

A Social-Legal Analysis of Reforms in the Regulation of Sex Work: The Case Study of End Demand Legislation in Israel

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Abstract

This article proposes an innovative approach to analysing legal and policy reforms in the regulation of sex work. Using the development of the Israeli 2019 Prohibition on the Consumption of Prostitution Act (hereinafter: End Demand Law) as a case study, we develop a socio-legal analytical framework which combines three elements: 1) the relationship between the “law on the books” and the “law in action” in the context of sex work policy – what are the distributive outcomes of the act? How is it implemented, who gets impacted by it, to which degree and why? 2) the importance of existing legal and policy baselines to evaluate new policy approaches. We argue that the baseline is key not only to understanding policy trajectories, but also to evaluating differences in perception of ‘End Demand’ legislation in different jurisdictions; 3) the lived experience of those affected by the policy. In our case study, sex workers are the population most directly impacted - we include their voices through interviews as well as secondary sources and focus on their perception of the law and its impact on their lives, options, livelihoods, and feminism.

Combining these three elements, our analytical framework is used to evaluate the dynamics of change in the regulation of sex work in the context of the Israeli End Demand Law - how it came about, which baselines it emerged from and which international influences affected it, but also how Israeli anti-prostitution governance feminists influenced the legislative and policymaking process. We pay equal attention to sex workers’ voices not only as the most affected population, but also as political actors, activists and aspiring governance feminists in the Israeli context, who were marginalised in the legislative process.

Keywords

Sex work, prostitution, human trafficking, End Demand legislation, governance feminism

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Introduction

The regulation of sex work has seen dynamic changes globally since the early 2000s. In this article, we use a detailed case study of one recent example – the criminalisation of clients through The Prohibition on the Consumption of Prostitution Act (hereinafter: End Demand Law) in Israel – to understand the dynamics that enable and shape reforms in the regulation of sex work. We do so by developing a framework for socio-legal analysis of reform comprised of three dimensions: first, the tension between the “law on the books” and the “law in action” – a classic legal realist distinction between the language of the law and its operation in real life.² Second, the importance of understanding the status quo, the baseline - both on the books and in action – that reformers seek to change. We argue that the existing baseline is key to understanding reform framings, options, and trajectories and is particularly important for the comparative study of social movements and the law. Here, we study mostly the actions of governance feminists,³ and specifically anti-prostitution governance feminists, but our approach to studying baselines can be translated to other social movements. Third, focusing on the voices of the population most directly impacted: sex workers. In Israel, sex workers were aspiring governance feminists but were marginalised in the legislative process. We focus on their perception of the law and its impact on their lives, options, livelihoods, and feminism.

The governance feminism lens allows us to see the intricate inter-relations between feminist positions and state power. The feminist organisations we study – both anti-prostitution feminists and pro sex-work feminists - often view themselves as powerless outsiders to state power and governance mechanisms. At times they are, but in other cases, they aspire to and manage to become part of governance and significantly shape its path. The regulation of sex work in Israel, and in many other countries, is a case in point. Anti-prostitution feminists became part of campaigns to “conduct [...] the conduct of men”,⁴ and translate feminist ideas into legal and policy reform. The regulation of sex work is therefore a powerful example of “efforts feminists have made to become incorporated into state, state-like, and state-affiliated, power”.⁵ It is noteworthy that in our Israeli case study, sex workers’ organisations are also aspiring governance feminists, albeit of a different feminist persuasion, and, thus far, mostly unsuccessful ones that remain outside the halls of power. To clarify, we do not view feminist aspiration for governance as negative per se, but rather as a common characteristic of social

² KN Llewellyn, ‘A Realistic Jurisprudence -- The Next Step’ (1930) 30 Columbia Law Review 431; J Scouler, ‘What’s Law Got To Do With It? How and Why Law Matters in the Regulation of Sex Work’ (2010) 37 Journal of Law and Society 12.

³ As defined by: J Halley and others, *Governance Feminism: An Introduction* (University of Minnesota Press, 2018); J Halley and others, *Governance Feminism: Notes from the Field* (University of Minnesota Press, 2019).

⁴ M Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-1979* (Springer, 2008) 186.

⁵ Halley and others, *Governance Feminism* (n 3), p.x.

movement politics in the current political order. The lens of governance feminism, however, helps sharpen our understanding of the responsibility feminists have as governance actors, as well as the costs and benefits of different approaches to feminist policymaking.

A plethora of terminology surrounds different approaches to sex work. Here, we move away from language of 'neo-abolitionism' when describing approaches which intend to criminalise either sellers or buyers of sexual services (or both),⁶ and instead refer to this position as 'anti-prostitution'. We utilise and build on Petra Östergren's approach to categorising policy responses to sex work,⁷ by adding to the three categories she proposes – 'restrictive', 'repressive' and 'integrative' - a fourth category of 'permissive' policies.

The article proceeds as follows: Part I introduces the three dimensions of our analysis: we situate our approach based on Östergren's model of ideal type policies for the regulation of sex work.⁸ Part II introduces the Israeli case study as illustrative of our proposed analytics. Part III offers a combined analysis of the analytical framework and its application to the Israeli case study, contextualising it in wider neo-liberal regulatory trends.

Methodology

This study develops an analytical framework to describe and assess legal changes in the regulation of sex work, and implements it on the recent legal change in Israel. The Israeli case study is based on qualitative methods that include ethnographic observations and interviews, as well as analysis of primary and secondary documentary review of court proceedings, legislative materials, reports, social media, media coverage and publicly available protocols of parliamentary meetings and other events where sex workers participated or spoke.

In addition, we conducted six semi-structured interviews with activist sex workers from various indoor sectors involved in the sex workers' rights organisation Argaman (Scarlet) in summer 2019, after passage of the End Demand Law but before it came into effect. We interviewed the main leading activists and then-dominant actors in the newly-formed

⁶ In light of the Black Lives Matter movement and calls for abolition of incarceration, we suggest the term 'neo-abolitionist' is no longer compatible, particularly as 'neo-abolitionist' governance feminists are often also carceral feminists (see Elizabeth Bernstein, 'Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns' (2010) 36 Signs 45.)

⁷ P Östergren, 'From Zero-Tolerance to Full Integration: Rethinking Prostitution Policies' (2017), Available at: <<https://www.demandat.eu/publications/zero-tolerance-full-integration-rethinking-prostitution-policies>> (Last accessed 17 February 2022).

⁸ *ibid.*

organisation.⁹ Because the leadership group was still forming, the sample size is relatively small. These interviews were aimed to identify the activist-sex workers' opinions on the legislative process and legal change in Israeli law, the relationship between sex work and trafficking policy, and the anticipated effects of the new legislation on the interviewees. Argaman includes sex workers of different nationalities, status, practices, and locations in the industry. Argaman is a relatively young organisation, with less formalised structures or clear membership than organisations in other countries.

Participants were current or former sex workers engaged in different sectors of the Israeli sex industry, including full-service sex work (including those working from the street, private apartments, brothels, and both independent sex work as well as working for a pimp or madam), stripping and BDSM services, and active leaders of Argaman. Two participants indicated that they had taken on 'management' roles within their workplaces at some point. Participants' ages ranged from early 20s to early 50s, with average time in the sex industry from 2-15 years. One interviewee was male, and one was not originally from Israel.

Interviewees were contacted through Argaman's network. The interviews were carried out at locations that enabled private conversations, accommodating the participants' preferences. All interviews were conducted in person, in English or French and lasted an average of 60 minutes. All interviewees were informed at the outset that the purpose was to hear their views on the proposed regulation and other forms of sex work regulation, and on how they expected to be affected. Pseudonyms are used to protect anonymity.

Open interview invitations were shared through Argaman's group communication channels. As a result, our interviewees reflected some of Argaman's diversity, although we acknowledge the multitude of factors affecting self-selection that resulted in our interviewees representing Argaman's most politically active members, who are also most experienced and comfortable with public speaking, engaging with legislation and policy, and being interviewed (by press or researchers). Our interviewees represent a narrow segment of the wider collective: they fought to have their voices heard within and beyond Argaman and, while they did not claim to speak on behalf of the organisation or other members, they were sufficiently connected to speak of sex workers' experiences beyond their own. They also share a degree of political cohesion, all favouring 'decriminalisation' over 'End Demand' or other repressive approaches to sex work. Thus, our interviews illustrate the experience of the most politically

⁹ One of the authors, Shamir, was involved in supporting Argaman's first steps and served as a board member during the first year following its establishment.

active members of Argaman, whose lived experience as sex workers have influenced their political lobbying. They also offer an opportunity to include the voices of sex workers' rights activists in their own words, which has been missing from the legislative process on sex work in Israel, as we will demonstrate below.

Part I: Studying Policy Approaches and Reform in the Regulation of Sex Work

The study of different approaches to the regulation of sex work and their outcomes is a topic of ongoing scholarly engagement and debate.¹⁰ Several challenges characterise the research of sex work regulation: first, a failure of some research to fully addressing the multifaceted diverse realities and experiences of sex workers;¹¹ second, the field is characterised by a non-realist perception of legal reform - a belief that the intent of the law, once enacted, translates into its desired goal, without sufficient attention to unintended consequences, complex impact on bargaining power and impact on the ground;¹² third, a tendency to focus on criminal and labour law, disregarding multiple other relevant fields of state and non-state governance;¹³ and fourth, the various confusing and overlapping terminology used to describe different policy approaches, which obfuscate more than reveal.¹⁴

Stemming from critiques of and engagement with this burgeoning field of research, we develop a socio-legal analytical framework for the study of policy approaches and reform in the regulation of sex work. The analytical framework emphasises studying the law in action – the impact of legislation on the lives of those it seeks to impact – as well as a detailed understanding of the baseline regulatory situation, on the books and in action. Using these dimensions, we seek to offer a nuanced and rich analysis and to develop an analytical toolkit for future case studies and comparative research of the regulation of sex work, as well for activists strategising on how to realise change.

¹⁰ J Scouler and T Sanders, 'Introduction: The Changing Social and Legal Context of Sexual Commerce: Why Regulation Matters' (2010) 37 *Journal of Law and Society* 1; H Wagenaar, H Amesberger and S Altink, *Designing Prostitution Policy* (Policy Press 2017); E Ward and G Wylie (eds), *Feminism, Prostitution and the State: The Politics of Neo-Abolitionism* (Routledge 2017).

¹¹ Wagenaar, Amesberger and Altink (n 10).

¹² J Halley and others, 'From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism' (2006) 29 *Harvard Journal of Law & Gender* 335; Scouler (n 2).

¹³ P Kotiswaran, *Dangerous Sex, Invisible Labor* (Princeton University Press 2011).

¹⁴ Östergren (n 7).

Typology of Policy Approaches

Scholars often distinguish between different approaches to the regulation of sex work:¹⁵

- a) *Prohibitionist or complete criminalisation*: all involved actors – sex workers, clients, managers, property owners, cashiers, etc. – are criminalised. This is the situation in most US states.
- b) *Abolitionism or partial criminalisation (or partial decriminalisation)*: all actors except sex workers and clients are criminalised. (This is the current approach in the UK and was the case in Israel until 2018.) In 2000, Sweden initiated a fuller abolitionist model that criminalises sex workers' clients ('End Demand'). The Swedish approach is sometimes called 'neo-abolitionism' or 'neo-prohibitionism'.
- c) *Legalisation or Regulation*: parts of the sex industry are fully decriminalised under strict restrictions and administrative regulation (licensing requirements, zoning, hygiene, times of operation, who can be employed, etc.). Main examples are the Netherlands and Germany.
- d) *Decriminalisation*: the sex industry is fully decriminalised, with regulation similar to that of other businesses, as well as labour rights. Main examples are New Zealand and New South Wales, Australia.

While this typology helps to formally differentiate policies as they manifest in criminal law, scholars and activists have often found it unsatisfactory and inadequate to describe the multifaceted realities of the regulation of the sex industry. This is mainly because the regulation of sex work often includes contradictory elements, as well as great disparities, between the law on the books and in action. Furthermore, various aspects of the regulation of sex work reside outside criminal, employment, and administrative (licensing and zoning) laws, and can be found in other governance elements such as welfare institutions, family law, and migration regimes.¹⁶ Such aspects are often excluded from classic categorisations.

For purposes of a holistic and nuanced analysis of the regulation of sex work, we propose that a more useful categorisation is that developed by Petra Östergren. Östergren suggests categorising policy approaches to the regulation of sex work based on their purported goals beyond criminal law, and on empirical studies of the regulation and governance of the sex industry. She proposes a typology of three models that she terms

¹⁵ See e.g. *ibid*; Scoular (n 2); Halley and others, 'From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking' (n 12); Wagenaar, Amesberger and Altink (n 10).

¹⁶ Kotiswaran (n 13).

'repressive', 'restrictive', and 'integrative' policy approaches to sex work,¹⁷ aiming to allow analytical clarity and to overcome the "high degree of semantic overlap and indistinctness" between sex work policies under the common typology.¹⁸

We find Östergren's typology useful because it moves beyond criminal law. Its animating question asks, "What is the sum of what the policy is *intending* to accomplish?"¹⁹ The '*repressive*' policy type sees prostitution as a negative social phenomenon to be eliminated. The '*integrative*' approach sees sex work as a multifaceted phenomenon "consisting of a wide range of arrangements, relations and experiences, only some of which are directly harmful to women or socially unacceptable."²⁰ In between, is a '*restrictive*' approach that aims not to eliminate sex work but to restrict it and control some elements within it, in order to protect society or those selling sex.²¹

Adding to this typology's utility, we suggest that a sharper categorisation of policy types will emerge by adding to this spectrum of a fourth category '*permissive*' approach, which sits between 'restrictive' and 'integrative' and can reflect realities on the ground, even when policy intent may differ. Adding this category helps move beyond legislative intent, to legislative outcome, creating analytic space to distinguish between the law on the books and the law in action. The policies of some countries, such as Germany, Israel, England and Wales, do not neatly sit within Östergren's model categories: their approaches contain elements of restrictive and integrative approaches but take a more laissez-faire approach to some aspects of sex work. Östergren herself describes Germany as exemplifying a "restrictive country with integrative elements" or as partially moving from a restrictive towards an integrative approach.²² In our view, Germany does not fully fit the 'restrictive' notion, which Östergren roots in a negative understanding of commercial sex.²³ Instead, our additional 'permissive' category assumes a multifaceted understanding of commercial sex, often rooted in understanding it as a necessary evil. This permissive root may translate into permissive or even integrative laws or policies or, as in Israel, permissive implementation of restrictive legislation. Concurrently, a permissive or even integrative starting point can result in *de facto* restrictive policies, such as Germany's requirement that sex workers register,²⁴ or the English

¹⁷ Östergren (n 7).

¹⁸ *ibid* 6.

¹⁹ *ibid* 9.

²⁰ *ibid* 10.

²¹ *ibid* 14.

²² *ibid* 13, 24.

²³ *ibid* 10–11.

²⁴ IK Thiemann, 'Sex Work Regulation, Anti-Trafficking Policy, and Their Effects on the Labour Rights of Sex Workers in Germany' (2020) 36 *International Journal of Comparative Labour Law and Industrial Relations*.

brothel-keeping law which also prevents sex workers from working together.²⁵ Furthermore, anti-trafficking policies have influenced fundamental shifts from 'integrative' to 'permissive' approaches, as well as from 'permissive' to 'restrictive' approaches. Anti-trafficking campaigns have influenced countries' policies towards paradigm shifts – as has the Swedish export of the 'End Demand' legislative model.²⁶

Law on the Books vs. Law in Action

We believe this typology helps provide descriptive and analytical tools to highlight discrepancies between law in the books and in action, and to trace the goals and outcomes (intended and unintended) of reforms in the regulation of sex work. It allows us to understand and describe how different policies can sit within or between several categories. Policies shift categories depending on assessment of their intent (claimed or assumed) or their impact (intended or perceived). Often policies purporting an integrative approach are integrative only in specific areas, such as in policy intent only (e.g., intent vs. effects of anti-trafficking policy).²⁷ Additionally, limitations of the integrative approach are often outwith direct sex work policy – within housing, zoning, migration, and anti-trafficking policies. For example, the Netherlands and Germany both have permissive legislative approaches to regulating sex work, even integrative in some aspects relating directly to sex work, but restrictive regarding zoning rights and related permits.²⁸

The case of Israel, analysed below, is illustrative. The four-type typology helps distinguish between the declaratory goal of the law– in Israel restrictive until and repressive after 2018 – and the lived realities in the sex industry under such regulation. The Israeli gap between the law on the books and the law in action until 2018 led to a *de facto* permissive policy which, through anti-trafficking policy changes beginning in the early 2000's, gradually transformed to a restrictive one. Following the introduction of 'End Demand' legislation in 2018, it remains to be seen whether the repressive law on the books will translate into a repressive, or, more likely, restrictive, policy in action. This categorisation further helps us explore beyond criminal and labour law to describe and assess the policy's goals and eventual outcomes.²⁹ The four policy categories provide us with clear analytical tools to distinguish between goals

²⁵ UK Sexual Offences Act 1956, s33A (applicable to England & Wales).

²⁶ S Dodillet and P Östergren, 'The Swedish Sex Purchase Act: Claimed Success and Documented Effects' (2011) 2.

²⁷ See Juno Mac and Molly Smith, *Revolting Prostitutes: The Fight for Sex Workers' Rights* (Verso Books 2018); Thiemann (n 24).

²⁸ Östergren (n 7); Thiemann (n 24).

²⁹ Wagenaar, Amesberger and Altink (n 10).

and outcomes and better understand the holistic impact of the operation of different legal frameworks on local settings.

Sex Workers' (Non-Monolithic) Perspectives

Studying the law in action requires understanding different stakeholders' perspectives. This includes consideration of sex workers' perspectives, both during and after processes of legislative and policy changes.³⁰ To many sex workers, most systems within which they operate are permissive at best, as they remain restrictive in some ways or regarding some subsets of workers.³¹ This also depends on workers' status and vulnerabilities not directly linked to sex work legislation. Restrictive elements of legislation impact those who are poorer, whose status may impede them in hiding from enforcement.³² As a result, the law in action analysis reveals elements of sex work regulation beyond the purchase of sexual services, such as class, poverty, social status, and ability to comply with the law.³³ For example, even decriminalisation in New Zealand and parts of Australia, 'integrative' from a legal and policy perspective, is not integrative for migrant sex workers, as no legal migration routes into sex work exist.³⁴ Different sex workers' perspectives and perceptions of the law are key to identifying the law's less visible, possibly unintended, consequences that may depart significantly from its declared goals. As shown through our analysis below of interviews with Israeli sex workers, perceiving oneself as being (or not being) the subject of legislation can powerfully effect workers' ability to advocate for themselves.

Understanding the Baseline

A final key element in our analysis is the importance of understanding a country's policy baseline to conduct a productive comparative analysis of reform. If the starting point prior to reform is a repressive approach of complete criminalisation, a shift towards 'End Demand' legislation can be read as a move toward a restrictive, or possibly even permissive, approach. As our case study suggests, countries such as Sweden and the US have significantly influenced other countries' responses to sex work. In the US, framing sex work as human trafficking and intimate partner violence created an opportunity to move away from

³⁰ C Benoit and others, 'Centering Sex Workers' Voices in Law and Social Policy' (2021) 18 *Sexuality Research and Social Policy* 897.

³¹ L Armstrong and G Abel, *Sex Work and the New Zealand Model: Decriminalisation and Social Change* (Policy Press 2020).

³² Scoular (n 2); Mac and Smith (n 27).

³³ B Sullivan, 'When (Some) Prostitution Is Legal: The Impact of Law Reform on Sex Work in Australia' (2010) 37 *Journal of Law and Society* 85.

³⁴ Armstrong and Abel (n 31); Östergren (n 7).

incarceration and to “transform partially stigmatizing and punitive practices of criminal prosecution, which in the case of prostitution are disproportionately borne by women.”³⁵ However, the call for leniency for female defendants co-existed with the claim that all prostitution is coerced and should be abolished. Therefore, despite its – albeit limited - potential for harm reduction, attempts to reframe sex work as violence against women created new, different forms of harm, rendering sex workers voiceless and treating them as child-like victims needing protection (and correction) by the law, rather than as workers needing protection of their rights.³⁶ The US approach to human trafficking and the US ‘Trafficking in Persons’ report have also had global influence, affecting shifts towards more restrictive approaches to sex work in most countries,³⁷ including Israel. Simultaneously, anti-trafficking policy adds the veneer of a shift to an integrative dimension – policies are formulated in terms of human rights, rehabilitation, and protections, with a stated intent of helping victims.

Yet the “legal transplantation” of policies from other countries – such as Sweden - occurs, at times, without attention to the repressive baseline. Thus, in studying reform in sex work regulation, and the discursive and policy options available to reformers, and its impact, it is important to consider the pre-existing approach to sex work and trafficking – on the books and in action. From a repressive starting point, End Demand legislation may seem permissive. However, starting from a restrictive (or permissive) legislative approach, End Demand legislation is a shift towards a repressive policy, due to its deeper criminalisation of actors in the sex industry.

The Swedish End Demand model was borne in an environment already restrictive towards sex workers, and, thus, shifting the blame and criminalisation of sex work from sex workers to clients could be construed as a feminist approach.³⁸ Accordingly, when governance feminists attempt to “import” the Swedish approach, they declare it permissive, rather than repressive. For example, in the US, End Demand might be perceived as a possible step towards harm reduction and de-stigmatisation, in relation to the repressive baseline of complete criminalisation (excepting Nevada). Indeed, in the US, some of the initial approaches by End Demand advocates have been received positively not only by anti-sex work feminists, but also by some sex workers’ rights groups, identifying the Swedish End Demand model as an improvement in relation to the US baseline of complete criminalisation. While sex workers’

³⁵ A Gruber, A Cohen and K Mogulescu, ‘Penal Welfare and the New Human Trafficking Intervention Courts’ (2017) 68 Florida Law Review 1333.

³⁶ IK Thiemann, ‘Beyond Victimhood and Beyond Employment? Exploring Avenues for Labour Law to Empower Women Trafficked into the Sex Industry’ (2019) 48 Industrial Law Journal 199.

³⁷ J Chuang, ‘The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking’ (2006) 27 Michigan Journal of International Law 441.

³⁸ Dodillet and Östergren (n 26).

organisations have disputed the equation of sex work with human trafficking and domestic violence, they nonetheless appreciated the potential of the policies for harm reduction,³⁹ and the initial potential to move away from carceral responses to sex work. The 2021 New York State reform effort provides an example. Two currently proposed bills manifest the confusing terminology of decriminalisation used by anti-prostitution governance feminists. The Stop the Violence in the Sex Trade Bill aims to decriminalise the industry — including sex workers, clients, and managers, while the Sex Trade Survivors Justice and Equality Bill seeks to decriminalise sex workers but not their clients or managers. Both employ language of decriminalisation, made possible due to the US's repressive baseline, even though only the former is understood by sex workers and their supporters as relieving sex work from the stigma and harm of criminalisation.⁴⁰

Part II: Socio-Legal Analysis of Reform in the Regulation of Sex Work in Israel

On December 31, 2018, the Israeli Parliament passed the Prohibition on Consumption of Prostitution Act,⁴¹ which introduced a downscaled version of the Swedish 'End Demand' model, criminalising the purchasers of sexual services. Although the Law came into force in July 2020, enforcement began, after several waves of ministerial resistance, only in December of 2020, at the height of the global COVID-19 pandemic. Several months before the legislation was passed, an organisation of Israeli sex workers – 'Argaman' – was established,⁴² and attempted to change the discourse around sex work, demanded inclusion in legislative and policy processes, and resisted the legislation. The Law passed, despite their resistance and clear proclamations of their belief that it would harm sex workers.⁴³ The Israeli End Demand Law changed the regulation of sex work in Israel on the books, but the law in action had already earlier shifted in a repressive direction: policy changes began in the early 2000's with rising attention to human trafficking for the purpose of exploitation in the sex industry.

In this Part, we will use the socio-legal analytical framework developed in Part I to address the processes that led to the Israeli End Demand legislation, and its eventual impact on sex workers. The discussion will be chronological. We will first describe and analyse the legal baseline in Israel before the anti-trafficking campaign, then the impactful anti-trafficking

³⁹ Gruber, Cohen and Mogulescu (n 35).

⁴⁰ C Gentili, 'This Is What Will Make Sex Work in New York Safer' *The New York Times* (17 October 2021). Available at: <<https://www.nytimes.com/2021/10/17/opinion/decriminalize-sex-work-new-york.html>> (Last accessed 24 February 2022).

⁴¹ The Prohibition on Consumption of Prostitution Act (Temporary Provisions and Legislative Amendments) – 2019, LB-2779, January 10, 2019.

⁴² Argaman, 'Declaration of Intent' (Argaman 2018).

⁴³ Argaman, 'Position Paper for the Parliamentary Subcommittee to Combat Trafficking in Women (Nov. 27)' (2018).

campaign that focused on non-citizens, and the way it transformed the sex industry, and finally, turn to address the steps anti-prostitution governance feminists took regarding Israelis in the sex industry, culminating in the 2018 End Demand legislation and its aftermath and enforcement, during the COVID-19 pandemic.

Pre-2000: From Restrictive to Permissive Regulation of Sex Work

Until 2018, Israeli law partially criminalised sex work. The Penal Code criminalised pimping, holding or renting-out a site for prostitution, and living off the profits of a prostitute and, since 2001, also criminalised trafficking persons for the purpose of prostitution.⁴⁴ The law on the books was restrictive: prostitution was seen as a negative social phenomenon, but persons engaged in prostitution were seen as its victims. All aspects of prostitution were criminalised, except for the act itself – neither sex workers nor their clients were criminalised. We identify the Israeli situation as merely restrictive since independent sex workers could theoretically work without breaking any laws. However, legislative and judicial history suggest a regulatory goal of guaranteeing very strict restrictions, on the verge of repression. For example, a 1965 Israeli Supreme Court decision interpreted a Penal Code amendment as criminalising sex workers working from their own apartments, and reconciled this interpretation with the traditional understanding that the Penal Code refrained from criminalising persons in prostitution by arguing that public policy disfavoured prostitution and sought its abolition.⁴⁵ Accordingly, the Court ruled, while sex workers were not criminalised for engaging in sex work, they could be penalised for owning or renting a place for the purpose of prostitution, thus leading to further repression of independent sex workers.

Despite this formally restrictive policy ‘on the books’, the law ‘in action’ pulled the Israeli system towards a *de facto* permissive regulatory style. From the mid-1990s, a policy of permissive ‘tolerance’ emerged in different regulatory, executive, and enforcement agencies.⁴⁶ Several authorities took an, albeit uncoordinated, approach towards toleration and even partial regulation of sex work.⁴⁷ Police were instructed not to investigate prostitution offences unless there were aggravating circumstances.⁴⁸ This resulted in *de facto* creation of a zone of

⁴⁴ See Penal Law, 5737-1977, art. 10 (Isr.) (dealing with prostitution and obscenity, primarily §§ 199–200, 204–05).

⁴⁵ N Levenkron, ‘The Story of Turgeman: Utopia in Chains – *Turgeman v. the Attorney General* (2019) 10 Law and Social Change 405; CrimA 94/65 *Myriam Turgeman v. Attorney General*, 19(3) PD 57 (1965) (Isr.).

⁴⁶ T Sagy, ‘It Takes a Village to Create Prostitution: The Struggle of Human Rights Organizations against the Trafficking of Women in Israel and Their Contribution to the Institutionalization of Prostitution’ in D Barak Erez and others, *Inquiries in Law, Gender and Feminism* (Nevo Publishing 2007).

⁴⁷ H Shamir, ‘Regulating Sex Work: Looking Favourably at the Gap between the Law in the Books and the Law in Action’ in D Levi-Faur, Y Blank and I Rosen-Zvi, *Law, Society and Culture, The Governance of Regulation* (2016).

⁴⁸ *State Attorney Directive No. 2.2* (2012) ¶ 6.

toleration of prostitution and non-enforcement regarding offenses related to prostitution, absent aggravating circumstances. Other institutions and State officials further expressed a permissive approach to prostitution: The National Insurance Institute recognised physical harm caused to a sex worker due to a brothel fire as work-related injury.⁴⁹ Tax authorities collected income tax from brothel owners. The Labour Courts granted full employment rights to trafficked individuals who sued their pimps and traffickers, even while indicating non-recognition of their contracts as employment contracts.⁵⁰ Finally, the High Court of Justice and trial courts awarded compensation for torts claims for the cost of payment for sexual services to a disabled individual.⁵¹

The overall impact was a permissive approach to sex work and regulation of the sex industry in ways that could promote protection of sex workers' rights. This series of decisions affected a *de facto* change in Israel—from a restrictive to a hybrid approach, which includes a restrictive approach on the books but a permissive policy style in action. This approach consists of formally-declared restrictive goals with wide informal characteristics of decriminalisation — a form of what Annelise Riles calls, in a different context, a formalist law with a 'hollow core.'⁵² Such an approach can be characterised as experimentalist, in that it does not assume sex work has one necessary essence and provides opportunities for various state actors (police officers, social workers, etc.) to exercise discretion to craft state response: coercive criminal power of the state can be utilised in cases of violence and exploitation and protective elements (workers' rights, social rights) in others. This leaves policy makers and street level bureaucrats with a wide set of regulatory tools at their disposal, at times too wide.⁵³

Anti-prostitution feminists argued against this hybridity and pushed towards enhancing enforcement, in order to implement the law's restrictive goals. They viewed hybridity as a form of hypocrisy: the State fails to protect women from violence by insufficiently restricting prostitution. The hybrid approach was similarly problematic from a pro-decriminalisation feminist standpoint, because it symbolically marginalises sex workers and prevents them from being fully socially and economically integrated. The hybrid approach sends two messages: restriction of prostitution on the symbolic level, and permission – partial normalisation and

⁴⁹ R Sinai, 'The Pimp Must Pay the Prostitute Minimum Wage and Allow her Annual Leave' הארץ (22 May 2002) <<https://www.haaretz.co.il/misc/1.796067>> accessed 24 February 2022.

⁵⁰ LabA (National) 247/07 *Raro v. Kuchik* (published by Nevo, 24.9.09). See also NLCH (National) 56/180-3 *Eli Ben-Ami Mechon Classa v. Rachel Glitzcensky*, 31 IsrLC 389 (1998).

⁵¹ CA 11152/04 *Anon v. Migdal Ins. Co.*, 61(3) PD 310 (2006); CA 1249/04 *Rabach v. Rabach*, 16–18 (published by Nevo, 8.11.06).

⁵² A Riles, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets* (University of Chicago Press 2011).

⁵³ Shamir, 'Regulating Sex Work: Looking Favourably at the Gap between the Law in the Books and the Law in Action' (n 48).

regulation of sex work – in practice. As a result of its informal and dialectic nature, that left wide discretion to low level bureaucrats, the hybrid approach was dynamic and unstable. In 2018, it was transformed, on the books, when Israel adopted repressive End Demand legislation. Yet even in the decades prior to its enactment, the reinforcement of more repressive elements in the system aimed to combat human trafficking swung the policy pendulum towards a more restrictive direction.

Post-2000: From Permissive to Restrictive Regulation of Sex Work

The hybrid approach to the regulation of sex work began to change following growing awareness of the severe exploitation and violence that migrant sex workers and trafficking victims – mostly women from the former Soviet Union – experienced in the Israeli sex industry in the early 2000s. The growing number of non-citizen women who entered the Israeli sex industry and the involvement of international organised crime networks, coupled with the re-invigorated international (and especially US) interest in the renewed definition of human trafficking, caused the Israeli government to pay attention to the phenomenon. Seizing this opportunity, anti-prostitution feminists, joining others concerned with human trafficking and migrant workers' exploitation, began to pressure the government to change its policies and close the gap between the law in the books and the law in action.⁵⁴

Israeli feminists' concerns about victims of trafficking began to be heard in 2000, following the enactment of the US Victims of Trafficking and Violence (TVPA) Protection Act, to which American governance feminists contributed significantly.⁵⁵ The TVPA's annual Trafficking in Persons (TIP) report ranks countries on their compliance with minimum standards to combat human trafficking, with a strong focus on trafficking into the sex industry.⁵⁶ Initially, Israel was ranked in the shameful third tier, placing it at risk of economic sanctions, in the form of withdrawal of US aid. The US's understanding of trafficking and its focus on trafficking into the sex industry directly affected Israeli policymaking on the matter. The Israeli response to trafficking in persons came that same year, in the form of an amendment to the Penal Code criminalising trafficking for the purpose of prostitution (section 203A).⁵⁷ This

⁵⁴ H Shamir, 'Anti-Trafficking in Israel: Neo-Abolitionist Feminists, Markets, Borders, and the State' in Janet Halley and others, *Governance Feminism: An Introduction* (University of Minnesota Press 2018).

⁵⁵ D Hacker, 'Strategic Compliance in the Shadow of Transnational Anti-Trafficking Law' (2015) 28 *Harvard Human Rights Journal* 11.

⁵⁶ Chuang (n 37).

⁵⁷ Penal Law, 5737-1977, art. 10 (Isr.), §§ 203A-203D (added by the Penal Law (Amendment No. 56), 5760-2000, LB No. 226 (July 21, 2000)). Section 203A was repealed by § 1(2) of the Prohibition of Human Trafficking (Legislative Amendments) Law, 5767-2006, LB No. 2 (Oct. 29, 2006). See Explanatory Notes, Penal Law Bill (Amendment no. 91) (Prohibition of Human Trafficking), 5766-2006, Government Bill No. 236. [Heb.].

section was replaced in 2006 by the Prohibition of Human Trafficking (Legislative Amendments) Law,⁵⁸ which added section 377A to the Penal Code and included various additional severe forms of exploitation including organ removal, forced labour, and slavery.

With the increased political focus on trafficking into the sex industry and sex worker migration into Israel, anti-prostitution feminists gained increasing access to governance and engaged in an effective campaign to increase enforcement against sex trafficking and prostitution and guarantee better treatment and services for survivors and victims. From their perspective, it was a tale of remarkable success.⁵⁹ Due to their intense activities, brothel raids, prosecution of traffickers, and penalties increased significantly. Because of the already-repressive law on the books, much of the policy change occurred without additional legislation, through only a change in priorities instigated through the Knesset (Israeli Parliament) Subcommittee on Trafficking in Women. After 2000, police raids on brothels in Tel Aviv increased, and sex work changed shape and moved, in part, into discrete apartments. Beyond increased enforcement, additional legislative steps were enacted,⁶⁰ leading, *inter alia*, to raids on brothels and on the businesses of independent sex workers.⁶¹ Further changes in the Penal Code in 2011 prohibited the advertisement of sexual services, with increasing penalties,⁶² and online enforcement through a new cyber unit from 2013 made it almost impossible for the sex industry, particularly for individual sex workers, to publicise their services and, especially, to vet clients in advance.

In addition to increased enforcement, anti-prostitution governance feminists lobbied for intensified border controls. More non-Israeli women were removed from Israel upon their 'rescue' from brothels, and due to enhanced border restrictions, fewer non-Israeli women entered the Israeli sex industry. Simultaneously, there was marked improvement in the treatment of the small numbers of identified victims of trafficking, who received visas, shelter, health care and emotional support, job training, language skills, and legal aid.⁶³

⁵⁸Prohibition of Human Trafficking (Legislative Amendments) Law, 5767-2006, *LB* No. 2 (indirect amendment of sections 203A-203B of the Penal Law, 5760-2000) (Isr.); Penal Law, 5737-1977, art. 10 (Isr.), § 377A (added by the Prohibition of Human Trafficking (Legislative Amendments) Law, 5767-2006, *LB* No. 2.) [Heb.].

⁵⁹ H Safran and R Chaikin, "Between Trafficking in Women and Prostitution: The Evolution of a Social Struggle" in E Herzog and E Shadmi, *Blood Money: Prostitution, Trafficking in Women and Pornography in Israel* (Pardes Publishing House 2013); Shamir, 'Anti-Trafficking in Israel: Neo-Abolitionist Feminists, Markets, Borders, and the State' (n 55).

⁶⁰The Restriction of Use of a Place for Purposes of Preventing the Commission of Offenses Law, 5765-2005, *LB* No. 426. [Heb.].

⁶¹ N Yaniv and L Shalom, 'Integrative Enforcement: Starting on a New Path in the Efforts to Combat the Sex Industry and the Exploitation of People in Prostitution, 4 Key Trials' [2016] *The Attorney General's Journal* 174 <<https://www.gov.il/BlobFolder/dynamiccollectorresultitem/traf152/he/NoaYanivLilachShalom.pdf>>.

⁶² Section 205(c) of the Penal Code (Amendment 109- 2011).

⁶³ D Hacker, Y Levine-Fraiman and I Halili, 'Ungendering and Regendering Shelters for Survivors of Human Trafficking' (2015) 3 *Social Inclusion* 35.

By 2008, it was widely agreed by Israeli police, relevant government ministries, and involved NGOs that transnational trafficking into the Israeli sex industry had been effectively curtailed. The US TIP report ranked Israel in tier 2 for 2002, moved it to the tier 2 watch-list in 2006 and into tier 1 from 2012 until 2019; in 2020 it was demoted to tier 2, mostly due to inaction in relation to labour exploitation outside the sex industry.⁶⁴

Since approximately 2008, the Israeli sex sector has been composed mostly of Israeli workers, although some are newer citizens from the former Soviet Union who entered the country under the Israeli Law of Return, 1950.⁶⁵ Gradually the protective response towards migrant sex workers translated into greater attention to, and a repressive approach towards, the sex industry as a whole, impacting Israeli workers as well,⁶⁶ echoing similar occurrences in other countries. Israeli anti-prostitution governance feminists shifted their focus from trafficking only to the issue of all prostitution, following US governance feminist reasoning that all prostitution is trafficking,⁶⁷ and began lobbying for the adoption of a Swedish-style End Demand bill. During the same period, governance feminists also began a campaign to abolish strip clubs, equating stripping with prostitution.

Some of the individual and governance feminist organisations that actively influenced the government's anti-trafficking agenda moved to promote End Demand legislation. A coalition of feminist organisations pushed for this, perhaps the most vocal being the Taskforce on Human Trafficking and Prostitution (the Taskforce), primarily a lobbying organisation, that worked tirelessly to lobby Knesset members, government officials, and the public regarding prostitution. Sex workers' voices were not part of this coalition.⁶⁸ Until Argaman's establishment in 2018, the few attempts to establish a sex workers' organisation had failed. In parliamentary committee meetings and other policy forums, women in prostitution were heard only as victims, as rescued survivors, who shared their difficult life stories and the violent realities of prostitution, but not as experts or agents in their own right.

The anti-prostitution governance feminist position did not aim solely to entrench the criminality of prostitution but rather sought accompanying alternatives and assistance for

⁶⁴ H Shamir and M Niezna, 'An Alternative Anti-Trafficking Action Plan: A Proposed Model Based on a Labor Approach to Trafficking' (2020) TraffLab Research Group Policy Paper <<https://www.trafflab.org/policy>>. TIP Report 2021.

⁶⁵ Safran and Chaikin (n 60).

⁶⁶ H Shamir, 'Feminist Approaches to the Regulation of Sex Work: Patterns in Transnational Governance Feminist Law Making' (2019) 52 Cornell International Law Journal 177.

⁶⁷ CA MacKinnon, *Butterfly Politics* (Harvard University Press 2017).

⁶⁸ Shamir, 'Anti-Trafficking in Israel: Neo-Abolitionist Feminists, Markets, Borders, and the State' (n 55).

women (and some specialist services for trans persons). In the last decade, the otherwise shrinking Israeli welfare state expanded rehabilitative services for women in prostitution. While still insufficient, funds were secured, and new services were created by the State and different municipalities.⁶⁹ Due to the effective lobbying of anti-prostitution governance feminists, the law in action shifted from permissive to restrictive, adhering more closely to its declared restrictive goal and gradually closing the opening for a tolerated, unofficially permitted, above-ground sex industry.

2018 End Demand Legislation and its Aftermath - From Restrictive to Repressive?

The first End Demand bill was introduced in the Knesset in 2008 by feminist MP Zehava Gal-On, together with a coalition of parliament members from across the political spectrum.⁷⁰ That bill sought to criminalise paying for sex (punishable with up to 6 months imprisonment), and establish “John Schools” for first time offenders, but never proceeded beyond an initial reading. Anti-prostitution governance feminists lobbied for similar bills presented before the Knesset in 2009, 2010, 2013, 2015, 2016, 2017 (twice), and finally, in 2018. It took a decade of intensive lobbying, and several iterations of the bill, to build sufficient support. An in-depth inter-ministerial report⁷¹ – that heard experts and other stakeholders, but not sex workers – along with a Welfare Ministry national survey about the Israeli sex industry⁷² resulted in a call for a holistic approach not based exclusively on criminal enforcement.⁷³

In July 2018, in response to increased enforcement and police harassment of sex workers, and in an attempt to resist further restriction and repression of the industry, sex workers established the rights organisation ‘Argaman’. The organisation developed from the sex workers activists’ Facebook page “When She Works” that sought to counter the anti-prostitution feminists’ narrative.⁷⁴ Argaman’s first priorities were to resist the introduction of End Demand legislation and to make their members’ voices heard and interests considered in policy processes.⁷⁵ However, their ability to influence the policy process was limited. The workers “described the legislation process as taking place ‘over their heads’ and deciding for

⁶⁹ A Palmor, ‘Report by the Inter-Ministerial Team to Examine the Tools to Reduce the Consumption of Prostitution’ (Ministry of Justice, Government of Israel 2017) 48–52.

⁷⁰ Bill to Prohibit the Purchase of Prostitution and Community Treatment (Legislative Amendments)-2008, P-17-3992, July 28, 2008.

⁷¹ Palmor (n 69).

⁷² Y Santo, A Carmeli and G Rahav, ‘The National Survey on the Phenomenon of Prostitution in Israel’ (Israel’s Ministry of Social Affairs and Social Services and the Ministry of Public Security 2016).

⁷³ Palmor (n 69) 96.

⁷⁴ Y Lahav-Raz, ‘Narrative Struggles in Online Arenas: The Facebook Feminist Sex Wars on the Israeli Sex Industry’ (2020) 20 *Feminist Media Studies* 784.

⁷⁵ S Levy-Aronovic, Y Lahav-Raz and A Raz, ‘Who Takes Part in the Political Game? The Sex Work Governance Debate in Israel’ (2021) 18 *Sexuality Research and Social Policy* 516.

them what is best for them, which, they stated, was ‘not very feminist’ nor a show of genuine concern.”⁷⁶ In our interviews, Argaman members raised similar concerns, recalling exchanges with governance feminist MPs and NGOs in a parliamentary committee meeting Argaman managed to get invited to, in which governance feminists rejected their experience. Anti-prostitution coalition members made claims to incredulous members of Argaman that “ninety-nine percent of the girls don’t want to be in this place (sex work).” When one of the activists we interviewed, Noa, responded to these claims as not representative of her and others’ experiences, she recalled being told, “I don’t have to talk to you.”⁷⁷ Overall, the movement’s attempts to be heard in the policy-making process gained too little momentum too late, and were rejected by the coalition supporting the law.

In December 2018, as a group of sex workers from Argaman stood protesting with red umbrellas outside the Knesset, the End Demand Law was enacted. The Law criminalised procurement of sexual services, imposing an administrative fine on offenders, with an alternative option to attend a “John School”. Unlike some of its original iterations, the Law did not include any direct provision regarding expanding rehabilitation services for sex workers, except a general declaration in its purpose clause. The Law stipulated that it would come into force 18 months following its legislation (July 2020) and would remain in place for five years, during which its impact would be studied and assessed prior to its extension.

Section 1 declares the Law’s purpose as reducing prostitution, as well as expanding public education about the harms of prostitution, and expanding treatment and ‘rehabilitation’ to persons in prostitution. While the law itself does not include provisions regarding rehabilitation, a governmental decision was issued to adopt the main recommendations of the 2017 Palmor report,⁷⁸ and to establish ‘treatment and rehabilitation programs’ for ‘prostitution survivors.’ That governmental decision instructed the Ministry of Welfare to allocate 30 million ILS to develop and enhance services for public education and the rehabilitation and treatment of persons in prostitution.⁷⁹ Due to repeated elections and an unstable budget in Israel at the time, the plan was only very partially implemented.⁸⁰

Argaman included several trans activists and developed a coalition with trans, LGBTQ

⁷⁶ *ibid* 6.

⁷⁷ Authors’ interviews, July 2019.

⁷⁸ Palmor, (n 69)

⁷⁹ Governmental Decision 4462 of the 34th Government of Israel, “Implementing the Recommendation of the Inter-ministerial Team to Reduce the Consumption of Prostitution and to Examine the Criminalization of Customers of Prostitution” (Jan 13, 2019).

⁸⁰ I Avgar, ‘Preparation Towards the Coming into Force of the Law Prohibiting the Consumption of Prostitution’ (The Knesset Research and Information Centre 2020).

and a few feminist organisations. Together with others in this coalition, Argaman activists gradually became regular participants in committee meetings and policy forums. Though they persistently attended parliamentary meetings, demanding to be heard, they were nonetheless often ignored or rejected. Using their newfound position, Argaman attempted to postpone the Law's enforcement. They argued in parliamentary committee meetings and in a letter to the Ministry of Justice⁸¹ that, absent introduction of rehabilitation programs and welfare support, the Law should not come into force.

In February 2020, Argaman and others issued a position paper regarding the negative impact of the End Demand Law prior to its implementation. They surveyed 29 sex workers and reported an increase in claims of police violence, a phenomenon documented in other legal contexts in which End Demand legislation was introduced.⁸² The survey showed that 92.8% of those workers felt unsafe since the legislation passed; 88.9% reported adverse treatment by police; 66.2% reported increased client violence; 89.1% reported fear approaching the police due to the Law; and 96% reported increased anxiety.⁸³ The organisations demanded a 24-month delay in the Law's enforcement. Their arguments were rebuffed by government officials and anti-prostitution governance feminists alike, who claimed programs would eventually be established and that this should not postpone the Law's coming into force.⁸⁴ A petition by the organisation Trans Israel to the High Court of Justice challenging the Law due to the lack of welfare assistance and employment programs was summarily dismissed, for failure to exhaust alternative processes for resolving the issue.⁸⁵

Speaking to key Argaman activists during these months (before COVID-19), they expressed awareness of their own relative privilege through relative financial stability, citizenship, alternative income streams or sufficient savings. All of them were concerned over the legislative change, but they feared less for their own safety, worrying more about colleagues in brothels, and migrant workers and other less-privileged colleagues.⁸⁶ They saw the punitive elements of the law as clearly affecting sex workers, rather than clients, an

⁸¹ Argaman, 'Israeli Transgender Association, Transitions and Sister Orgs., Position Paper regarding the Law Prohibiting Consumption of Prostitution (Feb. 24)' (2020).

⁸² E.g. Canada: B McBride and others, 'Harms of Third Party Criminalisation under End-Demand Legislation: Undermining Sex Workers' Safety and Rights' (2021) 23 *Culture, Health & Sexuality* 1165; B McBride and others, 'Protection or Police Harassment? Impacts of Punitive Policing, Discrimination, and Racial Profiling under End-Demand Laws among Im/Migrant Sex Workers in Metro Vancouver' (2022) 2 *SSM - Qualitative Research in Health* <<https://www.sciencedirect.com/science/article/pii/S2667321522000105>> accessed 24 February 2022.

⁸³ Argaman, 'Israeli Transgender Association, Transitions and Sister Orgs., Position Paper regarding the Law Prohibiting Consumption of Prostitution (Feb. 24)' (n 81).

⁸⁴ Avgar (n 80).

⁸⁵ T Carmon, 'A Petition Against the Law Prohibiting the Consumption of Prostitution was Denied' <<https://www.davar1.co.il/234763/>> accessed 17 February 2022.

⁸⁶ Our interviews, July-August 2019

assumption confirmed by other countries with End Demand legislation,⁸⁷ but did not feel personally affected. Our interviewees fit Scoular's category of "workers at liberty to comply with the law", or "in a position to avoid inspection by law enforcement", and therefore were largely unaffected by the negative consequences of the legislation.⁸⁸ Nevertheless, all interviewees felt very concerned about the effects of stigma on their own, and on other sex workers', lives:

In general, people will be afraid. I don't think they're going to be scared in the apartments just yet. But in the brothels, in the places where the girls can't be independent [...] For women migrant workers it is even more horrible.

Interview with Roni, August 2019

It can only make sex workers' lives harder, more complicated, [...] and they have much less power in the negotiation with the clients because the clients now have taken a risk. He's already taking a risk, so he's going to expect something to make it easier for him, like a lower price or whatever.

Interview with Moran, July 2019

One interviewee, Noa, mentioned that generally, her very stable client base enabled her to normally work relatively few hours, yet she also stated that she was working more prior to the legislation's impending enforcement to build larger savings. Whereas this behaviour points towards fear of the new legislation, it also demonstrates a potential – albeit temporary – strategy to deal with the law's repressive goals by making sure to only transgress the law with trusted clients.

I have clients who usually come. I have a lot at the moment, but I see that the customers are becoming more difficult, and we are more afraid of going to talk to the police if there are problems...

Interview with Noa, July 2019

In addition to increasingly difficult clients, Noa also described an increase in men attempting to act as pimps or intermediaries, as the legal situation created greater risks for workers. Similarly, she spoke of groups of men trying to extort sex workers for money, echoing similar

⁸⁷ H LeBail, G Calogero and N Rassouw, 'Que pensent les travailleuses du sexe de la loi prostitution? [What Do Sex Workers Think About the Prostitution Law?]' (2018). Available at: <<https://www.medecinsdumonde.org/sites/default/files/Rapport-prostitution-BD.PDF>> (Last accessed 17 February 2022).

⁸⁸ Scoular (n 2).

developments in Sweden and Ireland following the introduction of End Demand legislation.

The sole interview with a male sex worker profoundly illustrates the effect of governance feminism on the perception of legislation. The interviewee felt that as a male sex worker he was entirely outside the law's aims:

I have a feeling that, if it's going to be enforced at all, they are going to be completely not enforced on male [workers]. Nobody seems to care at all. [For] male sex workers, if you look at the public view about it, what I hear about it anyway, is that nobody thinks male sex workers are victims of anything.

Interview with Omer, August 2019

His view reflects the gendered characteristic of contemporary anti-prostitution and anti-trafficking campaigns. For example, anti-trafficking and anti-prostitution campaigns in the US affected male sex workers but did not paint them as victims needing protection, whereas governance feminist strategies almost always categorise women as victims.⁸⁹ In both Sweden and Ireland, as well as in other countries contemplating such legislation, the political debate entirely ignores male workers, having adopted the repressive framework of sex work as a problem of male domination over vulnerable women.⁹⁰ End Demand legislation's focus on sex work as a solely gendered power imbalance erases sex work performed by men, as well as non-male clients. Anti-sex work laws disproportionately affect female-presenting sex workers in visible parts of the sex industry, regardless of their theoretical applicability to all sex workers and neutral wording.

In a very similar vein, Roni, a sex worker offering dominatrix services, felt she would be largely unaffected in recruiting new clients and staying under the radar:

I go to some fetish parties, BDSM parties, and people get to know me this way. [...] I am lucky that I deal with this special area that is not the classical prostitution, and so I don't really get much of the fire personally. It's not that I don't see myself as part of the sex industry, of course I do.

Interview with Roni, August 2019

⁸⁹ Thiemann (n 36).

⁹⁰ CA Mackinnon, *Women's Lives, Men's Laws* (New Ed, Harvard University Press 2007); S Jeffreys, *The Industrial Vagina: The Political Economy of the Global Sex Trade* (Routledge 2008).

Roni clearly expressed that while she nonetheless identified as a sex worker and did not want to reinforce the 'whorearchy', she already felt the imbalanced enforcement of anti-sex work policy. This theme resonated amongst the interviewees: a notion of 'even if I will be safe, there are others who won't be.' Interviewees also shared anecdotal evidence of street-based and trans sex workers working double or triple their usual shifts in the period prior to enforcement, putting themselves at risk of STIs and exhaustion, in order to accumulate savings in preparation. It remains unclear whether Israeli law enforcement will consider dominatrix services outside the realm of sex work regulation. Other countries, e.g. Germany, following a mostly permissive regulatory model, consider dominatrix services to be within the scope of their regulations. However, the Swedish example demonstrates that under End Demand legislation, despite the complete criminalisation of purchasing sex, regardless of location or transactional circumstances, the focus has been on highly visible spaces, such as street prostitution, conforming to the governance feminist idea of prostitution as a site of male domination over women.⁹¹

Another interviewee, a stripper but not a full-service sex worker, did not feel personally affected by the Law, despite stripping being a highly visible form of sex work. She felt general concern about increasing regulations but did not focus on herself, due to the lack of effect on strippers. However, strippers were heavily impacted in a recent repressive wave. Strip clubs in Tel Aviv were closed altogether in 2020 following a 2019 change in the Attorney General's directive, equating stripping with prostitution. While her view about her personal risk might differ now, her concerns about increasing levels of regulation of visible sex work seem appropriate. The closure orders were justified with the argument that 'these clubs are a form of commercial sexual exploitation and promote the sexist view of women as sex objects', following the arguments for a restrictive regulation of sex work which led to the End Demand legislation. Highly visible sexualised spaces such as strip clubs might become additional battlegrounds for anti-sex work initiatives, a phenomenon already visible through the closure orders, as well as attempts to prohibit strip clubs in other jurisdictions.

In March 2020, the situation changed due to the spread of COVID-19. The Israeli government declared a series of lockdowns and social distancing measures that impacted all economic activity. The sex industry in Israel, as elsewhere, was hit particularly hard.⁹² Unlike

⁹¹ J Kuosmanen, 'Attitudes and Perceptions about Legislation Prohibiting the Purchase of Sexual Services in Sweden' (2011) 14 *European Journal of Social Work* 247; Dodillet and Östergren (n 26).

⁹² B Brooks-Gordon, M Morris and T Sanders, 'Harm Reduction and Decriminalization of Sex Work: Introduction to the Special Section' (2021) 18 *Sexuality Research and Social Policy* 809; ICRSE, 'The Impact of COVID-19 on Sex Workers in Europe and Central Asia and Recommendations for Policy Makers.' (2020) Available at: <http://www.sexworkeurope.org/sites/default/files/userfiles/files/Policy_brief_ICRSE_COVID19.pdf> (Last accessed 17 February 2022).

in other sectors, sex workers – considered neither employees nor independent business owners – received no Israeli governmental assistance.⁹³ Argaman attempted to fill this gap, providing peer-to-peer solidarity assistance through food deliveries, supermarket vouchers, and comradeships to sex workers in need. Other NGOs also offered assistance.⁹⁴

The COVID-19 pandemic arrived just four months before the Law was scheduled to come into effect. Postponement attempts through appeals to the Ministry of Justice and the High Court of Justice were unsuccessful. The Law came into force in July 2020, as planned, despite COVID-19's harsh impact and lack of utilisation of the rehabilitation budget.⁹⁵ Yet, public discourse, and the strengthened coalition between Argaman and the LGBTQ – especially the trans community, managed to reach the Minister of Public Security, Amir Ohana, who postponed an Executive Order required to initiate enforcement. Ohana justified his refusal on the government's failure to institute rehabilitation and assistance programs.⁹⁶ Momentarily, it appeared that an unpredictable powerful ally supported Argaman, heard their concerns, and granted them access to governance. The Taskforce and other coalition members expressed outrage and pressured Ohana to issue the Order. After months of executive resistance, on September 30, 2020, the Order was signed. Enforcement began slowly. Under Ohana, the police barely enforced the Act. In April 2021, the media reported that only five fines had been issued.⁹⁷ In June 2021, a new Minister of Public Security, Omer Bar Lev, took office. Bar Lev issued statements positioning himself clearly with the anti-prostitution coalition,⁹⁸ and intensified enforcement began. In September 2021, the media reported the issuance of over 80 fines,⁹⁹ and in January 2022 the police reported the issuance of 1,638 fines.¹⁰⁰ Media

⁹³ Cf E Jozaghi and L Bird, 'COVID-19 and Sex Workers: Human Rights, the Struggle for Safety and Minimum Income' (2020) 111 *Canadian Journal of Public Health* 406; T Sanders, 'Sex Workers in the Crisis of Covid – BJCJ' (2020) Available at: <<https://mmuperu.co.uk/bjci/blog/sex-workers-in-the-crisis-of-covid/>> (Last accessed 24 February 2022).

⁹⁴ E Peled, G Shilo and Yeela Lahav-Raz, 'Assistance for Persons in Prostitution During and Following the COVID Pandemic: Preliminary Report' (2020).

⁹⁵ L Yaron, 'Israeli Ban on Frequenting Prostitutes Goes Into Effect, but Government Slow to Move' *Haaretz* (2020) Available at: <<https://www.haaretz.com/israel-news/.premium-israeli-ban-on-frequenting-prostitutes-goes-into-effect-but-government-slow-to-move-1.8984477>> (Last accessed 24 February 2022).

⁹⁶ A Shklar-Hamo, 'Ohana Does not Sign, and the Law to Prohibit the Consumption of Prostitution is Not enforced' (Makor Rishon 2020) Available at: <<https://www.makorrishon.co.il/news/261873/>> (Last accessed 17 February 2022).

⁹⁷ H Gil-Ad, 'There is a Law to Prohibit Consumption of Prostitution but No Enforcement' *YNET* (2021) Available at: <<https://www.ynet.co.il/news/article/BJmCxcgAUu>> (Last accessed 17 February 2022).

⁹⁸ See Facebook page of Nitzan Kahana, former chair of the Taskforce, sharing a clip Bar Lev issued regarding intensifying enforcement and abolishing prostitution, Available at: https://m.facebook.com/story.php?story_fbid=10159651803856165&id=673091164 (Last accessed 23 October 2021).

⁹⁹ B Peleg, 'Israel Ramps Up Penalizing Clients of Women in Prostitution, Issuing Dozens of Fines' *Haaretz* (2021) Available at: <<https://www.haaretz.com/israel-news/.premium-israel-police-ramp-up-penalizing-sex-workers-clients-issuing-dozens-of-fines-1.10229287>> (Last accessed 24 February 2022).

¹⁰⁰ Press Release, The Knesset Committee for the Promotion of Women and Gender Equality (Jan. 31, 2022) Available at: <<https://main.knesset.gov.il/Activity/committees/Women/News/pages/%D7%90%D7%9B%D7%99%D7%A4%D7%>>

coverage suggested that, as in other countries that instituted reforms, enforcement began in gentrifying and gentrifiable areas.¹⁰¹ In Israel, this meant focusing on mostly on Tel Aviv and Haifa, and on very few known prostitution zones in other cities.¹⁰² At the same time, services for industry ‘survivors’ slowly expanded.

Although assessment is premature, it seems that our interviewees had a good sense of how enforcement would develop. End Demand legislation, coupled with the lingering shock of COVID-19 and related policies, hit the most marginalised sections of the sex industry hardest. Street prostitution, discreet apartments, and brothels in gentrifying areas were most affected, with sex workers in those areas most exposed to police and client violence. While the full impact of End Demand legislation is still being shaped, the trajectory becomes clearer by examining the longer process, beginning from the permissive regulatory background of the late 1990’s. The approach of Israeli sex work regulation shifted from restrictive on the books and permissive in action, to repressive on the books and mostly restrictive in action. The move towards restriction and repression was presented as a feminist and caring agenda. As Wendy Chapkis described US anti-trafficking law, “the law serves as a soft glove covering a still punishing fist”.¹⁰³ The “soft glove” was the extension of visas, work permits and shelters for identified victims of trafficking, and the introduction of a growing service sector for the treatment and rehabilitation of sex workers. Yet the “punishing fist” – large waves of deportation of migrant sex workers, persecution of sex workers, closure of brothels, and increased police violence – was the string that tied together the strong coalition of left-right, religious-secular, feminist-conservative alliance that changed the law on the books in 2018, and the law in action since the early 2000’s towards the current repressive regime.

Twenty years after Israel’s anti-trafficking campaign began, and three years since passage of the End Demand Law, the impact has clearly spread unevenly throughout the sex industry. Vulnerable and highly visible sex workers are the focus of policy attention. First to be impacted were migrant sex workers – most of whom were arrested and deported or ‘repatriated’ to their countries of origin. Only a few hundred identified victims of trafficking received needed shelter, protection, and support.¹⁰⁴ Second, ‘visible’ parts of the sex industry were impacted, with the greatest impact on strip clubs, as well as gentrifiable ‘hotspots’ where

AA-%D7%90%D7%99%D7%A1%D7%95%D7%A8-%D7%A6%D7%A8%D7%99%D7%9B%D7%AA-%D7%96%D7%A0%D7%95%D7%AA.aspx > (Last accessed 29 May 2022).

¹⁰¹ E Bernstein, ‘The Sexual Politics of the “New Abolitionism”’ (2007) 18 *Differences* 128.

¹⁰² I Avgar, ‘Enforcement of the Prohibition on the Purchase of Prostitution and Services to People in Prostitution’ (The Knesset Research and Information Centre 2022). The report shows that 69% of the fines were given in Tel-Aviv and neighboring metropolitan cities and 30% of fines were given in Haifa and the surrounding area.

¹⁰³ W Chapkis, ‘Trafficking, Migration, and the Law Protecting Innocents, Punishing Immigrants’ (2003) 17 *Gender & Society* 923, 924.

¹⁰⁴ Shamir, ‘Anti-Trafficking in Israel: Neo-Abolitionist Feminists, Markets, Borders, and the State’ (n 55).

the most marginalised sex workers work - asylum seekers, trans individuals, drug users and others who engage in street prostitution, and in brothels.

With the introduction of the End Demand Law, catalysed by COVID-19, we assume that significant sections of the sex industry moved online,¹⁰⁵ though, as noted, the ease of accessing clients and publicising online has been curtailed and further criminalised. Members of Argaman we spoke to predicted that other parts of the sex industry will not be impacted by the legislation, which, so far, seems to be correct. If, indeed, only mostly visible and easily detected parts of the sex industry are impacted, this might leave the majority of the Israeli sex industry mostly untouched.¹⁰⁶ If so, a new status quo may arise: repression of visible parts of the sex industry, affecting the most marginalised and vulnerable workers, and a permissive approach towards less vulnerable, more 'discrete' venues and forms of sex work.

Analysis and Conclusion

We developed a three-pronged socio-legal analytical approach to describe and analyse law and policy reform on the regulation of sex work – 1) law on the books vs. law in action; 2) understanding the regulatory baseline; and 3) centring the voices of sex workers – which we then applied to Israel as a case study. In this concluding Part, we draw on our framework, and its application to Israel, to discuss the study of sex work regulatory reform more broadly.

Critical legal scholars have assessed human-rights-based reforms and interventions, including feminist ones, insisting on the importance of examining the gap between their ideal terms or desired symbolic impact, real-world impact, and unintended consequences.¹⁰⁷ Sex work regulation – and specifically the push for End Demand legislation by anti-prostitution governance feminists – is therefore better understood not as an outlier but as another example of social movements using the law to advance symbolic goals, in a manner that may disregard the complex interaction of law and market realities. In fact, a basic legal realist insight recognises that examination of almost *any* legal field reveals a gap between the law on the books and the law in action.¹⁰⁸ Accordingly, the emphasis on examining on-the-ground outcomes, including in relation to well-meaning social movement reforms, is a legal realist and critical legal studies tradition. As Scoular showed in the context of sex work regulation, this

¹⁰⁵ Peled, Shilo and Lahav-Raz (n 94); for the global trend see: T Sanders and others, 'The Point of Counting: Mapping the Internet Based Sex Industry' (2018) 7 *Social Sciences* 233.

¹⁰⁶ At least according to Santo, Carmeli and Rahav (n 73).

¹⁰⁷ Halley and others, *Governance Feminism* (n 2); M Mutua, *Human Rights: A Political and Cultural Critique* (University of Pennsylvania Press 2002).

¹⁰⁸ RL Abel and A Watson, 'Law as Lag: Inertia as a Social Theory of Law' (1982) 80 *Michigan Law Review* 785.

gap can translate into similar outcomes in reforms of opposite regulatory intent.¹⁰⁹ This does not suggest the law's insignificance, only that full exploration of its impact requires an intricate analysis of law and social realities. Indeed, as Kotiswaran persuasively showed in relation to the Indian context, the law on the books – particularly criminal law – tells only part of the story of sex workers' lived realities.¹¹⁰

Our analysis of the Israeli case study further sheds light on the interplay of reform processes and their outcomes, and shows the parallel, but not identical, developments of law on the books vs. law in action, and the intricate processes through which law constructs “space, subjects and systems of governance”.¹¹¹ As shown, in Israel, gradual reform, supported by anti-trafficking campaigns, shifted the regulation of sex work from restrictive to suppressive on the books, and from permissive to restrictive in action. Our analysis suggests that implementation, unintended consequences, and enforcement priorities are crucial elements of the outcomes of reforms in the regulation of sex work. We further showed that the reform affects different types of sex workers differently (in terms of legal status, or sex work setting and activity), with the most visible settings and marginalised populations encountering strict enforcement, while others may encounter little or no enforcement at all.¹¹² Therefore, a full assessment of the interaction between regulatory intent and outcome in the context of sex work requires a holistic examination of political processes, neo-liberal governance, legal spheres beyond criminal law (including systems of licensing, zoning, migration, administrative law, and welfare interventions), and the different positions and risks of different types of sex workers.

Furthermore, to fully explore the impact of regulatory reform, both regulatory and normative baselines must be considered. This is critical for comparative research of sex work regulation; for example, adopting End Demand regulation may appear permissive from a full-criminalisation standpoint or repressive from a partial-criminalisation standpoint. Accordingly, transplanting a regulatory model from one country to another may have a wholly different impact, given different regulatory baselines, welfare state interventions and market dynamics. In addition to the legal baseline, the normative one also matters. Our analysis of the Israeli case shows the recasting of feminist reform narratives into neo-liberal settings for their adoption: one way to explain the Israeli situation pre-2000 in relation to sex work is to contextualise it within welfare state retrenchment and policies of market non-intervention that

¹⁰⁹ Scoular (n 2).

¹¹⁰ Kotiswaran (n 13).

¹¹¹ Scoular (n 2) 24.

¹¹² E Bernstein, *Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex* (University of Chicago Press 2007); Scoular (n 2).

dominated Israeli policy since the 1990s. Anti-prostitution governance feminists sought to transform this *laissez faire* approach towards prostitution using this neo-liberal logic. To encourage state intervention, they utilised and expanded the anti-trafficking discourse gaining traction at the time, to bring about what Bernard Harcourt calls the 'Neoliberal Penalty':

[a] form of rationality in which the penal sphere is pushed outside political economy and serves the function of a boundary: the penal sanction is marked off from the dominant logic of classical economics as the only space where order is legitimately enforced by the State.¹¹³

End demand legislation does just that: by focusing attention on force, coercion, and lack of consent in the sex industry, portraying it as work no one would consent to given other options, sex work became an exception to the neo-liberal approach of non-intervention of the pre-2000 Israeli hybrid approach. Such an approach assumes the acceptability and consent in other sectors of the labour market, while framing sex work as a unique exception, a zone of violence, sexualisation and coercion.

Through this argument, anti-prostitution governance feminists formed a wide-reaching coalition, along with religious actors and other social conservatives, to justify criminalisation of clients. They portrayed the sex sector as inherently violent, outside 'normal' market interaction, and, thus, justifying governmental intervention without destabilisation of other market inequalities and injustices. Such rhetoric had immense symbolic and actual costs for sex workers whose experience of the industry differed. Under this rhetoric, sex workers could be dismissed as either operating in 'false consciousness'¹¹⁴ or as deviants, or as representing pimps rather than their own authentic interests. Indeed, a study of public opinion of the law and its impact suggested that while the Israeli public increasingly views sex workers as victims, it increasingly perceives them as deviants and supports the criminalisation of both sex workers and clients,¹¹⁵ a phenomenon also observed in Sweden.¹¹⁶ We can therefore observe that utilising neo-liberal penalty logic entrenched sex workers' stigmatisation and pushed them outside public discourse.

¹¹³ BE Harcourt, 'Neoliberal Penalty: A Brief Genealogy' (2010) 14 *Theoretical Criminology* 74, 77.

¹¹⁴ CA MacKinnon, 'Feminism, Marxism, Method, and the State: An Agenda for Theory' (1982) 7 *Signs: Journal of Women in Culture and Society* 515; cf: J Halley, *Split Decisions* (Princeton University Press 2008).

¹¹⁵ G Shilo, E Peled and H Shamir, 'Paying for Sex, Receiving Payment for Sex and Public Opinion Regarding Prostitution/ Sex Work Policy and the Law Prohibiting the Consumption of Prostitution' (TraffLab 2020) TraffLab Research Report. Available at: <<https://www.trafflab.org/policy>> (Last accessed 17 February 2022).

¹¹⁶ Kuosmanen (n 91).

Despite sex workers' marginalisation, the Israeli case study further shows the dialectic potential in repressive policies to bring about resistance. A successful anti-prostitution campaign led sex workers to establish Argaman, demanding 'nothing about us without us' and resisting characterisation as victims. The individuals we interviewed, felt the legislation and accompanying campaign led them, and others in Argaman, to unite and take action. A similar process occurred in Sweden.¹¹⁷ Our interviewees expressed solidarity with their colleagues, even when doubting the law's impact upon them personally, and were concerned about stigmatisation and potential further marginalisation all sex workers would experience. Specifically, many of them were alarmed by their misrepresentation and the dismissal of their agency, as necessary stakeholders in policy processes. Indeed, since its establishment in 2018, Argaman's representatives have been slowly and gradually carving out their space in policy circles and are becoming repeat players in policy discussions. Their impact on future policy formulation and implementation of the current legislation remains to be seen and will require follow-up. They may push the regulatory pendulum to swing once again towards permission (or possibly integration).

Legal reform influences normative discourses around sex work and shapes workers' rights, inclusion, and citizenship. Studying the full impact of regulatory reform requires an expansive view of what the law is, how it is made, how it operates in tandem with other fields of law and policy, and how it is implemented and by whom. An equally multifaceted view of the sex industry, the power relations within it, and particularly the diverse lived experiences and views of sex workers within, is called for. Our article proposes an analytical framework that seeks to incorporate these elements to allow for and enhance further socio-legal research on reform in sex work regulation.

¹¹⁷ Fuckförbundet, '20 Years of Failing Sex Workers' (2019) Available at: <<https://www.fuckforbundet.com/report>> (Last accessed 24 February 2022).

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