

Sweden's Ban on Buying Sex: What Happened to Sex Workers' Rights?

Excerpt from a presentation, and article by Jesper Bryngemark

Hi everyone. My name is Jesper and I'm here to talk about how the Swedish law violates sex workers' rights, because this is a subject that is becoming increasingly important and increasingly relevant on a European level. Sweden has a tradition of exporting social policies, because we have a very strong image of ourselves as the social conscience of the world.

For instance, in 1979 Sweden banned child abuse — whipping your kids was made illegal. We thought this was very fine and good, so then this policy was promoted to other countries. So we know how to promote policies, and now Sweden is promoting its policy on prostitution as a sequel.

One reason this law became a reality in Sweden in the first place was that so few sex workers were ready to go public. Prostitution traditionally has been invisible in Sweden. Connected to this invisibility is the fact that the sex workers' movement in Sweden is very, very weak. And feminism is very, very strong in Sweden. The law looks nice in the eyes of politicians because it's the same old "abolitionist" bullshit, but it's dressed up in nice feminist clothing. Maybe if more sex workers had gone public and said: "Hello, you are stepping on our fundamental human rights by doing this," then maybe there would have been a chance to stop it at its root.

Sex workers have been opposing the spread of this law internationally, however. They have been going to Norway to help their Norwegian colleagues fight this law, and they are going to Finland to speak up against the law because Finland is also considering adopting the Swedish model. So the Swedish promotion campaign will be coming to your countries — it may even already be happening. Let me make it clear: You have to speak up before it's too late, because this model is very persuasive. So in order to combat this, stand up and make yourselves heard.

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Introduction

In 1998 the Swedish Parliament passed a law that prohibits the purchase of—as well as the attempt to purchase—sexual services. The law entered into force January 1, 1999. From an international legal perspective the law was unique in that it put criminal sanctions on the buyer, but not the seller in commercial sexual transactions.¹

Before long this law became known internationally as the "Swedish model," and like any issue connected to prostitution it soon became the subject of polarised debates in Sweden and in other countries. Advocates of this new legal construction celebrated it as a progressive solution to the "problem of prostitution," whereas adversaries described it as inefficient, moralistic and possibly harmful to sex sellers.

Historical Perspective

To put this law in a context, a few things should be mentioned about Sweden. Since the First World War, Sweden has been under predominantly social

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Protesters chanted slogans in French and in English.

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democratic rule. The concept of social welfare through governmental rule is relatively strong and widely accepted. Compared to most other countries in Western Europe, the commercial trade in sexual services is traditionally not a very visible phenomenon in Sweden; for instance, there are no red light districts or publicly visible brothels. The sex workers' movement is weak compared to, say, Germany or The Netherlands.

Sweden also keeps up a tradition of exporting social policies. During the rise and expansion of the Swedish welfare state, Sweden mostly exported models of economic governance. It has been argued, however, that as Sweden's welfare system began to deteriorate by the end of the 1970s, focus changed to exporting moral policies, which are arguably cheaper.² One example of such a moral policy is Sweden's ban on child abuse in 1979, which in some contexts was considered proof of the progressiveness of Sweden's social policies.

When it comes to governing prostitution, Sweden has applied most known models of individual responsibility through the last 150 years. By the latter half of the 19th century, prostitution was subject to municipal regulation in most larger Swedish cities, as was the case in many other Western European countries at the time. Female sex sellers were subjected to mandatory registration as well as mandatory medical inspections. Those who did not comply risked prosecution under the vagrancy law. By the end of the First World War, however — following a general turn to abolitionism in continental Europe — the registration system was abolished. The focus of political arguments shifted away from prostitutes, to the procurers of prostitution. Nevertheless, female sex sellers were still arrested under the vagrancy law.

And the media ate it up!

PHOTO: A. Sorfleet



The vagrancy law was abolished in 1964. From this point onward, prostitutes disappeared from Swedish criminal law and became the concern of different kinds of social legislation. The laws on procurement remained, but it seems that they were now more harshly applied. Until this day, Swedish laws on procurement are much more strictly enforced than in the neighbouring Scandinavian countries where similar laws apply. Whereas tabloid newspaper publishers in Norway and Denmark do not usually face prosecution for publishing ads for sexual services, publishing such ads in Sweden would constitute a clear case of procurement following a court case in the late 1970s. (NJA 1979 p. 602) Since then, such ads are not published in Swedish newspapers.³

The 1980s saw the birth of a new feminist legal discourse where prostitution, among other things, was increasingly constructed as a form of “structural violence” against women. Traces of this discourse can be found as early as 1984 in a law reform on sex crimes, and to some extent this discourse also affected the laws against procuring at the time. In 1998, however, an explicit analysis of systemic patriarchy was used by a Government enquiry commission to introduce a new subject of individual responsibility — the client. The result was a new ban on the purchase of sexual services:

“Den som mot ersättning skaffar sig en tillfällig sexuell förbindelse, döms — om inte gärningen är belagd med straff enligt brottsbalken — för köp av sexuella tjänster till böter eller fängelse i högst sex månader.

För försök döms till ansvar enligt 23 kap. brottsbalken.”

In English:

“Anyone who provides himself with a remunerated temporary sexual relation shall be sentenced — if the act is not punishable according to the Criminal Code — for purchase of sexual services to fines or at most six months in prison.

Attempted purchase of sexual services is punishable according to the 23rd chapter of the Criminal Code.”

The law contained this wording until 2005 when it was incorporated into Sweden's Criminal Code (*Brottsbalken*). In addition to editorial changes, it was added that even cases where someone other than the buyer pays — or offers to pay — for sexual services are punishable.

The issue is sometimes brought up to what extent the remunerated sexual relation must be “temporary,” mostly by those who aim to criticise the law by pointing to its alleged logical flaws. The question is then raised whether a buyer in a stable commercial sexual relationship, who repeatedly sees the same seller and pays him or her for sexual services, is to be sentenced or not. In its law proposal for the 2005 alteration of the law, the Government admits that this issue is potentially problematic, but concludes that the word “temporary” should be kept in the law for reasons of terminological consistency (laws against procuring use the same wording). According to the Government this, however, does not imply that regular clients would be exempt from prosecution. (prop. 2004/05:45, pp. 104-105) Until today this issue has not been settled in any court and therefore remains unresolved.

The Law of 1998: Background

The ban on the purchase of sexual services originates in a Government enquiry commission report published in 1995 which proposed penalising not only the purchase, but also the *sale* of sexual services, as well as the production of pornography in cases where the final product “*depicts intercourse or is grossly offensive.*” The commission’s task was to investigate prostitution, and its findings largely consist of narratives that portray prostitution as a kind of gendered sex-slave trade. When entering this trade women are transformed into prostitutes who—aside from selling sex—have irreparable damages in common. According to the commission these damages stem from either earlier physical and mental violations; from prostitution in itself; or from both. (sou 1995:15, pp. 137-149)

The commission concluded that society must take a stance against such atrocities. Interestingly, the commission recommended that both parties of the transaction be equally punishable. According to the commission a law criminalising both the sale and purchase of sexual services would give women an incentive to stay out of the sex trade, whereas men would refrain from buying sex out of fear of getting caught. Arguments about “the women” (*i.e.* the sellers) being victims who should not be held responsible for the existence of prostitution were dismissed with the following argument: If we agree that “the men” (*i.e.* the clients) should be punished then we cannot conclude that the women should go free of



PHOTO: Quentin Deltour (Espace P)

Sex workers start the protest with a chant.

punishment. The women may be victims in the sex trade, but even the men can be seen as victims of a larger oppressive structure. This means that you cannot escape responsibility solely by means of your status as a victim. (SOU 1995:15, pp. 224-228)

Such arguments, however, gained little adherence by the Government. In its law proposal of 1998, the Government instead argued that it would be wrong to criminalise the “weaker party” (*i.e.* the seller) in prostitution. According to the Government there is no doubt that prostitution is harmful to society as well as to individuals. It would, however, suffice to criminalise the purchase (and the attempted purchase) of sexual services. Such a law would, in short, send a *moral message* to the population who would then hopefully learn that paying for sex is *wrong*. (prop. 1997/98:55, pp. 104-107)

Upon reading the Government’s law proposal, it becomes evident that the feminist or anti-patriarchal kinds of arguments that were so fundamental to the recommendations put forward by the commission in 1995 were not useful to the Government in 1998. Instead, the harmfulness of prostitution was now being described in terms of criminality and social despair, and the proposal was given to the Parliament without a trace of feminist arguments to support it. Still, in contemporary Swedish debates the law is generally defended by feminists, and is generally considered to be a product of feminist politics. A recent trend has, however, been to emphasize the alleged successfulness of the law as a tool in the struggle against sex trafficking.⁴

It should be noted that none of the visions put forward in the arguments above, neither before nor after the law was passed, is founded in empirical research. The preparatory documents give no

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PHOTO: Maj Christensen

Protesters talk about human rights.

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clue as to how the proposed measures would lead to the desired outcomes; the connection instead seems to be based on ideological reasoning and common-sense arguments. New claims that the law hinders sex trafficking also seem to be generally accepted without any reference to research.

Measuring the Law's "Effects"

I am sometimes asked to say something about the practical effects of the ban on purchasing sexual services. This is not an easy task: A law is merely a document; it neither talks nor acts on its own. The effects caused by the existence of a law are not particularly easy to assess. Yet political discourse often attributes laws with such active abilities and the law becomes a metaphor for such phenomena as police actions, court sentences, etc. Even within this kind of discourse, however, it is more or less impossible to assess the effects or results of the 1998 law, as it still has not been officially evaluated despite it being characteristic of a social experiment.

A few reports have been written, although none of them meet acceptable scientific standards for methodology. Two Swedish official reports (Socialstyrelsen 2000 and 2003) state that street prostitution appears to have decreased, but that no causal link can be drawn between this decrease and the law. The question, "What happened to the sex sellers who stopped working from the street?" is raised in both reports, but is left unanswered. According to the same reports, clandestine prostitution has increased since the law entered into force.

Soon after the law was passed, the Swedish Government put political pressure on neighbouring Norway to adopt this new legislation. In response, the Norwegian Government appointed

a commission to investigate the matter. The result was a report (Stridbeck *et al* 2003) which concluded that the only scientifically-proven effect of the law is that a majority of the Swedish population are in favour of it. Thus, the ambition to send a moral message to the population can be said to have been successful in part, but the question of whether or not the other goals have been met remains unanswered.

The law has proven difficult for courts to put into practice. Unless the client admits to the action, the prosecutor must present proof for two assertions:

1. that payment has been offered or given, and
2. that this payment relates to a sexual act.

In practice this means that police must catch the buyer and the seller in the act, and preferably record the bust with a video camera. A report issued by the National Police Board (Nord/Rosenberg 2001) instructs police to confiscate the condoms they find, as these can be used as evidence. Critics claim this practice gives sex sellers an incentive to not use condoms. According to the same report there are indications that since the law entered into force sex sellers have been exposed to more violence. Again, it is unclear what conclusions can be drawn from these claims.

In a report from 2001, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) expressed concern that the current legislation may have rendered prostitutes more vulnerable, and asked the Swedish Government to evaluate the effects of the law. (CEDAW 2001:79) The Swedish Parliament recently voted in favour of a proposal to undertake such an evaluation, but to my knowledge no investigation into the matter has been initiated as yet.

"Swedish Model" for Export

The Swedish Government has been promoting the "Swedish model" not only to Norway, but to governments around the world as an attractive alternative to other models for controlling prostitution. Whenever the adoption of Sweden's "solution to the problem of prostitution" has become subject of debate in any other country, Swedish media has been eager to report about it. There have also been several claims that efforts to export the law have been successful—that governments of other countries have adopted laws

similar to the Swedish one. Investigation into the legal sources, however, shows that these assertions are not well-founded. The two examples mentioned most in this context are Lithuania and South Korea.

In the summer of 2005, Swedish media reported that Lithuania—inspired by Sweden’s example—had amended its Criminal Code to make the purchase of sexual services illegal. But it turns out, Lithuania’s Criminal Code (Article 182) explicitly makes both the sale and purchase of sexual services equally punishable. Since sellers of sexual services do not go free, this legislation clearly is not an instance of the Swedish model. Instead, it is a classic example of a prostitution prohibition law.

For the last couple of years, representatives of the Swedish Government have been pointing out that South Korea has adopted Sweden’s law on prostitution.⁵ But an investigation into the matter reveals that in 2004 South Korea—after having been shamefully added to the US State Department’s “Watch List” of countries that are doing too little to counter trafficking—adopted two new laws against prostitution and sex trafficking.⁶ Article 4 of South Korea’s *Act on the Punishment of Procuring Prostitution and Associated Acts* criminalises any involvement in prostitution—be it selling, buying, or procuring. Article 6 does, however, exempt “victims of prostitution” from punishment. The word “victim” is defined in Article 2:1:4 as someone who:

- is “forced to sell sex”
- sells sex under influence of illicit drugs provided by a third party
- is underage or disabled, or
- “is trafficked for the purpose of prostitution.”

It is clear that South Korea’s laws differ considerably from Sweden’s original model. The South Korean laws criminalise the sale of sexual services, but make exceptions for people who can be construed as “victims,” whereas the important feature of the Swedish model is that sex sellers are not held legally responsible at all. South Korea’s legislation appears to have more in common with the classic idea of prohibition than it does with the objectives behind the Swedish law. It therefore still looks like hopes to make the “Swedish model”

a product for international export have yet to become real. □

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Footnotes

1. In contrast, laws criminalising the buyer as well as the seller are common all over the world, for instance in the United States and throughout Asia. Such a set of laws is usually referred to as “prohibitionist” legislation.
2. For a more elaborate discussion on Swedish social policies and “symbolic legislation” from the 1970s onwards, see Tham (2001).
3. For historical accounts on Swedish prostitution governance, see Svanström (2006), Söderblom (1991), Frykman (1993) and Könshandeln (1995).
4. One example (out of thousands) can be found in *Rikskriminalpolisen* 2004:32.
5. See, for instance, Ekberg 2004:15.
6. US Department of State 2001:15.

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Banners and placards soon block the entrance.

PHOTO: Maj Christensen



PIRKTI MOTERĮ – GĖDINGA!

Be to, anksčiau ar vėliau VISI tai sužinos*



Dabar baudžiamas ir PERKANTIS prostitucijos paslaugas asmuo:

PHOTO: bow4rain

“It is Shameful to Buy a Woman!”
“Moreover, sooner or later everybody will find out about it.”

Curb Demand for Sex

NOVEMBER 14, 2005 — A huge publicity campaign has been launched in Lithuania aimed at lowering client demand for prostitutes. The campaign includes street posters with slogans such as “*She could be your daughter, sister...*”; a *Primer on the Male Demand for Prostitution* for police, government officials and business executives; and a letter-writing campaign from women’s groups, protesting sex tourism in Lithuania.

Lithuania banned buying services from prostitutes in June 2005 in an effort to combat the sex trade. At a Parliamentary roundtable session held in September, Lithuania’s *Action Plan for Combating Trafficking* was presented by Igoris Bazylevas, Deputy Chief of the Ministry of the Interior. The campaign is sponsored by European Women’s Lobby, Coalition Against Trafficking in Women and the Ministry of Social Security and Labour, and promotes community actions that confront customers. Police are using name and shame tactics that include airing surveillance video of men talking to prostitutes on a special television show. Police have also seized men’s cars.

The campaign also has the support of the Baltic Network to Challenge the Legalisation and Decriminalisation of Prostitution Industries and Focus on the Demand, which held its first meeting on Sept. 30. The network aims to promote Sweden’s model legislation which views prostitution as violence against women; to educate boys and men against buying sex; and to work with the media to raise public awareness in Estonia, Latvia and Lithuania about the harmful effects from legally recognising prostitution as work. □

SOURCE: ITC News, November 18, 2005 (<http://www.lygus.lt/ITC/>)

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- Lithuania’s Criminal Code (unofficial translation of relevant parts: <http://www.refocusbaltic.net/en/main/legislation/lithuania>)

