

Caught in the Carceral Web: Anti-Trafficking Laws and Policies and their Impact on Migrant Sex Workers.

Authors: Judy Fudge, Elene Lam, Sandra Ka Hon Chu, Vincent Wong

2021

Executive Summary

In Canada, a complex and multiscalar web of laws has been constructed to target sex trafficking, based upon two deeply rooted assumptions: the first, that immigrant women are especially vulnerable to trafficking for sexual exploitation, and the second, that the commercial sex sector is inseparable from trafficking. The express goals of this carceral and repressive approach to human trafficking are to protect immigrant women who are vulnerable to sex trafficking by prohibiting them from working in any aspect of the sex industry and to reduce demand by making it a crime to purchase, materially benefit from, procure, or advertise sexual services.

Yet, a closer review reveals the harms of this carceral approach. An evaluation of the combined impact of federal immigration and criminal laws, provincial anti-human trafficking laws, and municipal laws ostensibly targeting human trafficking and a review of the academic and grey literature on the impact of these laws on migrant sex workers in Canada uncover no evidence that they protect immigrant women from trafficking or migrant sex workers from exploitation. Rather, migrant sex workers have been targeted by law enforcement through surveillance, racial profiling, arrest, detention and deportation in the name of protecting them from human trafficking, with enormously negative impacts on their health and welfare.

A qualitative study conducted between June 2020 and March 2021 of migrant sex workers and their advocates regarding the operation of anti-trafficking laws and policies accords with these findings. Migrant sex workers described how these laws and policies have led to extraordinary surveillance and unjustified criminal charges, particularly within migrant sex work communities, as well as against third parties in the absence of evidence of exploitation. The immigration regulations prohibiting migrants without permanent residence from working in the sex industry is particularly pernicious because it is unaccountable, since immigration enforcement matters are adjudicated as administrative matters and lack due process protections, despite the severe impact of the threat of detention and deportation.

Not only does this web of carceral laws and policies render migrant sex workers less likely to report crimes perpetrated against them, but migrant sex workers are also compelled to take steps to evade police and other law enforcement bodies for fear of detection, surveillance and apprehension related to the criminal status of their work and/or their precarious immigration status. As a result, migrant sex workers become increasingly susceptible to targeted violence by

predators who know these workers, given their precarious legal status and the criminalization of their work, have no effective recourse to state protection. Rather than protecting the human rights of migrants and other communities who may be vulnerable to labour exploitation, existing laws, policies and law enforcement measures intended to combat human trafficking have stoked moral panic surrounding sex work, intensified profiling of sex workers and racialized communities, and profoundly threatened the safety, security and well-being of migrant sex workers.

Efforts to resist punitive anti-trafficking policies are met with unsubstantiated claims that these repressive policies are crucial to stamp out a flourishing, sinister industry. Despite an arsenal of coercive laws and increased policing, surveillance and inspection powers, the number of trafficking victims detected and convictions for trafficking offences have been very low. Yet this evidence, instead of creating doubt concerning the need for such a thick and wide web of coercive anti-trafficking laws and policies, is dismissed on the basis that human trafficking is a “hidden” crime. In turn, the need to “uncover” this hidden crime is used to justify further increases in expenditures devoted to policing and surveillance.

As migrant sex workers and advocates recommend, decriminalizing sex work and repealing the immigration prohibitions on sex work would enable migrant sex workers to have the same access to employment, labour and occupational health and safety protections as other workers. Such an approach would therefore reduce the vulnerability of these workers to conditions of exploitation, violence, and abuse. Repealing municipal bylaws that target sex work, ceasing law enforcement raids and intrusions into sex workers’ workplaces, ensuring that a labour and human rights analysis is used to examine and evaluate all existing and future laws and policies with respect to human trafficking, and reallocating human trafficking resources to settlement, health, legal and social services for migrant workers would also mitigate the harms perpetuated by Canada’s existing repressive and carceral web that has ensnared so many migrant sex workers.

Supported by:

School of Labour Studies, McMaster University
Butterfly (Asian and Migrant Sex Workers Support Network)
HIV Legal Network

Funded by:

The LIUNA Enrico Henry Mancinelli Professor of Global Labour Issues, McMaster University