Prostitution, public health, and human-rights law

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), created in September, 1981, is now open for signing and ratification by nations. Should the protocol come into force, women will be given the right to complain to the United Nations (UN) about breaches of the Convention and, in particular, discrimination in the provision of health services. For women who are prostitutes, however, and whose legal status is uncertain, it is unlikely that the Convention will be of substantial benefit.

Prostitutes are entitled to enjoy universal human rights. Because their legal status is complex, and compounded by international human-rights law, prostitutes are rarely in a situation where health protection or promotional activity could be expected to succeed. The view that linking health policy with respect for human rights will result in a better health outcome is gaining acceptance. But when human-rights instruments are applied uncritically, in ignorance of the larger social picture, measurements of improved health outcomes may be less certain. Rights-based questions about public health should be asked and failings in rights instruments must be confronted.

Prostitutes overwhelmingly work outside the law. This has implications for their health that are hard to quantify. In one Australian study carried out in 1998, the prevalence of sexually transmitted bacterial infections was 80 times greater in 63 illegal street prostitutes than in 753 of their legal brothel counterparts. All the illegal street prostitutes with infections were in the group who had not been screened for infections in the past 3 months, whereas none of those screened in the last 3 months were infected. In legal brothels women are given a strong legal incentive to be screened monthly, and the use of condoms is compulsory. Legally sanctioned encouragement of prostitutes to use condoms or access screening services, both major determinants of the prevalence of sexually transmitted diseases, is impossible because of their illegal status. Occupational health and safety law is applied to prostitutes in lawful brothels but not to their counterparts on the street.

Vulnerability to contracting HIV has been characterised as "exercising little or no control over one's risk of acquiring HIV infection…vulnerability is magnified by societal factors such as marginalisation or discrimination". This account encapsulates the situation of most prostitutes. In this context rights-based objections to individual programmes such as compulsory testing, for example, have some, but limited, worth. A failure to acknowledge a background of general deprivation of rights undermines the impact of these objections.

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Prostitutes are yet to enjoy universal human rights

International law that deals with prostitution targets trafficking in women for the purpose of prostitution, and counterpoises prostitution with human dignity. The 1949 Convention for the Suppression of Traffic in Persons prohibits the exploitation of prostitution of a person even with the consent of that person. CEDAW asks States to suppress trafficking in women and exploitation of prostitution. Nowhere is trafficking defined.

In May this year the Council of Europe adopted a recommendation which stated that trafficking in human beings for the purpose of sexual exploitation includes the procurement of individuals, even with their consent. Prominence is given to the rehabilitation of the prostitute and punishment of those responsible. This is despite the comment in February this year from Radhika Coomaraswamy, the UN Special Rapporteur on violence against women, that lack of consent should be an element of trafficking.

In a 1998 International Labour Office (ILO) study on prostitution in southeast Asia investigators noted that for adults it was possible to distinguish between forced and voluntary prostitution. But, they asserted, "It is outside the purview of the ILO to take a position on whether prostitution should be legalized. The question of legalization is thorny because the human rights concerns are difficult to disentangle from concerns over morality, criminality and public health threats".

Many prostitutes would not find it difficult to disentangle the human-rights issues. Social history explains the legal emphasis on trafficking and rehabilitation, and constructed similarities to slavery. But this is no longer a sufficient explanation. Perhaps the prohibition of exploitation of prostitution is a protective measure necessary when prostitution is illegal, but substitutes poorly for labour rights. This is not a basis upon which to carry out a health programme for prostitutes. No international treaties promote the rights of willing workers. The failure to recognise the distinction between forced and unforced prostitution allows the claims of prostitutes' rights groups to be ignored. This expression of international law undermines efforts to reduce the incidence of HIV and AIDS and discriminates against prostitution on the basis of occupation. Anti-Slavery International and the Network of Sex Work Projects argue that the redefinition of prostitution as work is vital if prostitutes are to enjoy equal human rights, in particular, their rights as workers.

If it is possible to conceive that a person can enter prostitution voluntarily as the best of available options, then it is evident that there is a problem in international law. This problem contributes to the vulnerability of prostitutes to disease. It is therefore within the remit of health practitioners to advocate for a critical review of human-rights law. Rights instruments should not contribute to the vulnerability of populations to disease, they should aim to diminish this vulnerability.

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