

# Gendered Provisions in *The Sexual Offences Bill 2003*: Prostitution

Belinda Brooks-Gordon explores a number of concerns with the provision of the *Sexual Offences Bill* in relation to prostitution.

The *Sexual Offence Bill 2003* is currently making its way through Parliament. The provisions of this Bill represent a de-gendering of the law in that certain sexual offences will become gender neutral. On the other hand, the Bill represents what could be termed a 'high gendering' of the law, and issues which were once considered to be women's issues in the past have become germane to this Bill. This article explores some concerns with the provisions in the Bill which relate to prostitution — one of the most gendered areas of criminal justice policy.

## The outcome of flawed logic

Aspects of the Bill will make things more dangerous for women sex workers. These constitute part of a steady flow of legislation being applied to prostitutes and their clients without either systematic evaluation or public discussion (Brooks-Gordon and Gelsthorpe, 2002). For example, the amendments in s.46 and s.47 of *The Criminal Justice and Police Act 2001* to criminalize the advertising of prostitute cards in public places were enacted before any intervention had been trialled or evaluated. This legislation has not cleared the telephone boxes, but it has had the net-widening effect of criminalizing a further group of people, and the penalties imposed have received legal criticism in the context of the *Human Rights Act* (Wasik, 2001). The use of ASBOs under s.1 of the *Crime and Disorder Act 1998* are also currently used against sex-working women, which reintroduced imprisonment for prostitute women which had been removed in s.71 of the *Criminal Justice Act 1982*, and have also been considered to be a retrograde step (Jones and Sagar, 2001).

Laws proposed in the Bill are based on flawed logic. The Bill does not define sexual exploitation nor differentiate it from consensual adult prostitution; it makes the assumption that all sex work is exploitation. This is difficult territory, as legal scholars have pointed out. In the Home Office consultation document which was a precursor to this Bill, *Setting the Boundaries*, the key question of whether selling sex always involves abuse or exploitation was side-stepped in the discussion of prostitution-related offences (Lacey, 2001). Such an analysis would have to include broad socio-cultural analysis that would also render vast tracts of the labour market inherently exploitative.

As regards the scientific basis of *Setting the*

*Boundaries*, there was no independent systematic review of the literature on prostitutes, their clients, or residents, nor was any systematic review carried out on interventions to address prostitution. Moreover, some of the methods used, such as telephone surveys, have been shown to be inadequate data collection methods for this type of information.

## Some consequences and conflicts

A further concern is for the impact on public services. It is admitted that there will be an impact on public services but it is suggested in the Bill that this will be minimal. However it is possible that this is a serious underestimate. The proposed laws could have consequences for policing, social exclusion, family breakdown, court delays and prison overcrowding, as well as the legitimacy of the law for those empowered to uphold it. Moreover, the proposals in the Bill conflict with wider European policy. It would leave England and Wales with the most punitive laws on prostitution at a time when the rest of Europe is beginning to address the vulnerability of sex-working women in more positive ways. For example, in April 2000 the European Parliamentary Assembly adopted recommendation 1450 which aims to introduce training programmes for officers dealing with prostitute victims of violence, run campaigns to educate the public of unacceptability of violence against prostitute women, step up collaboration between state institutions and NGOs to improve protection of women, and trial tolerance zones where sex-working women can work safely.

## Extending their 'clause'

Clauses in the Bill dealing with adult prostitution are problematic as they are placed in a section entitled 'Prostitution and Child Pornography' and inserted between child offences. This lumps the adult sex-working woman and the child together. In the rush towards child protectionism, adult prostitute women may be infantilized by the law, have their right to choose removed, and be criminalized as a result.

Clause 56 proposes a law of "causing or inciting prostitution for gain". This is also aimed at adult women yet there is no clear definition of 'cause' or 'incite' and as it stands the clause, taken with the interpretation of 'prostitution', is overarching in such a way that it would cause more problems than it would solve. It could, for example, be used to criminalize the benign relationships of those involved in sex work. Clause 58, which would create a law against



“controlling prostitution for gain” could be applied to ‘maids’ who are employed by women sex workers to see clients in and out and offer company to a prostitute woman. The term could also apply to a receptionist in a massage parlour. Given that off-street work is the safer option for women working in prostitution, this clause will make it harder for women to work in safe environments.

The interpretation of terms is given in clause 60, and the three sections of this clause are so broad that they could include employment practices. For example, in s.3 ‘gain’ is defined as a) any financial advantage or b) “goodwill of any person which is or appears likely to, in time, to bring financial advantage”. In s.4, ‘prostitute’ is defined as a person “who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise payment”. In s.5 ‘payment’ is defined as “any financial advantage, including the discharge of an obligation to pay or the provision of goods or services gratuitously or at a discount”. This would mean that every person who ever had any sexual activity for any sort of material or abstract gain or goodwill at any time or in the future would be criminalized. By logical application this could criminalize every woman or man who has slept with their boss or head of department, accepted a job, or merely expected some sort of gain from a sexual relationship in practice. It could criminalize a gift from a lover or friend.

Clause 61 deals with “trafficking into the UK for sexual exploitation”. This is not age-specific, thus it could cover the movement of all adults who work in the sex industry as they travel across borders. This discriminates against sex-working

women who travel across boundaries. A further clause, Clause 62, “trafficking within the UK for sexual exploitation” suffers from the same lack of definition of ‘sexual exploitation’. This clause is too broad and could be used to criminalize anyone who facilitates the movement of prostitute women within the UK, including cab drivers or lorry drivers who offer women lifts whether on the promise of sexual services at the end of the ride, or not.

A definition of ‘sexual’ is given in Clause 80, and this is far too broad and overarching a phrase. If something is sexual because of “its nature; its circumstances or the purposes of any person in relation to it” then any person who is known to sell could be penalized just on that basis. The addition of “any other activity that is sexual” could be used to include a sex-working woman holding hands with a client if their purpose is to find a hotel room in which to have sex. It therefore discriminates against sex working women and will cause disproportionate harm to these women and their clients and such penalties do not sit well with a so-called tolerant and diverse society.

### ‘Gender neutral’ and ‘high gendered’

In the past, a prostitute was, by definition, a woman, and a client (or kerb crawler) was, by definition, a man. All of the new clauses are gender neutral and encompass both men and women who sell or buy sex. This retrograde step may make men as vulnerable as women to the law’s interference in people’s private lives. Paradoxically, enactment of the Bill could increase the gender disparity between those selling sex and create a more

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court and pre-sentence stage is seen as crucial, particularly for those currently receiving custodial remands and short sentences.

Responding more appropriately to women's drug use and mental health problems are particular priorities for the WOP. It aims to ensure that women have access to, and are retained in, suitable treatment and services within the community and to dispel the idea that prison is the only 'safe' place to deal with women's drug and mental health problems. The WOP therefore operates in tandem with the Drug Strategy and the Department of Health's Women's Mental Health Strategy, both of which will deliver services and interventions which better meet women's needs in the community. The objective is to identify problems as early as possible and get women into appropriate treatment or intervention before the problem escalates, and therefore reduce the risk of future offending.

The WOP also keeps an eye on future developments and provisions, to ensure that any criminal justice reform, such as the new sentencing provisions contained in the current *Criminal Justice Bill*, takes account of the impact on women offenders in the implementation guidance.

### Delivering on gender equality – the wider context

This is just a flavour of the priority issues the WOP is seeking to address in its initial stages, but over time it will respond to the whole range of factors that affect women's offending. Care has been taken to ensure that the initial stages and the programme as a whole are realistic and achievable. The WOP is not aspirational: it is an agreed plan of action, with ownership and timelines for delivery identified. The programme is an important step towards achieving a coherent and co-ordinated strategic approach to reducing women's offending that builds on progress already made to ensure women offenders' needs are met and not marginalised in policies, programmes and interventions.

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highly gendered situation. Young men, unencumbered by families, may be mobile and have access to gay networks where they may still be able to work in relative safety. Women tied (for a variety of reasons) to the streets will be further stigmatised and criminalized for an act which is not in itself illegal.

These clauses also represent a 'high-gendering' of the law in that they have come about from many of the issues women brought to the fore. Issues such as child sexual abuse, an issue second-wave feminists did much to expose, and child trafficking have become such a huge fear with policy makers that any calls for reasoned debate on the issues seem heretical. The prostitution clauses hark back to the old prohibitionist days of prostitution when radical feminists were naive enough to think that prohibition would create an end to prostitution and its perceived oppression.

It is clear that the clauses on prostitution in the *Sexual Offences Bill* will worsen the existing situation rather than promote social justice. The penalties imposed would hamper the government's attempts to meet the challenge of social exclusion, and would have serious consequences as even more women and men are swept into the criminal justice system.

When the Bill is heard in the House of Commons it would be a wise Home Secretary who removes the adult prostitution clauses pending the wholesale review of all the laws relating to prostitution as recommended by *Setting the Boundaries*, including kerb crawling, telephone box cards, street work and off-street work; a review that must be systematic to have credibility with the public, the academic community, and those involved in prostitution.

**Belinda Brooks-Gordon** is a university lecturer in the School of Psychology, Birkbeck College, University of London.

**Note:** At the time of publication, the Sexual Offences Bill had progressed to third reading but had not yet been debated in Commons or received Royal Assent.

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Sexual Offences Bill, [http://www.sexualoffencesbill.homeoffice.gov.uk/sexoffences\\_conresp.pdf](http://www.sexualoffencesbill.homeoffice.gov.uk/sexoffences_conresp.pdf)