates that surround sex work and its legislation in South Africa.

2.3 The Historical context of sex work in South Africa

The historical context of the way in which sex work has been regulated in South Africa, over the years, carries a lot of influence on the way it is currently viewed, thus exploring this factor is of great importance. It reveals how deeply rooted the concerns in current debates are in the history of sex work in South Africa. Trotter (2008: 763) explains that the way in which sex work has been regulated in South Africa has been documented since the arrival of the Dutch East Indian Company which occupied the Cape Colony in 1652. Thusi (2015 :209) explains that “sex workers here were used as entertainment

for the Seamen who were part of the passing companies that went through the Cape as well as the permanent residents.” The notion of sex work being a way to entertain men and their desires while completely ignoring the views of the women taking part in trading sex for money, forms the basis for the discussion in this dissertation. It is clearly drawn that sex work was defined by gender dynamics that fully focused on the emotions and pleasure of the man and not of both parties, and thus the opinions of the sex workers were not given any attention. Gaitskell et al. (2007: 86) posited that “African women are oppressed in three ways: oppressed as blacks, oppressed as women, and oppressed as workers”. This also highlights at least two of the realities of South African sex workers, as most of them are black. This also corresponds with the gender dynamics claim mentioned by Thusi.

Van Heyningen (1984: 170) explains that the first brothel in the Cape was first recorded in 1681 but regulation that “prohibited concubinage already existed by 1678” thus explaining the early rejection of ex trade in South Africa. Gaitskell et al. (2007: 104) further explains that slave owners also embraced sex worker legislation, Gaitskell et al (2007: 104) mention that “Some employers went as far as claiming that their servants worked as prostitutes and saw the legislation as a means to control their social life”. This shows reveals the core fundamental factors that societal authorities seek to have over the lives of sex workers through legislation.

However, even though these beliefs existed Thusi (2015: 209) explains that sex work was regarded “a necessary evil” by law makers and many residents of the Cape in the colonial era as it was understood to stabilise the society by catering to male residents’ sexual desires. Trotter (2008: 6) shared sentiments that concur with Thusi’s views of the “necessary evil” by explaining that the trading of sex for money had its benefits for the society. Trotter (2008: 6) states that “these women were opportunistic agents with some measure of control over their lives, not just passive victims of the vice trade.” This demonstrates that although the women were not completely independent they could provide for themselves, and due to their financial independence they would gain from trading sex. Furthermore, Trotter (2008:6) states that “officials tolerated dockside prostitution as ‘inevitable in a seaport town as it provided a form of controlled release for the antisocial energies of unruly sailors” thus stabilising the society and providing a functionality as Thusi also mentioned.

Van Heyningen (1984: 170) mentions that “Slavery, poverty and prostitution, then, were largely synonymous in early Cape Town”, further emphasising the characteristics of the women who would trade sex for money at the time. Subsequently sex work during this period of the Cape colony was the “necessary evil” as it ensured that the sexual needs of the men who were away from their women were provided for while also ensuring that women who did not have male counterparts to provide for them could earn a living and provide for themselves. However, Castañeda et al. (1996) oppose the notion of the “necessary evil” and argue that sex workers in this sense “live in a constant double bind”. Castañeda et al. (1996) explain the lives of sex workers as a “constant double bind”, this in the sense that sex work was a better paying employment opportunity for women seen as a necessary evil as it was a type of social service but at the same time this was not seen as a dignified job and thus sex workers still had to hide their profession from their families. This discussion is relevant to the dissertation because this it highlights the debates around sex work that may be conflicting but true, depending on one’s personal view point and how they have experienced the industry. Most scholarly work defines sex work as the trade of services in exchange for payment between two consenting parties, although the conditions were not always inhabitable. The aforementioned explanations also highlight the notion that sex workers were not always happy to be in the industry thus giving the definition of sex selling a one sided story.

Thusi (2015: 215) explains that in the British colony morality did not pass as “it was encouraged for men to express their sexual desires” and thus did not give a sufficient reason for legislation around sex work to be implemented. Public health concerns became the motivation for legislation due to the outbreak of syphilis which resulted in the death of many people in the colonies. At the time sex workers were seen as main carriers of the disease. Trotter (2008: 6) states that sex workers were viewed as “a source of contamination to society at large”. Trotter (2008:6) further explains that this led to the passing of the Contagious Diseases Act which was passed in South Africa in 1868, aimed at regulating sex worker’s health in order to manage the spread of diseases in the country. The Contagious Diseases Act was repealed in 1919 and in 1927 the Immorality Act was passed to ban any relations between white women and black men. The act also put emphasis on the fining of those who participated in sex work in South Africa. The Apartheid government was responsible for passing the

Immorality Act of 1950 which later became the Sexual Offence Act of 1957 which banned any sort of sex work, brothels and anyone who makes a living off the exchange of any sexual favours.

The Sexual Offences Amendment Act which was later passed in 2007 further made the act of buying sex a criminal offence. Furthermore, this act specifically banned prostitution and the buying of sex from people under the age of 18. "These individuals are identified as children and thus seen as victims of exploitation and cannot be charged with prostitution-related offences" (The Sexual Offences Amendment Act of 2007). This law meant that one could not only be criminalised for selling sex but also for the act of buying sex.

The history of sex work in South Africa as seen above is clearly one that has been extremely lengthy with several attempts to regulate the sex industry in ways that never prioritised the sex worker. This as seen above, was harshly influenced by the morals and values of others, thus leaving sex workers vulnerable to many social ills. Murder is one of the harshest outcomes of the neglect of sex workers as stated by the Sonke Gender Justice factsheet (2021:2), that explains that sex worker women are 18 times more likely to be vulnerable to being murdered than any other women in South Africa. Mgbako et al. (2013: 1426) explain that sex work being illegal has enhanced the stigmatisation and discrimination against sex workers thus resulting in a lack of justice, lack of access to health services, and lastly has left sex workers vulnerable to police abuse instead of opening the industry up to police assistance. This can also be found in the historical overview of the industry explained by Thusi (2015: 208).

2.3.1 Gender and Sexuality and Sex Work in South Africa

Public perception plays a huge role in influencing legislative change as those are the voices that are amplified when government brings about change. The voices of the most influential are more likely to be echoed through legislation. When it comes to sex work there is no way the influence that gender has had on discussions that influence the industry can be left out. It is therefore important to explore this topic. The roles of women in South Africa have always been depicted in relation to socially constructed ideas about dignity, for example emphasis on virginity as a determinant of pure status in society, making her desirable to her husband or a man.

Hunt and Hubbard (2015: 27) address this issue by explaining the ideology of gender. Hunt and Hubbard (2015:27) explain that “people are divided into two “classes” where men are dominant and women subordinate” thus drawing a clear power division between the genders in society. Hunt and Hubbard (2015: 27) go on further to explain that “A cline of powerlessness is thus established amongst women through male societal approval of certain female behaviours over others, thereby producing a spectrum from respectable women, whose behaviours with regard to their gender and sexuality bring approval within patriarchy, and disreputable women, amongst them, sex workers.” This defines the dominant role of the male gender in the definition and regulation of women and sex workers. Since sex workers would not fit the gender description as predetermined by men, they are identified as ‘loose women’ who lack morality. This ideal could also be linked to the chain of thought stated by Trotter (2008: 677) which expresses the idea that the economic empowerment that comes with being a sex worker may not be one that is approved of by men because it also releases women from the clutch of a man’s control as she may not then need a man’s direct financial support, as sex workers work earn their own money.

The value of a woman has been predetermined by men since colonial times. Van Heyningen (1984:172) highlights that “Until modern times women were, broadly speaking, thought of as incomplete in themselves and as existing primarily for the sake of men.” The purpose of a woman was primarily to serve the man to his satisfaction and his idea of what the role of the woman was. This refers us back to statements made by Thusi (2015: 201) that argued that sex work was found to be a necessary evil for the sake of the men and their needs. Thus sex work was not discouraged as it was the perfect way to service the men’s sexual needs and ensure that they do not turn to homosexuality as a solution for their sexual needs. It can be understood that in the initial stages sex work was encouraged because it was necessary for the pleasure of a man. However, the same women that offered these ‘needed services’ were later undermined and ridiculed as ‘undignified women’ as explained by Thusi (2015:201). This is important because it highlights the ideologies alluded to by Van Heyningen (1984: 173) who explains that initially there were “no large outcries by society for legislation against sex workers to be implemented”. This means that sex work was not a major concern for society and thus there was no demand for any legislative restrictions to be put in place. However, Van Heyningen (1984: 173) further explains

that during the British's rule in South Africa it was "the War Office which claimed that British troops at the Cape were being 'more than decimated by venereal disease and expected the colonial legislature to take appropriate action". In addition, McClintock (1992: 82) explains that some even believed that "that the real threat to the potency of the imperial army lay in the sexual bodies of transgressive women. If working women could be cordoned off, the purity of the army and the imperial body politic could be assured." This adds to the argument that sex workers were viewed as the ones who carried and spread diseases, hence the implementation of the Contagious Diseases Act of 1868. Once again the women who were expected to cater to the needs of the men were being blamed for the ills in society and were to carry the responsibility for a burden that was not theirs to carry alone, as the spread of diseases was due to the irresponsible behaviour of both, women and men.

Wojcicki (2003:84) also explains that "most advocates for legalisation or decriminalisation of prostitution had focused on the public health benefits of an increased tolerance and leniency." This links back to the common idea highlighted by scholars that the focus was never really prioritising the sex worker and their freedom to do as they wish with their bodies. Rather, the purpose of this notion was just to find an alternative way to control the outbreak of diseases in the country. These views and contributions were also limited in opinion as they only came from a certain group of society. Wojcicki (2003:84) highlights that in the Apartheid era public opinion was mostly dominated by the white minority as "black people had a very limited voice" due to their status in society at the time. It is however further explained by Wojcicki (2003: 84) that when black people finally had the opportunity to speak on discussions around sex work post-Apartheid they were not in support of it. Post-apartheid, "a counter discourse came to be heard from black South Africans, one which argues that not only are prostitution and the decriminalisation of sex work immoral, but also that they are 'un-African'" (Wojcicki, 2003: 84). This can be understood as it has previously been discussed that the dignity of a woman was linked to her virginity and the man she was to marry. Thus the idea of a woman that has multiple partners would not be one that would be very attractive to the majority of the black community in South Africa.

Tradition and religion are two factors that are highly embraced in the South African context. They highly endorse the same ideals imposed by western moral and legal definitions of sex work. Both, tradition and religion have also been controlled by the male figures. So it is evident that the practices within them will both be influenced by the ideologies of what a man sees as perfect. The moral values that a large percentage of South Africans uphold are influenced by religion and culture, thus both have largely influenced the stigma that the sex worker's industry is shadowed by.

The dominant religion of Christianity, which is widely practiced in South Africa, defines sex work as a sin. A sin is defined by Man Kei Ho (2010: 15) as "the moral standard of a community, which is defined in accordance with human psychology, anthropology, religion, history and culture." This means that it is the view of a specific community of what is wrong and what is right. This also highlights the influence tradition and religion has had over sex work in the history of South Africa.

The events of what occurred post the apartheid era with regards to the sex industry are not very dynamic but some scholars have explained that the subject became a popular research topic. Mostly because of the HIV pandemic that gained prominence in the 1990's and 2000's, but not limited to that period. A scholar named Vanwesenbeeck (2012:247) explores popular themes that dominated research on sex work in the 1990's all the way up to the 2000's, in South Africa. Vanwesenbeeck (2012: 247) explains that the first theme was based on discussions around sex work, HIV, and other sexually transmitted diseases. Furthermore, Vanwesenbeeck (2012: 247) explains that "others have become interested in sex work only because of HIV" as seeking solutions to the pandemic required cooperation of sex workers who were defined as mostly responsible for the spread of the virus. The next theme that is identified by Vanwesenbeeck (2012: 247) relates to the question "Why do prostitutes enter prostitution" – a question posed with the aim to understand why sex workers enter into this specific industry. Vanwesenbeeck (2012: 247) highlights that it was found that many who had gone into the industry were victims of sexual abuse. The third theme as explained by Vanwesenbeeck (2012: 247) was that, "increasingly, in the last decade concerns prostitutes working routines, stresses, risks (other than HIV), and ways of dealing with them." This as an attempt to understand their realities. The fourth theme relates to understanding the clients of sex workers and lastly as

described by Vanwesenbeeck (2012:247) “discussions pertaining to legal issues surrounding sex work.

Even though the discussions around sex work in the 1990’s to the early 2000’s were mainly focussed on understanding the scope of the industry, they brought about advances towards working on the legalities of the industry.

2.3.2 Sex work and the 2010 World Cup

Decriminalisation of sex work in South Africa was also part of the discussions that were held in preparation for the 2010 World Cup. The discussions arose due to the concerns around the high HIV infection rate in South Africa and the concern around sex worker’s safety due to an increasing demand in sex trade that was expected around that time. Many had concerns and made recommendations about what would be best for the sex industry. Scholars such as Richter et al (2010: 2) explained that “there were concerns over an anticipated increase in demand for paid sex during the tournament” and thus it was important to give the topic attention due to the influx in criminal activity since the industry was illegal in the country. Richter et al (2010) goes further to explain that there were divergent perspectives regarding how the industry should have been handled during that time. Some called for the temporary legalisation of sex work, “while others advocated for a forceful crack down on sex workers, involving mandatory HIV testing and sex worker registration with a regulatory authority” (Richter et.al, 2010: 2) These were seen to be the options that would best protect and ensure the limited spread of HIV and STDs whilst also having systems in place to help regulate the industry.

Richer et al. (2010:4) explain that many tend to believe that if sex work is no longer criminalised there will be an influx in demand and the industry will grow to an uncontrollable number. Richter et al (2010: 4) refer to examples of countries that have decriminalised and explain that there is no proof that this anticipated increase in sex demand does not exist. According to Richter et al. (2010: 4), “contrary to public fears, no increase was found in the number of people entering sex work.” Instead it was found that it just creates a safer space for sex workers. Richter et al. (2010: 4) also noted that “sex workers reported improved working conditions and wellbeing, feeling safer under the new legal framework, and being able to negotiate safer sex and report abuse to police” thus indicating the environment that would be created for sex workers

and anyone who would engage in the industry if it were to be decriminalised. Richter et al. (2010: 10) then recommend that attention to improving sex workers' access to the health and social services is key because of the need to prevent infections and HIV transmission, as opposed to "misguided attempts to legislate sex work out of existence." This suggests that enforcing a legal framework that embraces sex work would do more for South Africa than moving forward with one that attempts to put an end to it. However this recommendation was not taken into consideration during the World Cup debates as there was just not enough urgency and political will on the part of government to address the issues of sex workers.

It is interesting to see how these reasons proved the low political will to decriminalise because the status quo persists and advocacy efforts as well as presidential promises have not resulted in the decriminalisation of the industry. This then probes on to question, 'Why even after continuous concerns around the safety of sex workers have been raised, did this still not result in legal reforms for the industry?'. Many state that there was no particular reason why sex work law reform was not implemented. It just seemed to not be a matter of urgency, because of how controversial the topic of sex work is in a conservative country like South Africa.

Richter and Massawe (2010: 28) emphasised that "The World Cup intensified harm towards sex workers in many ways. Yet, the South African Law Reform Commission works with little urgency to modernise the apartheid laws that criminalised sex work in South Africa." This shows that there really was no specific reason as to why sex work could not be decriminalised during the 2010 world cup except that the issue was just not a top priority as it was not an issue that was seen to be of importance for the majority of the people and thus government had no urgency to address it.

Since the implementation of the Constitution of the Republic of South Africa in 1996 sex worker Human Rights have been the main motive adopted by those who have tried to combat the criminalisation of sex work. This not only applies to South Africa, but to most parts of the world. It was not until March 2019 at the signing of the Gender-Based Violence and Femicide Declaration that there was a shift in the way sex work was addressed. At the time when President Cyril Ramaphosa addressed the decriminalisation of sex work he did so from a gender-based violence stand point

instead of basic human rights infringement point of view. It is important to note this change and draw the link between the two, to gain a better an understanding of the president's reasoning behind this shift.

2.3.3 The voice of the sex workers

It is important to fully acknowledge the efforts made by SWEAT, Sonke Gender Justice and Asijiki Coalition in all discussions related to sex work in South Africa. They are three of the most influential NGO's that focus on the rights of sex workers and the movement towards the decriminalisation of sex work in South Africa.

Sex Workers Educational and Advocacy Taskforce (SWEAT)

SWEAT “was founded to defend and advocate for the rights of sex workers in 1994 as a non-government organisation, then known as ASET [AIDS Support, Education and Training]” (SWEAT, 2020). It was started by Shane Petzer, a male sex worker and a Clinical psychologist who goes by the name Ilse Pauw”. Before SWEAT was established the needs of sex workers were not prioritised by anyone. While the rights of all people ought to be addressed, sex workers' rights were undermined because of the moral and religious cloud that hovered over the industry. Shane Petzer and Ilse Pauw's efforts created a common ground to help fight for the rights of sex workers as they were clearly not prioritised by government. When it was founded, SWEAT sought to defend the rights of sex workers, with the view that with the new transition in South Africa (the move from the Apartheid era to the Democratic era) should be characterised by the promotion of equal human rights for all in the new democracy.

The organisation has “facilitated the birth of two movements - the Pan African Alliance of Sex Workers (African Sex Worker Alliance) and a national movement of sex workers called Sisonke” (SWEAT, 2020) The organisation's vision is to experience “A South Africa where people who choose to sell sex are able to enjoy freedom, rights and human dignity” (SWEAT, 2020). The NGO helps with the overall wellness of all sex workers as that is a basic human right. They explain that “wellness goes beyond merely the absence of disease – it includes physical, mental, and social well-being” thereby ensuring that sex workers can live a better and safer life and thus have a well-rounded livelihood (SWEAT, 2020).

Sonke Gender Justice

Sonke Gender Justice is an NGO that was established in 2006, with Dean Peacock and Bafana Khumalo being the organisation's Co-Founders. Sonke Gender Justice has offices in all of South Africa's nine provinces. Sonke Gender Justice has also established itself in the southern, eastern, central and western parts of Africa. It works towards preventing domestic and sexual violence, reducing the spread and impact of HIV and AIDS, promoting gender equality and human rights, as well as advocating for the decriminalisation of sex work and advocating for the rights of sex workers (Sonke Gender Justice, 2021).

Asijiki Coalition

The Asijiki Coalition (2021) "is a group of sex workers, activists, advocates and human rights defenders who advocate for the decriminalisation of sex work in South Africa". Asijiki works hand in hand with organisations such as SWEAT, Sonke Gender Justice and the Women's Legal Centre. Its effort are coordinated by Constance Mathe. Knowledge on this NPO is of importance because it involves sex workers who are better placed to outline the injustices linked to their trade. Asijiki is also the main organisation in the quest for decriminalisation, making concerted efforts to ensure the president and government's commitment. This reveals how amplified the voices of sex workers are through this organisation. It is important to understand their work in order to understand the debates around the industry.

[2.4 The Human Rights platform verses Gender-Based Violence platform in South Africa](#)

[2.4.1 Sex work as a Human Right issue](#)

Those who advocate for the lifting of the criminalisation banner over the sex industry have argued that sex workers constantly have to fight many different factors in society that constantly put a restriction on their basic human rights. This results in the mistreatment of those who belong to the industry just because of their choice of work. An article by the Joint United Nations Programme on HIV/AIDS (UNAIDS, 2020) explains that Human Rights are rights that an individual has simply for being human. As explained by the South African Human Rights Commission (2019) "Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death." It is further explained that every person should be afforded human rights

“regardless of where they come from, their beliefs and lastly, they are not affected or removed due to an individual’s personal life choices” The Human Rights Commission (2019). Furthermore, the Human Rights Commission (2019) highlights that “these basic rights are based on shared values like dignity, fairness, equality, respect and independence”.

According to the South African Constitution of 1996, which is the highest rule of law in the country, there are basic rights that each individual in the country has the right to access as long as they live in the country. These include the right to equality; the right to human dignity, the right to life; the right to freedom and security; the right to privacy; the right to healthcare and the right to freedom of trade; occupation and profession. The Commission for Gender Equality (2013: 10) also highlights that with the current laws that are in force, criminalisation and the infringement on the basic human rights of sex workers are inevitable, therefore the best legislative outcome that they recommend is decriminalisation. This proposed reform would ensure that the human rights of sex workers are protected. The Commission for Gender Equality (2013: 13) “acknowledges that in relation to our Constitution, every South African has human rights. It is in relation to the violation of those rights that we recommend decriminalisation of sex work”. The Commission for Gender Equality (2013: 10) goes further to explain that South Africa has foundational rights that apply to all who live in the country, including sex workers, thus confirming that the infringement of human rights under current laws against sex workers makes it difficult to ensure the basic human rights of sex workers. This contributes greatly to this dissertation because under current criminalisation laws that ban sex work, sex workers find themselves not having access to these rights which then makes the fairness of the justice system questionable.

From the explanation above, the linkage between the industry and lack of human rights can be drawn, as the criminalisation of the industry takes away the freedom of choice/independence. It takes away dignity from those who choose to work in the industry and the stigma that comes as a result of the criminalisation results in a loss of respect for those in the industry by the rest of society. It also takes away the dignity of the sex workers and their right to be treated equally like all other employees in society. May (2017) explains that the criminalisation of sex work in South Africa and

the policy frameworks that support it immediately allow room for issues such as violence against women in many different forms. It allows room for police brutality as the police can now take advantage of sex workers and abuse them because of the fact that the industry is criminalised. The Asijiki (2015) factsheet highlights that sex workers explain that they find alternative ways to stay clear of the police so that they can avoid being abused or arrested. This being evidence to the effects that criminalisation leaves for sex workers. Lastly the criminalisation of the industry results in the compromise of the health of all sex workers as it makes access to health services difficult for sex workers.

Just from looking at these three factors it is evident that the criminalisation of sex work compromises the basic human rights of sex workers. It also promotes inequality and unjust behaviour towards sex workers. Criminalisation in itself takes away the right to safety and introduces police brutality. It takes away the right to good healthcare and imposes restricted access to public healthcare services. Criminalisation also encourages violence against female sex workers as it allows room for a vulnerable sex worker to be violated by a client, a pimp or the brothel they may work for (the employer), and lastly by society in general. This is the stance that many sex workers emphasise to reflect the injustices caused and perpetuated by criminalisation.

[2.4.2 Sex work as a Gender Based violence issue and President Cyril Ramaphosa's commitment to decriminalisation sex work](#)

Due to the rejection of sex work as a human rights issue by society, an alternative solution had to be found, thus President Cyril Ramaphosa made his commitment to decriminalise sex work on a gender-based violence platform in 2019. It is important to gain a full understanding of what Gender-Based Violence (GBV) is before its link to sex work can be explored. Pickup et al. (2001: 12) defined GBV as “the violence directed towards women” because of gendered power dynamics. Pickup et al. (2001: 12) further explains that violence against women “can be any physical or sexual force against a woman”. Pickup et al. (2001:12) further explains that many tend to narrow violence against women (VAW) to just physical hurt, and then explains that this is incorrect because VAW can manifest in “non-contact form” as well. Thus Pickup et al. (2001: 12) posited that a more appropriate definition of GBV would be any form of “violence against women that results in physical, sexual or psychological harm, or

suffering of a woman”. With this definition the link between GBV and the sex industry becomes more evident because of the experiences of sex workers and the violence they are prone to, as a result of the fact that the industry is illegal and allows for abusers to take advantage of the lack of protection sex workers experience from an abusive society.

Gqola (2013) speaks on the idea that was previously spoken about in this study and by other scholars which highlights the idea that men feel that they are entitled to sex, even when their partners may not be willingly to partake. The entitlement of men through a patriarchal society driven by tradition/religion is also the core driving force as to why the sex industry was developed, to serve the needs of the men while bypassing the emotions of the women is how sex work can so closely be linked to the GBV platform.

In 2019 President Cyril Ramaphosa made his announcement about committing to legislative change for the sex industry through the removal of the criminalisation banner. He vowed to replace it with decriminalisation of sex work and this was widely celebrated in the sex worker’s community. This was something they had hoped for as demonstrated through various advocacy initiatives by organisations such as SWEAT and Sisonke. The surprising part of the president’s commitment was that he took the need for the decriminalisation of sex work not from the angle of a human rights point of view but from a GBV point of view.

South Africa has received a lot of attention from the world, especially after being listed as the most dangerous country for women to travel to according to an insider article by Cash (2019). GBV is one of the contributing factors to this ranking. This is evident because as highlighted by Manoek (2017: 6) in the #SayHerName campaign, a very large percentage of reported GBV cases involve sex workers. Manoek (2017:6) in the #SayHerName campaign reported that between the years the 2014 to 2017 there were 118 female sex workers who had died, and of that, 55% of these sex workers had been murdered. Furthermore, Manoek (2020: 6) in the #SayHerName campaign factsheet states that “it is important to note that these numbers are not accurate as not all GBV cases have the opportunity to be reported and recorded.” This can be linked

to the reality that some of the perpetrators are part of the law enforcement system so they can take advantage of their power and positions to conceal their offences.

Linking decriminalisation of sex work to gender-based violence instead of linking it to a human rights need makes it easier to denounce any moral or dignity views that people may have against sex work, thus turning decriminalisation into a means to save lives. This pulls the notion for decriminalisation of sex work away from the religious and traditional clouded views of sex work. This would as a result, make it easier for the president to make decriminalisation more acceptable to the rest of the country, as the moral focus point is on ensuring the livelihoods of those affected by gender-based violence.

2.5 Debates around sex work industry in South Africa.

2.5.1 How the criminalisation of sex work has a negative impact on individuals in the industry?

Some major negative implications of criminalisation in South Africa include: lack of labour rights, negative stigma towards those who work in the industry, police abuse and a lack of justice, abuse by clients and lack of availability of health services for individuals in the industry. These are all the outcomes of the criminalisation model that will be explored in this section.

2.5.1.1 *The Stigma around sex work*

There are two main reasons why sex work carries the horrible stigma that it does and these are mainly the way in which religion has drawn sex work to carry the face of disgrace. Second is the way in which the law has allowed religion to filter into the way justice administered, thus resulting in sex work being viewed as the disgrace it has been viewed as over the years. As explained by Sorajjakool and Benitez (2015: 1276) “Sexual practices beyond matrimonial boundaries are often considered immoral and thus, prohibited, especially within the realm of religion.” This explains why sex work would be undermined from a religious point of view. Sorajjakool and Benitez (2015: 1276) go further to explain that “religion has a general tendency to view non-marital sexual practices as non-normative and thus, sever any connection between religion and sex work.” This explains why there would be a division between religious people and sex workers because fundamentally they view the issue of sex work completely differently. This results in all those who consider themselves as religious attaching that face of disgrace and immorality of sex work in their point of view to the practices and

presence of all sex workers. This leads to religions' stigma towards sex workers and their industry.

In the case of the law Mgbako et al. (2013:1426) highlights that the law very deeply impacts the views of society, he explains the "the law plays an important role in influencing societal attitudes. Criminalisation stigmatizes sex workers as criminals, which negatively affects the way society views them." This shows why it becomes an accepted norm to stigmatize sex workers in society, due to the fact that the law has told the public that sex work within itself is wrong. Mgbako et al. (2013:1426) then explains that once the society sees the industry in this way they seem to have no rights and thus are prone to abuse, Mgbako et al. (2013:1426) states that "Because sex workers are criminalised, communities often believe abuses against sex workers are justified." This leaving the sex worker at the mercy of the society.

2.5.1.2 Lack of labour rights

Mgbako et al. (2013:1431) discussed the lack of justice in defence of sex workers in a country where the industry is criminalised, Mgbako et al. (2013:1431) explains that "Under criminalisation, South African sex workers' labour rights are violated in several ways. The illicit nature of sex work forces sex workers to operate in isolation and impedes efforts to collectively organise." Criminalisation completely removes the possibility of having a sex workers' union that protects the rights of the sex worker. Mgbako et al. (2013: 1431) further explain that "without collective action, a large power imbalance exists between sex workers and brothel owners or pimps, who may abuse sex workers by demanding that they work long hours and forcing them to work in unsafe conditions." This creates an unsafe and unfair work environment for the sex workers who are just trying to make a living like anyone else in the work environment.

As evidenced by Mgbako et al. (2013:1431) one can look at Kylie Vs Commission for Conciliation, Mediation and Arbitration Pty Ltd (2008) CA10/08. This case speaks about Kylie who worked at a massage parlour and offered sexual favours as part of her job. When she was unfairly dismissed and took her employers to court she lost her case with the main reason being that since the acts she performs as part of her job are illegal, it would be wrong to argue for her to be reinstated as this would be defending an illegal act and thus breaking the law. This case revealed how a lack of labour rights leads to little or no rights to justice.

2.5.1.3 Lack of availability of health care services for sex workers

Sex workers experience some of the harshest responses from the health care system. A report conducted by Makhakhe et al. (2019) explains that health care providers in the public sector tend to make it extremely difficult for sex workers to access health care services because they tend to be reluctant and “unwilling to engage or they assist sex workers in a non-discriminatory manner.” This is caused by their inability to look past their own personal values and morals. Furthermore, health professionals in the public healthcare system tend to forget that they are not meant to address sex workers from a personal level but rather a professional one. Many sex workers have found it difficult to go to health care professionals in the public sector when experiencing symptoms of sexually transmitted diseases because of the environment being one that is non-supportive towards them (Makhakhe et al. 2019). Makhakhe et al (2019) further highlights that the South African public health care sector is already overburdened with issues such as “lack of adequate medical infrastructure, shortage of medical personnel and overworked staff”. This results in very long waiting hours and sometimes in patients having to go home with no medical assistance or solution to their problems, which harshly affects sex workers due to loss of income from missing work opportunities. This forces sex workers to resort to seeking for assistance from the private health care sector which is expensive, thus only a select few can resort to this option. As much as the public health care system may seem to not be very accommodating to sex workers sometimes further challenges can be linked to lack of discipline when it comes to alcohol and drug abuse (Makhakhe et al. 2019). These factors make it extremely difficult for testing to take place thus prolonging treatment processes.

The criminalisation of sex work has made it difficult for HIV intervention practices to actively make a difference as sex workers are usually denied access to health services or rather, they are not given the attention they deserve when it comes to accessing health information or services. This is because they are viewed as the ones who seek or spread the diseases and thus do not deserve treatment or advice. Mgabako et.al. (2013: 1429) explain that “sex workers face an increased risk of HIV and STI infections because criminalisation fuels stigma against sex workers in health services, it also dissuades sex worker involvement in the development of health policy decisions that affect them”. This simply confirms that when sex work is considered criminal it leaves

sex workers exposed to diseases such as HIV and AIDS, with no proper access to decent health services or attention due to the discrimination and stigmatisation that is driven by the criminalisation of the industry.

Duby et.al. (2018: 4) provides further detail in referring to how a study on sex workers and their experiences with healthcare service providers revealed that stigma and discrimination play a huge role in sex workers' reluctance to access public healthcare. Duby et.al. (2018: 3) state that "female sex worker respondents described situations in which nurses adopted a scolding tone, which caused feelings of embarrassment and shame, resulting in a reluctance to return to the clinic for treatment." One of the participants in stated that "they (nurses) embarrass you ... you end up telling yourself that you are no longer going to the clinic ... They (nurses) make you uncomfortable, you become reluctant to go to the clinic" (Duby et.al., 2018: 3). This confirms how the criminalisation of the industry fuels stigma.

2.5.1.4 Police abuse and lack of justice

Sex work being a criminal offence leaves sex workers at the mercy of the police, which in most cases results in the misuse of power by the police in their engagements with sex workers. Evidence for this can be found in an article written by Malan (2019) which speaks on the different experiences of sex workers in South Africa (which criminalises the industry) and Amsterdam (where sex work is legal). The article gives the story of Nosipho Vidima who is a sex worker in South Africa. Nosipho Vidima in the article by Malan (2018) states: "I've lost count of how many times I have been raped by the police. If you say no to a police officer asking for sexual favours he threatens you". This just is an indication of the abuse of power by police officers under current laws. Mgabako et.al (2013: 1429) explain that "criminalisation creates an enormous power imbalance between sex workers and the police. This results in police abuse against sex workers in the form of improper arrests and detention, as well as economic, sexual, and physical abuse." Since the police are viewed as the lawfully correct figures in the society, it is easy for them to take advantage of those who are not so clean in the eyes of the society. No one will ever pick the side of the criminal. Sex workers also experience lack of justice as the police never take their cases seriously. Mgabako et.al (2013: 1429) states that "police often impede sex workers' access to justice when they are the victims of violent crimes. Because of the continual police harassment, they

face, sex workers are reluctant to report cases of rape committed against them for fear of additional ill treatment.” This means that sex workers hardly get the justice they deserve as civilians because of the fact that their rights and cases are undermined due to the stigma the career they are in carries.

2.5.1.5 Abuse sex workers by clients and other members of the community

The fact that the dignity and the rights of sex workers are so undermined makes it easy for everyone around them to take advantage of them, knowing very well that they have no support or backing structures. Mgabako et.al (2013: 1431) discussed this and explained that “criminalisation makes sex workers vulnerable to abuse from clients, hotel management, and intimate partners. Clients are more likely to abuse sex workers when they know that sex workers are very unlikely to go to or receive support from police because they are criminalised.” This statement can be supported by Vidima et al’s. (2020: 6) findings that “between 40-70% of sex workers had experienced physical violence in a period of one year”. The report goes further to explain that “the people who perpetrated this violence included clients, intimate partners (non-commercial), third parties and the general public.” This confirms Mgabako et al’s (2013:1431) assertion that sex workers are left vulnerable to the actions of all those who surround them as they are left with no power to fight back criminal acts towards them as they have no protection from the justice system.

2.6 COVID-19 and South African sex workers

Covid-19 being such recent and uncharted territory has affected many industries and thus has also harshly affected the sex industry. This is an important reality to highlight when discussing sex workers as currently there one effective way to avoid infection is social distancing which immediately puts restrictions on any contact-based interactions in the workplace. This makes it extremely difficult for the sex industry to operate. Even in the Netherlands where consensual sex work has been legalised since 1999 Kovacsics et.al (2021:16) explain that Covid-19 still put sex workers on the backhand when it came to support from the government. Due to the fact that sex work was seen as a high-risk industry to Covid-19 it was also the last to be allowed to reopen in the Netherlands and was only given permission to operate again in May 2020. Kovacsics et.al (2021:16) further explain that “this changed after the lobbying of sex work-related organisations and the creation of a hygiene protocol the industry had to

follow to meet certain biosecurity measures”. However even after operations had started for the industry sex workers were not receiving the support packages that other industries were receiving, examples of these packages include monetary grants and food packages. Kovacsics et.al (2021:16) further explained that “despite the payment of taxes and social security contributions by sex workers in the Netherlands, in a situation of crisis, sex workers have fallen through the cracks of social security.” This revealed that even in countries where sex work has not been a criminal offence for so many years, very little attention is given to the industry in times of crisis like Covid-19. How much worse will this reflect in the lives of South African sex workers where sex work is still criminalised.

In April 2020 UNAIDS in collaboration with the Global Network of Sex Work Projects (NSWP), released an article explaining that whatever response is reached in combating COVID-19, it is important to consider sex workers, their industry and their human rights. The UNAIDS (2020) explains that the pandemic caused many disruptions to the industry and to those who operate in it, one of the most important being health services. As explained in the article many of the sex workers living with HIV, highlighted that it has been very difficult to maintain a healthy status as it has been difficult to access health services due to lack of transport to get to clinics and hospitals. UNAIDS (2020) in addition explains that sex workers reported “interruptions to condom supplies owing to the pandemic” thus making it even more difficult for sex workers to operate, or rather protect, as operating would put their health at risk of contracting many illnesses. UNAIDS (2020) also mentioned that lack of health services is only one of many negatives that the sex industry currently faces. The source acknowledge how violence and harassment of sex workers increased in the times of COVID-19, especially in countries that still criminalise the industry (UNAIDS, 2020). (UNAIDS, 2020) explains that sex work being criminalised in almost every country leaves sex workers vulnerable to harsh measures linked to COVID-19 regulations. It is further explained that this could lead to more exposure of sex workers to harassment and violence as a result of increased policing This further confirms how sex workers’ lives became more difficult due to the pandemic.

Many Cape Town based sex workers have come out explaining how tough it has been to survive as a sex worker in the times of COVID-19 due to the increase in police

violence towards those in the industry. The criminalisation of sex workers as previously discussed removes sex workers from any government subsidies and assistance. With most individuals and businesses surviving on government support, sex workers remain on the losing end. UNAIDS (2020) noted a statement given by SWOP-Tucson (the Sex Workers Outreach Project), a United States based programme which is located in a country that still criminalises sex work. They explained that, “many of these government schemes require proof that employment has been lost or reduced as a result of COVID-19. Because sex work is criminalised, it’s not possible to provide necessary paperwork and proof of unemployment or hardship” (UNAIDS, 2020). This simply confirmed how the criminalisation of sex work does not protect the basic human right to a decent life for all those in the country, especially during unpredictable circumstances such as the COVID-19 pandemic era.

UNAIDS (2020) also noted that as much as many would assume that the situation is better for those in countries that have decriminalised sex work, this would be an inaccurate assumption. Many governments prioritised subsidies and benefits for those who work in more formal sectors. The pandemic crisis made it clearer that there is a great need for countries to move towards the decriminalisation of sex work as the criminalisation immediately takes away all benefits afforded to citizens in a state of emergency. The exclusion of the sex work industry made basic survival extremely difficult, especially for those who live on a hand to mouth basis like sex workers.

An article by Aislinn Laing (2020) tells the story of Camila, a sex worker who has found alternative ways of making money since it has become highly risky and difficult to physically operate in the business. Laing (2020) explained that Camila is a sex worker from Chile where sex work has been legalised with some regulations and limitations. Because sex work is legal in the country it makes it easier for the sex workers to try and find means of providing for themselves even though it may not be an equivalent of their regular incomes. In the article by Laing (2020), Camila explains how she has moved to trading her services online via video calls with her regular clients. Although this has become a solution for Camila, she explains that some sex workers in Chile continue to engage in physical meetings, on request as they fear losing clients. Camila’s story shows that although the sex workers in Chile still face a lot challenges and risks, they definitely have more options than those from countries that still

criminalise sex work, as this would mean that the online option still puts them at high risk of getting into trouble with the authorities. With the decriminalisation of sex work, sex workers cannot only get government benefits and access health services in states of emergencies there is room for them to try make means for themselves and those who depend on them in more alternative ways that correspond with stipulated restrictions. In cases such as South Africa where sex work is criminalised, sex workers remain at the underhand as they cannot depend on government to support them, as would be the case for those from more formal industries. Sex workers in the country could not find alternatives ways to make money because sex work is illegal.

Although things are still difficult for sex workers in South Africa because of criminalisation laws, Hendricks (2021), in *Sex Workers Pride celebrated with vaccinations and calls for decriminalisation* explains that sex workers continue to find creative ways to advocate for decriminalisation and they have even used Covid-19 vaccinations for this. The article explains that as part of the celebrations of sex workers pride, a march for advocacy was organised. This march was also linked to an event that had health initiatives to help make the lives of sex workers safer. “The event also served as an opportunity to vaccinate sex workers against Covid-19 and offer testing for STI’s and HIV, and to provide access to items like condoms and lubricant” (Hendricks, 2021). This showing how the community takes responsibility for their own members and ensures that their members have access to necessary healthcare information and vaccinations. Even though this is the responsibility of the state the sex workers community understands that they are not prioritised because the industry is still criminalised and thus have to go extra lengths to ensure that they cater for themselves. Hendricks (2021) further explains that the event was organised by sex worker advocacy groups which included Sonke Gender Justice, Triangle Project, Pink Drive and the Asijiki Coalition. The symbolic events a march that started at Mowbray police station (where a sex worker named Robben Montsumi died in police custody in April 2020) and ended in Salt River Cape Town. The conversations that happened on the day highlighted the difficulties that sex workers still have in accessing health services as a result of criminalisation. This provided further evidence that criminalisation of sex work has made the lives of sex workers extremely difficult, and worse off during Covid-19, due to even harsher realities in accessing basic healthcare

services. Advocacy groups and sex workers have taken the responsibility to attempt to make these services available to themselves within their own communities.

2.7 Conclusion

This chapter reviewed current literature pertaining to challenges associated with decriminalisation as well as criminalisation of sex work. The chapter also explored the history of sex work, discussed the role of influential voices in the South African sex industry, examined the effects of criminalisation, and lastly the impact of platforms used to address the industry. The chapter noted how several factors are deeply rooted in the history of sex work and have highly contributed to the industry's current realities. Furthermore, these historical factors have contributed to the industry's close links to GBV. Factors such as stigmatisation and discrimination result from criminalisation, and have further enhanced the infringement of sex workers' basic human rights. Due to the fact that these factors are so deeply rooted, it is difficult to use human rights platforms to push for the rights of sex workers as this strategy was ineffective in the past, hence the president's cautionary promise to address sex work as a GBV issue.

The chapter also referred to events that occurred during the height of the Covid-19 pandemic. It explored the pandemic's effects in South Africa and in countries that have made legislative reforms to their sex industries. The researcher found that the criminalisation of sex work, especially under unusual circumstances like the Covid-19 pandemic have further shown the cracks within criminalisation.

In the following chapters this study aims to use the information accumulated from this chapter to attempt to give an informed contribution to the discussions around the sex workers industry in South Africa.

Chapter Three: “Sex work is work” Journey to legislative reform

3.1 Introduction

This chapter focuses on the South African journey to legislative reform for the sex work industry. It explores two legislative frameworks (models) that are most talked about for sex work legislative reform in South Africa. The chapter outlines, how these models have been implemented in other countries and assesses whether the same is feasible for law reforms in South Africa. Furthermore, this chapter explores the stances that South African political parties have taken regarding the industry, and the role of the general public that could hinder change for the sex workers’ community.

3.2 The difference between Decriminalisation and Legalisation of sex work

At the Gender-Based Violence and Femicide Declaration (GBVF) launch in 2019 the current President of South Africa, Cyril Ramaphosa, committed himself and his government to work towards decriminalising sex work in South Africa. This section will look at differences between decriminalisation and legalisation and attempt to fully define what they both entail. An article by Schwartzbach (2020) titled *Decriminalizing Prostitution* provides a great start in defining the difference between the decriminalisation and the legalisation of sex work. Schwartzbach (2020) explains that legalisation is “the direct regulation of prostitution by the government”. Living under a government that legalises sex work ensures monitoring and protection by the state. Schwartzbach (2020) goes further to explain that “regulation may include an array of methods, from zoning requirements and advertising restrictions, to mandatory tests for sexually transmitted diseases.” This means the government directly becomes involved in ensuring that the industry is not only allowed to operate but regulates how it operates, putting restrictions on aspects that may or may not be practiced. For example, allocating certain areas in which sex workers can stand and sell services. This ensures that the industry is regulated and monitored. An example of a state that has taken this route would be Nevada hence the approach is also known as the Nevada model.

Decriminalisation on the other hand entails, “the removal of laws and regulation; under this model, prostitution is treated just like any other occupation” (Schwartzbach, 2020). This means that with decriminalisation, all the laws that make the industry illegal are

lifted but in this case there would be no regulations such as mandatory health checks to somehow regulate the sex work. This model just means that normal labour laws would be implemented, and nothing specifically targeting sex workers would be put in place. This is the model used adopted. By New Zealand. Schwartzbach (2020) also explains that government can decriminalise with boundaries. In some countries the lifting of criminal laws only applies to those selling sex while those who buy sex remain criminalised. This means that the sex worker cannot be arrested for selling sex, but their client can be arrested for buying sex, as the act of buying becomes the only criminal act. An example of a country that has taken this route would be Sweden.

The above explanation shows that the words 'legalisation' and decriminalisation' cannot be used interchangeably nor can they be confused to be similar as they both, when defined, are very complex and result in completely different routes that governments can take when dealing with the sex industry. In South Africa, when the Deputy Minister of Justice, John Jeffreys was asked about a possible module in an interview on SAFM (2019), he explained that legalisation which is the route that New Zealand has gone with, would not work for South Africa as this model amongst many other factors bans foreigners or bans migrant workers from working in the industry which completely defeats the purpose in South Africa. John Jeffreys then referred to the Swedish model which criminalises the buyer but allows the seller to continue providing their services. He explained that the purpose of this is aimed at trying to reduce the demand. He did not conclude by noting the model he/the department support. The section below will explore different opinions that different political parties support when discussing the sex industry.

3.3 Case Studies of the different models

There are several case studies that speak to the different ways in which sex work has been handled in other countries with the implementation of different models. With regards to the removal of the laws that criminalise sex work, there are three different models which can be utilised. These models include legalisation, partial decriminalisation and full decriminalisation. The selected countries that will be used as case studies to explain these models and their functionality in this study will be Nevada, New Zealand and Sweden. All three have tackled sex industry challenges in their countries in different ways, as discussed below. Nevada relates to the legalising

model, while Sweden and New Zealand have both selected the route of decriminalising, but in different ways. Sweden has selected the model that decriminalises the act of selling sex but still criminalises the act of buying sex, whereas New Zealand has completely decriminalised for both the seller and the buyer.

3.3.1 The Nevada model

Bruckert and Hannem (2012: 56) explain that sex work is illegal in the United States of America save for the state of Nevada. Rindels (2018) highlights that “it wasn’t until the Storey County Commission officially sanctioned Joe Conforte’s Mustang Ranch Brothel in 1971 that the state had its first legal brothel.” Pressure to keep the brothel open is what brought about the legalisation of the industry. Bruckert and Hannem (2012: 56) explain that “prostitution and soliciting are permitted only in licensed brothels; any sex work that takes place outside of this context is criminalised”. Avery (2017 :7) states that according to Nevada’s law “any county in Nevada looking to open a brothel must have a population under 700,000 people.” Furthermore monthly blood testing for HIV and syphilis is a requirement, sex workers should negotiate with patrons to use condoms, and brothel business applicants must disclose financing and management plans, as well as undergo background investigation (Avery, 2017: 18). A need to regulate the industry is what brought the legalisation of the industry in this specific State in the United States of America.

Jenifer et al. (2012:10) explain that there is some sex work that is considered illegal in the state of Nevada and they list illegal types of sex work. They include: high-end escorts, house workers, outcall referrals, illegal brothel workers (this being unregistered/unlicensed brothels, massage parlour workers, bar or casino workers, street workers and people under the age of 18). Sex work is to only be sold in a Brothel. Rindels (2018) explains that according to the LA Times there were only 20 operating brothels in Nevada in May 2018. Whilst many hold the view that once an industry is legal in a state it would have to be taxed, this does not apply in Nevada. In Nevada only brothels as the business are expected to pay tax and the licenced sex workers are only expected to pay a licence fee but are not necessarily taxed. HG.org Legal Resources (2021) mentions that the act of selling sex in Nevada is not taxable and thus sex workers are not taxed. Furthermore HG.org Legal Resources (2021) concurs with Rindel, noting that there were previous attempts to tax sex workers but these

failed as many officials felt that once sex workers are taxed this legitimises the industry which they are not very comfortable with. Rindels (2018) explains the salary of a sex worker and highlights that sex workers in Nevada get half of their earnings and the other half is taken by the brothel. From this salary, sex workers are required by law to pay for their own STI weekly testing and their sex workers registration cards. Although the Nevada government has attempted to create a safe and accepting working space for their sex workers, it still ends up discriminatory in a way. It creates a space that is not as accepting of the industry as it is of all other formal industries.

Bondenner (2016) explains that activists who are in support of full decriminalisation of sex work have highly criticised the Nevada model for three main reasons. Firstly, “the licensing requirements create a permanent record which can lead to discrimination later on” (Bondenner, 2016). Due to the record keeping through the licencing of sex workers, sex workers become identifiable even when they may not want to reveal their identities. Secondly, the power differences between brothel owners and sex workers mean that the latter has very little influence over their own working conditions (Bondenner, 2016). The lack of balance in power between sex workers and brothel owners creates a relationship with a dominant partner which could lead to the exploitation of sex workers and the abuse of power. Thirdly, while sex workers “undergo legal and health background checks, their customers do not; the regulations are thus designed to protect customers, not prostitutes” (Bondenner, 2016). Sex workers being the only ones that are taxed creates a lack of reasonability from the client’s side and also enhances the stigmatisation that sex workers are the ones who spread diseases in society.

Scholars such as Weitzer (2007: 31) find Nevada to be have provided the safest solution for sex workers, Weitzer (2007: 31) states “Nevada’s legal brothels offer the safest environment available for women to sell consensual sex acts for money”. However, many scholars disagree with this statement, arguing that this model brings about restriction to sex workers. The Nevada model has been questioned for its true purpose as it does not seem to fully liberate the sex workers. Bingham (1998: 93) noted how some sex workers that previously worked for brothels in Nevada expressed that being a brothel sex worker exposes an individual to “a system that results in mandatory exploitation.” Furthermore, Sawicki (2019: 359) explains that “Businesses

and individuals involved, face regulations and licensing procedures that other businesses do not.” In addition, Sawicki (2019: 359) explains that “sex workers must register with the police department as a brothel worker and face restricted mobility, stipulated working conditions, mandated testing”. This highlights the lack of choice and liberation found within the model. Sex workers under this model still find themselves at the mercy of the authorities which still does not give them the right to dignified working conditions that all other industries enjoy.

3.3.2 The New Zealand Model

Abel (2009:1) highlights that “in 2003, New Zealand decriminalised sex work through the enactment of the Prostitution Reform Act”. Bellamy (2012), in *Prostitution Law Reform in New Zealand* explained that New Zealand became the first country to decriminalise sex work under the Prostitution Reform Act (PRA) 2003. Like most countries New Zealand has a long history of trying to manage the sex industry. As explained by Bellamy (2012), this dates back to the 1700s and the times of Captain James Cook’s trips to New Zealand, when sailors would have clear interactions with New Zealand women and sometimes trade items such as muskets for sexual favours from the Maori women, and at times even from the Maori men. New Zealand’s sex work industry has existed since the early stages of European colonisation. Bellamy (2012) highlights that earliest relevant legislation can be derived from the English Vagrancy Act 1824, which could be invoked against prostitutes in public streets or in any place of public resort and when behaving in a ‘riotous or indecent manner’, this being done in attempt to combat and decrease the numbers of sex workers in the country.

The country has had multiple legislative directions in attempt to abolish the sex industry. These include: the Police Offence Act of 1884, The Criminal Code Act of 1893, Crimes Act of 1903 and The Police Officers Act of 1927. There were other legislative measures that were taken in attempt to minimise the spread of disease such as the Contagious Diseases Act of 1869 which targeted sex workers as they were viewed as the spreaders of the various illnesses and thus had to be managed (Bellamy, 2012).

2.4.2.1 The change brought by the Prostitution Reform Act 2003

Bellamy (2012) highlights six factors that the Prostitution Reform Act of 2003 was meant to address. According to Bellamy (2012) the Act was meant to safeguard the human rights of sex workers, protect them from exploitation, promote their health, welfare and occupational safety, create an environment conducive to public health and prevent children from exploitation in relation to prostitution. All these were set to create a better and safer environment for sex workers. Apart from ensuring that no sexual activities are practiced in public, the Act of 2003 also ensures that no individuals under the age of 18 partake in the industry. The Act also seeks to ensure that all individuals who are involved in the industry (both, sex workers and brothels) comply with health regulations enforced by the act. For instance, all brothels and places where sex trade occurs, operations are registered and they must have a valid operator's certificate. Bellamy (2012) further explains that this act also promotes Small Owner Operated Brothels (SOOBS), which are brothels with less than four sex workers, and do not require a certificate to operate but must still comply with all the other regulations such as the health regulations. Territorial authorities are to ensure order when it comes to the location of sex sales and advertising. Lastly, there is a Prostitution Law Review committee of eleven members appointed by the Minister of Justice to review the operations of the act.

2.4.2.2 The effects of the Act of 2003

Although the Prostitution Act of 2003 has tried to cover all bases of protecting sex workers and ensuring a healthy and human environment to operate in since it was implemented in 2003, research has shown that there have been quite a few fall outs. There are many effects that show that the Act has not been as effective as expected. Bellamy (2012) explains the effects of the act from the year 2004 to 2011 and has revealed that there have been quite a few issues when it comes to the increase in individuals joining the industry, which may make it even more difficult to ensure order and safety, thus making it even more difficult to regulate as the numbers get out of control. Bellamy (2012) explains that the working conditions of the sex workers have worsened instead of getting better with the implementation of the act. The number of underage sex workers has increased along with the rates of abuse and harassment by clients, Furthermore, Bellamy (2012) states that "some sex workers continue to experience adverse incidents such as exploitation and violence." This proves that the

conditions for the sex workers have not improved for all in the industry. Lastly, the locations for approved sex work operations is a major cause for concern as many members of the community are still against the decriminalisation and they tend to stigmatise sex workers and the industry (Bellamy, 2012). This thus leads to issues of location for brothels and street-based sex trade especially in more residential areas.

3.3.3 The Swedish models

The Swedish model also known as the Nordic Model was implemented in 1999. Sweden was the very first country to adopt the model. Kingston and Thomas (2018: 425) explain that according to the “Swedish Penal Code, Chapter 6 s.11, “anyone who: obtains casual sexual relations in return for payment is sentenced for purchase of sexual services to a fine or imprisonment not exceeding one year”. Although this model may seem to protect the sex worker from being criminalised by law enforcement many question whether it was created to the benefit of the sex worker as it creates a difficult space to operate in the business. The government of South Africa should be wary of this effect in considering the Nordic Model. This model aims to instead of criminalising the sex worker, criminalise the customer. This results in a decrease in customers for the sex worker as no one wants to be arrested for a crime with such a horrible stigma. The Global Network of Sex Work projects (2015) explains that sex work in Sweden is viewed as a form of violence to women and thus views the sex worker as a victim to their customers and thus aims to decrease the sex industry. The Global Network of Sex Work projects of (2015) Swedish toolkit highlights a few views that aim to silence the advocacy of sex workers and their rights to fully operate. These silencing modes show how this model has negatively affected the sex workers it was meant to benefit.

2.4.3.1 False Consensus

The Global Network of Sex Work Projects (2015) explains that false consensus is a mode of silencing that states that certain groups of people cannot fully understand their own situation because their self-awareness is undermined, thus their own opinions on their own lives are viewed as not accurate. The Global Network of Sex Work Projects of (2015) highlights three main views in which false consensus occurs with sex workers, ‘Trauma, undermining self-awareness and choice’ being the first. This means that sex workers are viewed as individuals who cannot fully comprehend their situation because of the abuse and trauma they have faced in their industry. The second is ‘Desperation undermining true choice’, a view that sex workers have limited

option and thus their conclusion of true choice is not accurate as their choices are highly clouded by their difficult situations and limited number of options they have. The third is 'Social conditioning undermining objectivity', chain of thought that assumes sex workers are unable to fully comprehend their own oppression, meaning that they cannot see when they are wrongfully treated this as explained by The Global Network of Sex Work Projects (2015).

2.4.3.2 Lying and putting on a brave face

The Global Network of Sex Work Projects (2015) also explains that the Swedish model assumes that sex workers tend to make their situations seem lighter than they really are by putting on a brave face and making the situation seem as if it is not as bad as expected, thus implying that sex workers lie about the realities of their industry so that they continue operating.

2.4.3.3. An unrepresentative or misrepresented perspective

This view as explained by the Global Network of Sex Work Projects (2015) aims to silence the voices of certain sex workers. Their views and concerns maybe completely disregarded as they may not be as popular and as mainstream as those of more accepted sex workers. The Global Network of Sex Workers (2015) also highlights that this perspective is usually directed to sex workers who belong to the LGBTQTI community, as the Swedish model views sex work as a form of male violence towards females thus completely ignoring non-heterosexual engagements.

2.4.3.4 Demonising the testimony and the speaker of the testimony

This perspective aims to silence those who advocate for the rights of sex workers through stating that they promote promiscuity, pimps and human trafficking, instead of the view that sex work could be one's life choice for a career. This contention is emphasised by the fundamental view that sex work promotes acts of violence towards women in Sweden. The law reattaches the stigma that sex workers aim to eradicate in order to fully operate as a normal career industry in the country. As a result, this model is not exactly favourable to sex workers as its solution to protecting them undermines the industry as a whole, and thus in the long run aims to completely shut it down.

The aforementioned complexities reveal that all three models are not always fully functional and they do not always create a safe and functional working environment

for sex workers. The Swedish Model seems to decrease business for sex workers due to the criminalisation of clients. The Nevada Model creates a highly controlled and exploitative environment for the sex workers by brothel owners and the New Zealand Model creates an uncontrollable growth of the industry that is not always maintainable and can sometimes be unsustainable.

3.4 What different South African political parties say about sex work?

It is important to get an understanding of what the three major political parties in South Africa, as described by Koekemoer (2017: 12) have said about the sex industry. It is further important to gain some sort of understanding of what impact or rather role they aim to play in the journey to combat the daily struggles of sex workers under the current laws in place. It is also important to gain an understanding of what change they would bring about if they were to become the ruling party and have control over the law reform and policy framework processes relating to the sex workers' environment. The political parties that will be focused on outside the ANC as the ruling party will be the Democratic Alliance (DA) and the Economic Freedom Fighters (EFF) as they are currently the most influential parties in South African politics.

As previously discussed, the South African government has very openly and very publicly announced their commitment to decriminalise the sex work industry as announced by President Cyril Ramaphosa at the signing of the Gender-Based Violence and Femicide Declaration in March 2019. The best way to seek evidence of what individual political parties say and establish their seriousness towards a topic is to go through their manifestos which highlight the main issues the party promises to tackle, if given the opportunity to govern the country. The 2019 manifestos of all three political parties were analysed to see what they have to say about the industry and whether their provisions cater to the needs stated by sex workers and advocacy organisations that represent sex workers.

3.4.1 *The African National Congress Manifesto and Sex Work*

As per the manifesto released by the ANC in 2019 nothing directly speaks to the decriminalisation of sex work but rather to the combatting of GBV as a whole, which is the banner under which sex work has been categorised. Moosa (2019) highlights that in the 2019 ANC manifesto, the party specifically speaks on working with and equipping the police and the court system on how to better assist and support GBV

victims. The party noted nothing about its commitment to decriminalise even though they verbally publicly commit(ed) to the action.

3.4.2 The Economic Freedom Fighters

Unlike the ANC the EFF does directly speak about what they aim to do for sex workers in their manifesto, under the Justice System and Correctional Service section point number 21 as explained by Moose (2019). The EFF noted its commitment to legalise sex work which is not what sex worker movements and organisations such as SWEAT have been asking for. Instead, the EFF promises to implement a system that sex workers find faulty and believe would not work for them or cater to their needs. The manifesto does however address other issues that affect sex workers as stated by Moose (2019), such as a non-discriminatory healthcare system that aims to assist all those who seek medical assistance. This is one of sex work industry's major challenges.

The EFF believe that legalisation of sex work would be a better move than decriminalisation because this would bring about proper regulations in the industry and mandatory health checks for those who partake in the industry. This, many believe, would make the industry more manageable. Schwartzbach (2020) explains that some stand with the stance to legalise sex work with regulation because it is a way to avoid or limit accompanying social problems. Schwartzbach (2020) goes further to explain that “those who believe in the success of this model acknowledge that the state has an interest in suppressing sexually transmitted diseases, protecting minors who might get involved in the industry and preventing crimes that might occur in the industry.” This, in simple terms means that all those who believe in this model just feel that if the industry is more regulated it is safer and easier to manage, specifically looking at protecting those who are underage from entering into the industry and in terms of preventing the spread of illnesses. The Sonke Gender Justice fact sheet (2021:3) argued that activists prefer decriminalisation because it promotes the idea of consensual sex, which would require those who participate in the industry to have reached the age of consent. Minors would thus immediately be protected. Furthermore, the Asijiki fact sheet (2015) which promotes the rights of sex workers also argues that, with decriminalisation the point is to create a more welcoming healthcare system for sex workers so that the spread of diseases is limited.

3.4.3 The Democratic Alliance and Sex Work

The manifesto of the Democratic Alliance (2019) also does not exactly stipulate that the party would decriminalise the industry but instead it speaks on exploring possible legal models around sex work to cater for the need and requests of sex workers and their organisations. The manifesto of the DA (2019:70) also speaks about building a relationship between sex workers, the criminal justice system and civil society organisations to help understand and better cater to the need of sex workers. It speaks on providing HIV and STI testing kits to all willing sex workers to combat the spread of diseases. Lastly it speaks on training all government employees who work with sex workers such as police officers, prosecutors, and social workers to do so well and with due respect.

Pilane (2019) boldly makes the statement that all three most influential political parties in South Africa are unclear when it comes to where they stand with law reform for the sex industry. As much as they all have a stance on the industry, it is either not in formal writing or is the opposite of what the sex workers have asked for. Pilane (2019) further explains that political parties are either vague in their commitments and do not give concrete feedback on what the possible outcome would be for the industry under the rule of one of the three parties.

3.5 Perceptions of South Africans and their understanding of sex work being the reason why the South African government has committed itself to the full decriminalisation of sex work and not the other models

Although popular public perception tends to be that sex workers are in agreement with the notion for the legalisation of sex work in the country, there are individuals who feel that this conclusion is very clouded with fear of the changes that may come with legalisation. They feel that the negative implications may outweigh the positives. Wojcick (2011: 96) speaks on some of the fears South African sex workers have expressed on the legalisation of sex work. Wojcick (2011: 96) explains that most sex workers fear being documented as sex workers; the “most pervasive fear includes the notion that they will be exposed through registration programmes or simply by the very process of sex work being legalised”. This is because once they are registered or documented it makes it easier for those who wish to take advantage of them to identify them. Wojcick (2011:96) also explains that some sex workers are against the

legalisation and registration of sex workers because some sex workers have not informed their families and loved ones about the career field they operate in and would like to keep it that way. They fear the judgement they would receive from their families and society, this also being a matter of privacy that everyone has the right to as a basic human right.

Legalisation in this context may give the feel of laws implemented during the rule of the Cape Colony, which carried a very negative connotation when sex workers were required to be registered. Thusi (2015: 217) states that registered sex workers were referred to as common prostitutes - "A common prostitute was described as maladjusted, an unbalanced personality and a menace to society". This is a very harsh reality to live with because it gives the feel that sex workers are not normal and thus should not be treated like other members of the workforce. Wojcick (2011:96) also explains that some sex workers are of the view that once they are registered as sex workers this might then make it real or rather make them forget that they were not meant to stay in the industry for long. Some wish to only work in the industry for a short period of time, until they are able to get jobs they are more comfortable with. Those who are in the industry as part time sex workers or temporary sex workers feel that being registered as sex workers takes away from those who have chosen to operate in the industry permanently.

Wojcick (2011: 96) further explains that some sex workers fear registration because they feel they might have to work for registered brothels which might expose them to even worse working conditions and even lower payment rates, as they might be forced to pay tax under new regulations. Many sex workers and sex worker organisations have expressed that the implications that come with legalisation of the industry do not fully work to the advantage and comfort of the sex worker in the long run. This is seemingly the reason why the South African government has committed itself to decriminalisation of sex work and not the legalisation of sex work.

3.6 Conclusion

This chapter has explored South Africa's journey to legislative reform by exploring three legislative frameworks (models) that are most talked about for sex work legislative reform in South Africa. The chapter discussed how these models have been implemented in other countries and assessed whether they can really be used to guide

South Africa's law reform process. Furthermore, the chapter analysed the stances that three of South Africa's popular political parties have taken regarding the industry. Lastly, the chapter underscored the complexities linked to public perception that could hinder change for the sex worker community. It was found that although models have been developed to bring about legislative reform for this industry, none of them are perfect. Through exploring the different models, it was found that in all three case studies the models had their faults. It was further found that decriminalisation is the most advocated for model for South Africa, as noted by interest groups, because it would require the least resources to bring about change. Furthermore it would be easiest to adapt to South Africa for the sake of sex worker's safety from public scrutiny and stigmatisation. This model is also highly supported by sex workers and advocacy groups as it does not come with the harsh legalities and regulations that legalisation would.

The South African political parties have also been explored and it was found that it is only the ANC that speaks on decriminalisation in agreement with sex work advocacy groups and other interest groups.

Chapter 4: Presentations and interpretations of the findings

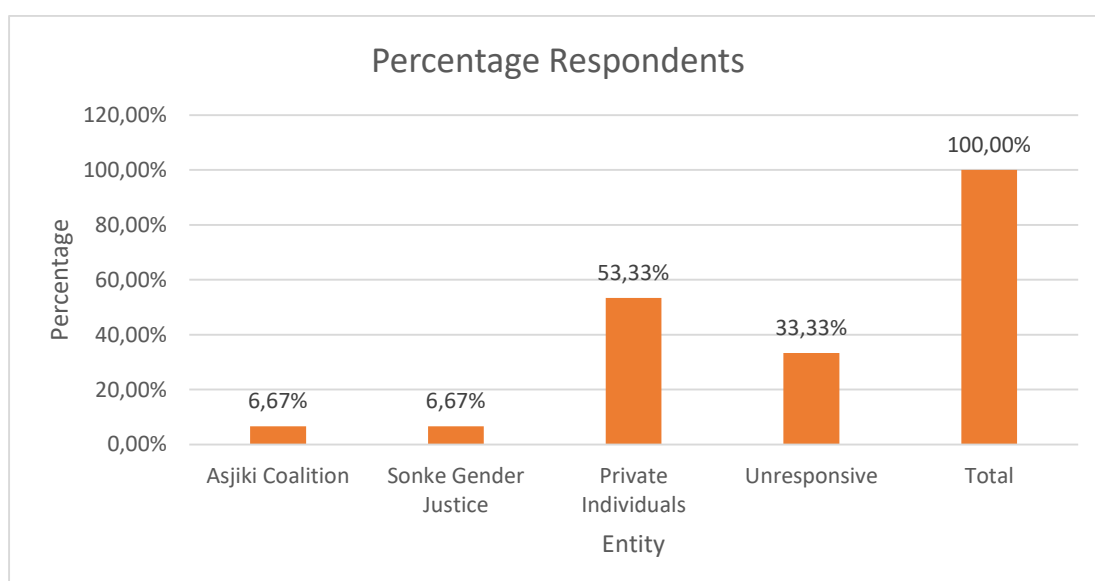
4.1 Introduction

This chapter will present the researcher's interpretations of findings from the primary data. Information provided in the chapter includes: the response rate, presentation of findings in the format of charts, graphs, and tables. Themes derived from a coding process will also be discussed. The participants who were representatives of NGOs are cited as PS and PA from Sonke Gender Justice and Asjiki, respectively (P represents Participant and the second letter represents the first letter of the name of the organisation). The other participants are referred to as P1-P8, these are the participants that represent public perception.

4.2 Response rate

The researcher targeted a response rate of 70% and the response rate of 67% was obtained because many sex workers and or would-be willing respondents were not available due to Covid-19. The fact that the target was not reached did not have material impact on the findings and conclusions of the study. A breakdown of the response rate is represented in figure 4.21 below

Figure 4.2.1: Response Rate



4.3 Presentation and Analysis

This section is a presentation of the primary data in line with the interview schedule, which consisted of biographical and content questions data (See Appendix A). The respondents included religious individuals, sex workers and academics.

4.3.1 Data from individual interviews

4.3.1 What legislative framework regarding sex work do you stand for and why?

Both Sonke Gender Justice and Asijiki Coalition stand for the decriminalisation of sex work. As stated by PS:

They stand for an environment that is enabling and safe. An environment that fosters labour rights and workers' rights, and lastly an environment that fosters urgency.

This was confirmed by PA who stated that:

Once the sex industry is decriminalised I can be registered under the labour laws so that when I reach 65 years I can retire and benefit like other Gogo's.

The abovementioned views are in line with the Pillay and Johnson's (2021: 2) assertion that: "South Africa must move more rapidly to a clearer policy on the decriminalisation of sex work and of injecting-drug use". P3, P6, P7, P8 being 50% of the respondents, representing the general public, were also of the view that the fitting model for South Africa is decriminalisation of sex work. Therefore, the study found that South African sex workers prefer the Nevada model. The majority of the participants stand for decriminalisation of sex work as it provides them with an environment that is safe and inhabitable for humans to operate. This view is also upheld by scholars such as Lazarus and Chettiar (2011: 1601).

4.3.2 What social issue is sex work decriminalisation – is it a human rights issue, gender biased or moral issue etc.?

Asjiki Coalition and Sonke Gender Justice agree that sex work is a human rights issue. PS explained that:

Sonke views sex work as a human rights issue. It is an issue that needs a social justice frame. It is an issue that requires a human rights based approach but it is not a human rights violation because we stand on the fact that all those who enter the industry do so consensually and that they are over the age of 18.

PA concurs:

Sex work as a morality issue is part of the mind-set that could be changed by decriminalisation and thus shine light on the human right infringements brought by the criminalisation of the industry.

Scholars such as Abel (2010: 35) agree with PA and PS' assertions as they state that "sex workers must have the right not to be subject to public harassment, such as stigmatisation, rape, violence, denial of health care, denial of protection by and under the law and denial of alternative opportunities. This is seen as a human rights issue." Therefore, the violation brought about by the law that criminalises the sex workers results in the human rights of sex workers being compromised and thus making it a human rights issue. This view was further upheld by 40% of the respondents from the general public P3, P4, P7 all agreed that sex work is a human rights issue. The conclusion that can be drawn from these responses is that sex work is a human rights issue because the violations that sex workers experience will always affect the human rights of the sex workers.

4.3.3 Does decriminalisation without regulation bring about negative effects such as Human Trafficking?

Both, Sonke Gender Justice and Asijiki Coalition, agree that human trafficking and sex work should not be used to interlink as they are two completely different industries.

PA explained that:

There should not be a confusion between sex work and human trafficking as these carry two completely different laws and thus do not affect each other... Once the industry has been decriminalised sex workers will be able to report cases of human trafficking or exploitation in the industry.

PS also agrees with this and explains that that:

We as an organisation stand for a constitutionally aligned decriminalisation which simply removes the criminalisation of the industry and brings about more protective laws for those who operate in the industry. [Furthermore] through working with the police to create safer working environments, which also allows sex workers to report any human trafficking that they may pick up on while they are working.

Scholars, Abright and D'Adamo (2017: 122) state that "by removing punitive laws that prevent reporting of exploitation and abuse, decriminalisation allows sex workers to

work more safely, thereby reducing marginalisation and vulnerability.” This corresponds with the statements made by PA and PS. Feingold (2005: 28) also highlights that “some efforts to prohibit prostitution have increased sex workers' risk to the dangers of trafficking, though largely because lawmakers neglected to consult the people the laws were designed to protect.” This bringing us to the conclusion that decriminalisation of sex work does not in any way enhance human trafficking numbers, instead the criminalisation of sex work allows the risk of human trafficking cases the opportunity to silently grow. The criminalisation of sex work makes the reporting of crimes by sex workers impossible and thus makes the country an inhabitable space for human trafficking.

4.3.4 Why do you think the president specifically chose the Gender-based violence platform to announce the decriminalisation in South Africa?

Asjiki Coalition and Sonke Gender Justice highlight that there is no better platform than the GBV platforms to address the issues affecting sex workers.

PS explained that:

Part of the reason why this platform was used was because at the GBV total shutdown it was highlighted that sex workers were one of the most marginalised and violated women in the country and thus it is what Sonke lobbied for... Policing GBV is less costly than policing sex work and thus could be an easier route for government.

PA further breaks this down and explains that:

Most of the issues sex workers face are brought by men and their patriarchal behaviour. ... Viewing sex work as a gender-based issue is necessary because of the patriarchal issues within the industry itself.

P3, P6, P7 & P8 all agreed that the president using the GBV platform would bring about change and that it would be successful.

P6 stated that:

It extended their voice to be heard and minimised their risk of being attacked, abused and killed whereby legal rights are now considered towards sex workers whereby many organizations are now in support in GBV.

Dunkle and Decher (2012: 22) state that “SWs suffer alarming levels of physical and sexual violence perpetrated by partners, clients, police, and other actors” hence the link between sex work and the GBV platform. According to both, Sonke and Asijiki, sex workers experience the highest risk of GBV because of their vulnerability and lack of protection which is caused by the criminalisation of sex work. This provides a reason as to why this platform was selected. The GBV platform represents and stands for the voices of sex workers who do not have the privilege to speak up for themselves as a result of the criminalisation of the industry. This leaves them vulnerable to the effects of GBV.

4.3.5 What are the perceptions of South Africans and do they hinder the decriminalisation of sex work?

The participants who responded to the online questionnaire gave an overview of what the public perceptions are towards sex workers that contribute to hindering decriminalisation for the industry in South Africa.

P7 stated the following:

South Africa is still in the grey area regarding this, as majority hold or account to moral value in culture and religious views.

P4 explained that:

People view this as lack of integrity

This is linked to what PA highlighted about public perception:

Many want to view sex work as a moral issue ... Sex work as a morality issue is part of the mind-set that could be changed by decriminalisation and thus shines light on the human right infringements brought by the criminalisation of the industry

However, P2 explained that

The fight to decriminalise sex work is about giving men the right to have sex with who they want when they want, not about giving women the right to have sex and be paid for it but men.

P2 concurs with the views of scholars Kissil and Davey (2010 :7) who argue that sex work is “violence perpetrated against women—violence not only in the practice of

prostitution but more fundamentally in the very idea of “buying sex” which is inextricably linked to a system of heterosexuality and male power.” Scholar, Kesler (2002: 19) shared the same sentiments arguing that sex work is “the absolute embodiment of patriarchal male privilege”.

The above mentioned arguments indicate that the perceptions shared in South Africa are shadowed by the morals values which are influenced by religious and cultural views. The other view illuminated by the radical feminist is the view that sex work is the encouragement of male patriarchal power and prioritises only the needs of the man.

4.3.6 Effects of the criminalisation of sex work in South Africa?

P6 highlighted that:

Criminalization of sex workers maximises their vulnerability towards abuse, violence and murder.

P5 went on to explain that:

It affects sex workers access to health care, the criminalisation of sex work makes it possible for sex workers to be harassed, abused and mistreated with no access to justice.

Scholars Scorgie et.al (2013: 8) also highlight that criminalisation fuels the exclusion of sex workers from acts that are meant to aid society; “sex workers described being excluded from money-lending projects, even those dedicated to developing women.” This being in agreement with the statement made by PA who explained the effects of criminalisation during the Covid-19 lockdown. PA stated that:

The pandemic and its lockdown outcome has harshly affected the industry as unlike organisations that could work remotely sex workers could not, even with the Covid-19 relief fund many sex workers still could not benefit from that as they did not qualify due to factors such as not having a bank account... Sex workers do not have bank accounts because they cannot apply for one as they do not have formal payslips.

In conclusion this reveals that more negative effects of criminalisation become apparent when members of society who are meant to be dependent on government

as sex workers do not benefit because of the criminalisation barrier that results in their exclusion from state support.

4.4 Conclusion

This section of the study has presented all the primary data collected from the interviews conducted with different interest groups including representatives from civil society, and individuals that are part of advocacy groups such as Sonke Gender Justice and Asijiki Coalition. The following section will relay overall conclusions based on the study, and make necessary recommendations relevant to the quest for decriminalisation.

Chapter 5: Findings, conclusions and recommendations

5.1 Introduction

This chapter concludes the study and provides recommendations based on the findings discussed in the dissertation. The author also points out areas for further research.

5.2 Findings 5.2.1 Findings from secondary data

5.2.1.1 Objective 1: Sex work, GBV and influential debates

The secondary data revealed that sex work is a human rights issue as the criminalisation of sex work infringes on the basic human rights of a sex worker as explained by The Commission of Gender Equality. However, the Gender Based Violence platform is used to advocate for the decriminalisation of sex work in South Africa because GBV is prevalent in the lives of currently criminalised sex workers. GBV is a major threat to the industry workers thus it is more effective to use the GBV platform when addressing issues pertaining to sex workers.

The study analysed secondary sources for information on case studies of sex work modules that have been implemented in other countries. These revealed the uniqueness of South Africa to other contexts as a one size fits all notion cannot be applied. However, the case studies revealed that decriminalisation seems to be the easiest form to implement as it does not require a significant amount of law reform except the lifting of current criminalising laws, which makes it a better fit for South Africa. The secondary data further explained the role of gender in debates that are concerned with sex work. The sources revealed that gender dynamics and racial dynamics in South Africa have contributed immensely as this is also what led to sex workers experiencing high rates of GBV. The role of women in the South African society also contributed to the lack of urgency when it came to managing the sex industry through law reform as the priority was historically not focused on women. Other leading debates in this study emphasised the need to acknowledge the voice of the sex worker and not assumptions of what others think sex workers need when exploring options ranging from understanding the effects of criminalisation, to understanding the differences between legalisation and decriminalisation. While also analysing whether South African political parties have fully grasped the message sent by the sex workers, the study noted how key political parties have not to fully

understood and incorporated what sex workers and advocacy groups have been asking for.

5.2.1.2 Objective 2: Perception and understanding of sex work in South Africa

The secondary sources on social perceptions led to a better understanding of why decriminalisation was found to be the best solution for South Africa, by President Cyril Ramaphosa. Furthermore, it highlighted on how the lives of sex workers would have been different during the Covid-19 lockdown if sex work was not criminalised in South Africa. The data revealed that fear around legalisation was mostly linked to sex workers not wanting to be documented as this could possibly lead to easy identification by people they may not be willing to share information about their employment with. The secondary data also provided examples of the possible lives South African sex workers could have lived if their work was not criminalised, by looking at case studies of countries that do not criminalise sex work.

5.3.1 Findings from Primary data

5.3.1.1 Objective 1: Sex work, GBV and influential debates

The primary data revealed that the GBV platform was strategic because GBV is prevalent in the lives of sex workers. It manifests through abuse and adds to the trauma of stigma from society, healthcare workers, and even the law itself. P6 highlighted that this platform might have been used because of the attention it is able to draw, thus was effective in the process of advocating for sex workers.

PA sympathised with the idea that GBV is prevalent in the lives of sex workers by stating:

This platform was used because sex workers have always been highly affected by gender-based violence.”

PS further explained that this platform was also able to highlight the fact that sex workers are the most “marginalised and violated women”, thus helping to spread awareness. PS further explained that President Cyril Ramaphosa utilised this platform to address sex industry concerns because this is what Sonke Gender Justice lobbied for following the 2019 GBV shutdown which revealed that sex workers were the most vulnerable women to the effects of GBV.

Sex worker advocacy groups discussed debates around why the attempt to decriminalise sex work in 2010 failed and how Covid-19 affected sex workers due to criminalisation laws. The advocacy groups mentioned that the attempt in 2010 did not follow through because it was all a political game and when it was found that the World Cup would not bring an influx of business to the industry it was no longer a matter of urgency as it would not bring any new financial gain to the country. They also spoke about the realities faced by sex workers during the Covid-19 lockdown and how the criminalisation of sex work prevented them from getting access to any financial assistance offered by government.

The interview data also revealed information on debates around the impact of human rights of sex workers in historical and current debates. The majority of the respondents explained that the human rights of sex workers have historically not been prioritised. This has led to the recurrence of lack of social justice and an imbalance in socio-economic factors, which is the main cause for the current standing of sex workers.

5.3.1.2 Objective 2: Perception and understanding of sex work in South Africa

The primary data collected reflected that perceptions about sex work reflect that the aim of the industry is to satisfy the needs of the men and it is not about women choosing to be sex workers. This was stated by P2, and P4 went as far as saying that South Africans' view the industry as one that lacks integrity. Participants also noted that the moral and religious views of the general public are what make it so difficult to manage this industry. They noted that further research has to be explored in South Africa on how this can be tackled. Data collected also revealed that using the GBV platform to tackle sex work could be effective as it would challenge the views of the radical feminists due to the plight of attention given to the industry through the platform which could work to the benefit of the sex workers. PA agreed with this suggestion and noted that decriminalisation could be used to readjust negative perceptions through destigmatising the industry by decriminalising.

5.4.1 Conclusions

5.4.1.1 Objective 1: Sex work, GBV and influential debates

According to the data collected, sex work was attached to the GBV platform because this notion was driven by what sex worker advocacy groups felt would be the best way to get the needs of sex workers recognised. This platform was also used because of the

high number of sex worker cases found under GBV statistics and thus could appeal to a crowd that focuses more on the lives and safety of women rather than focussing on the type of work they do. By using this platform, the social injustices faced by sex workers were amplified. However, as expressed by the participants, this does not take away from the fact that sex worker injustices are human rights violations and should be recognised in that manner.

The South African government has committed itself to decriminalisation. This decision was largely influenced by the views and recommendations of sex worker advocacy groups such as the Asijiki Coalition and Sonke Gender Justice. They have advocated for the implementation of this model. Those who represented public perceptions also agreed that decriminalisation would be the best outcome for the sex industry. The conclusion that can be drawn in relation to policy direction would be the decriminalisation of sex work. This is also stated in the National Development Plan as a means to fight HIV/AIDS.

The collected data presented that fundamentally the problems that occur in the lives of sex workers stem from the significance of gender dynamics in the country. The voices of women in South Africa were historically undermined and not prioritised as the voices/needs of men were. Government prioritised the needs of the superior gender and thus the needs, desires and views of the male gender were always put at the forefront even if this meant infringing on the lives of women. Even when looking at failed attempts to decriminalise in the past, law reforms failed because decriminalisation was not a male demand, but rather one driven by women. This priority has been redirected with the concerns driven by the GBV platform, hence the firm decision to decriminalise, advanced by both, sex work advocates and the South African Government

5.4.1.4 Objective 2: Perception and understanding of sex work in South Africa

The data collected indicated that much more research is required to draw a clearer indication of the perceptions of sex workers. However, public perception has indicated that sex workers are undermined because of the personal morals and values of individuals in the country and that this has contributed to making sex workers

vulnerable to GBV because of their exclusion from the “dignified community” or those of a good moral standing.

5.4.2 Recommendations

5.4.2.1 Objective 1: Sex work, GBV and influential debates

The South African government needs to make knowledge on sex worker rights more accessible so that sex workers know when they are being wrongfully discriminated against. They should also ensure sensitisation training for public health workers so that they know how to best assist sex workers even before law reform has occurred, to help reduce stigmatisation and enhance social justice in the country. Furthermore, the government needs to work on drawing examples from countries that have a similar historical backgrounds and economical standings to South Africa so that the suggested law reform is sustainable and easily attainable. Working on customizing a model that has been inspired by similar countries may also be a great way in which government could create a solution for this industry in South Africa. Government could also work on having dedicated courts for sexual offences courts that focus on regulating the injustices that are faced by sex workers. They should also facilitate training on supportive law enforcement that focuses on assisting sex workers.

5.4.1.2 Objective 2: Perception and understanding of sex work in South Africa

The South African government needs to work on promoting conversations around sex work in more conservative settings, such as through involving church leaders and traditional leaders to help change the mind-sets that drives the discrimination of sex workers through moral and religious policing. Furthermore, they should implement sensitisation and awareness programs for members of the public to better educate themselves. This can be done through reforming the way various forms of media portray sex workers.

5.5 Implications for further research

Further research has to be conducted on the sustainability of decriminalising sex work in South Africa and what legislative changes this would require for the industry.

5.6 Conclusion

The aim of the dissertation was to analyse and evaluate the impact of the historical debates around sex work in South Africa. Whilst also looking at what different legislative reform models (Partial decriminalisation, Full Decriminalisation and

Legalisation) would mean for South Africa and whether they would be sustainable. Furthermore, the study evaluated the role of advocacy in the quest for law reform and consequently, examined why decriminalisation is the model that has been most supported by advocacy groups. Lastly the study sought to assess the role of different perceptions regarding this industry and the role they play in the process of legislative reform in South Africa. The researcher also studied the impact of historical debates and known legislative models in sex work, before analysing the roles of different perceptions on the process of legislative change.

The researcher explored existing literature that addressed the aforementioned subjects and further spoke to different stakeholders from different advocacy groups and civil society. It was found that sex work is widely perceived as a human rights violation but is address on GBV platforms because sex workers are heavily affected by its effects, as they are more prone to GBV risk. Furthermore, the role of the current standing law being criminalisation was explored and it was found that this law is what drives the outcomes of GBV. The criminalisation of sex work results in sex workers being denied access to basic services that serve human rights needs such as access to health care, access to safety and security, access to law enforcement and access to labour rights. Furthermore, criminalisation exacerbates the effects of stigmatisation towards sex workers and further leaves sex workers vulnerable to violation by their clients and general members of society. These effects are what have led to the advocacy and promises of legislative reform as implied by the president's commitment to decriminalise sex work. It has been understood that decriminalisation was the model found to be best suited for South Africa as it is the one model that sex workers advocate for. Furthermore, this model would not require extensive resources but rather it would just require the lifting of all criminalising laws and allow for sex workers to be included in other beneficial laws that all other South African have access to.

Perceptions about the sex work industry have also revealed that sex workers do not advocate for the legalisation and partial decriminalisation of sex work as these two models would lead to regulations that are not favourable to them. Furthermore, those models are likely to bring about regulations that infringe on their preferred working processes and their right to privacy.

In conclusion this dissertation found that historical debates have played a major role in shaping the current legal standing of the sex industry in South Africa, and why it has been so difficult for law reform to happen for the sex industry. Factors such as the role of women which are mostly influenced by religious and cultural norms inform the moral beliefs of many South Africans. Thus, governing structures have also fuelled the persistence of criminalising laws that have proven to form an unjust society. Unjust due to the fact that it is these laws that lead to sex workers' limited access to basic human rights.

The full decriminalisation of sex work in South Africa as promised by President Cyril Ramaphosa is long overdue, it is the best way in which government can cater to the needs of those who belong to the sex industry while also attempting to make the South African society more accepting to this industry. It is a positive sign that some members of society have expressed that there is a need for law reform in order to truly manage GBV-related effects that result from criminalisation. Split perspectives persist as some feel that there should be regulative restrictions for the industry. However, the major point of agreement is on the fact that criminalisation of the industry does not serve South Africa in the best manner. From the findings, it has also been found that majority of the participants who represent the society however agree with the notion for full decriminalisation of the sex industry, this being what sex workers and their advocacy groups see as the only solution.

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