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# KOREA'S NEW PROSTITUTION POLICY: OVERCOMING CHALLENGES TO EFFECTUATE THE LEGISLATURE'S INTENT TO PROTECT PROSTITUTES FROM ABUSE

Ji Hye Kim<sup>†</sup>

*Abstract:* Prostitution has been rampant in South Korea, exposing tens of thousands of women to abuse and violence. Beginning in 2000, however, women's rights organizations spearheaded a legal reform campaign to change the nation's prostitution policy. They drafted and proposed two bills to the National Assembly, which subsequently enacted them as laws. In passing the new legislation, the South Korean government vowed to eliminate prostitution as well as protect victims of exploitation and violence in the sex industry. However, the legislation fails to achieve these goals due to inherent inadequacies in the language and structure of the laws. This shortfall arises because the government failed to adequately discuss the breadth and depth of prostitution's impact on Korean men and women. Consequently, the legislation retains a discriminatory attitude towards prostituting women and still criminalizes them unless they can prove their victim status. It is doubtful that these provisions can protect abused women in the sex industry, particularly when they face so many barriers in proving their victim status. To remedy these problems, the South Korean government must reconsider and rework its prostitution policy so that it is more protective of women engaged in prostitution and more appropriate for Korean society. It must also rethink enforcement mechanisms to allow prostituting women to seek help when necessary.

## I. INTRODUCTION

A fire broke out in the red light district of Gunsan, South Korea<sup>1</sup> on September 12, 2000 and killed five women who were locked in a room of a brothel.<sup>2</sup> The brothel owner had imprisoned the women every night after they worked as prostitutes.<sup>3</sup> The fire accident helped expose a system of exploitation of women and children in the nation's sex industry and fueled the need for a reform of prostitution policy. Despite the then-current Law Against Morally Depraved Behaviors ("LMDB"),<sup>4</sup> which had outlawed

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<sup>1</sup> Hereinafter, "Korea" refers to South Korea, also known the Republic of Korea.

<sup>2</sup> 국회여성위원회[SOUTH KOREAN NATIONAL ASSEMBLY'S WOMEN'S AFFAIRS COMMITTEE], 성매매방지 정책-성매매방지 관련법 제정을 중심으로 [POLICY ON PREVENTION OF PROSTITUTION—A FOCUS ON THE ENACTMENT OF THE LAWS RELATED TO THE PREVENTION OF PROSTITUTION] 2-3 (2003) (S. Korea) (title translated by the author) [hereinafter WOMEN'S AFFAIRS COMMITTEE REPORT].

<sup>3</sup> *Id.* at 3.

<sup>4</sup> 윤락행위등방지법[Law Against Morally Depraved Behaviors], Statutes of South Korea, Act No. 771, (1961) (repealed Sept. 2004) [hereinafter LMDB] (translation provided by the Korean Women's Associations United).

prostitution since 1961,<sup>5</sup> prostitution had grown into a 24 trillion won (\$22 billion)<sup>6</sup> industry,<sup>7</sup> employing over 330,000 women around the nation.<sup>8</sup> The staggering demand for sex, the illegal operation of sex services without rules or protection for prostitutes, and the social stigmatization of prostitutes<sup>9</sup> together created an extremely exploitative working condition for women in the sex industry.<sup>10</sup>

Tragedy aside, the fire accident did prompt women's rights organizations to seek legal reforms to aid women trapped in prostitution.<sup>11</sup> Organizing under the Korean Women's Associations United ("KWAU"),<sup>12</sup> the organizations demanded legal reform and forced the government to evaluate and change its prostitution policy.<sup>13</sup> They contended that prostitution violated the human rights of all women in the sex industry and demanded its total elimination as well as protection for all prostitutes.<sup>14</sup> They drafted and lobbied for two new laws that would address these demands.<sup>15</sup>

The Korean government, already facing heavy international criticism of its prostitution and human trafficking policies, welcomed the proposed bills.<sup>16</sup> After several revisions, the laws were enacted.<sup>17</sup> They changed the

<sup>5</sup> *Id.*

<sup>6</sup> Sa-Jong Hong, *Futility of Efforts to Legislate Morality*, JOONGANG ILBO, Oct. 13 2004, translated in KOREA FOCUS ON CURRENT TOPICS, Vol. 12, Part 6 50-1 (2004), ct. 13 2004.

<sup>7</sup> Korean Institute of Criminal Justice Policy, *성매매 실태 및 경제규모에 관한 전국조사* [National Survey on Prostitution's Conditions and Economic Scope], at vi (2002) (study funded by the Ministry of Gender Equality and Family).

<sup>8</sup> Hyeran Oh, *A Study on the Factors Affected the Legislation of the Sex Trafficking Prevention Act: Focusing on the Governance Perspective and the Role of Women NGOs*, 여성연구 [JOURNAL OF WOMEN'S STUDIES], at 51 (2004) (citing KICJP's study) [hereinafter Oh].

<sup>9</sup> Tae Hee Yu, *United Voice (Hasori) for the Eradication of Prostitution in Korea*, ASIAN LABOUR UPDATE Issue 33 (Asia Monitor Res. Ctr., H.K.), Dec. 1999 – Feb. 2000, available at <http://www.amrc.org.hk/Arch/3309.htm> (last visited Jan. 8, 2007).

<sup>10</sup> See Young-Ja Lee, *A Paradigm of Prostitution Policy*, GENDER EQUALITY STUDIES, Vol. 9, at 8-10 (2005) (S.Korea) [hereinafter Paradigm].

<sup>11</sup> Oh, *supra* note 8, at 39. See also WOMEN'S AFFAIRS COMMITTEE REPORT, *supra* note 2, at 5.

<sup>12</sup> Oh, *supra* note 8, at 56. Korean Women's Associations United was formed in 1987 as a national coalition of twenty-eight organizations, including labor, research, housewife, human rights, and other interest groups. See Jeong-Lim Nam, *Gender Politics in the Korean Transition to Democracy*, 24 KOREAN STUD. 94, 101 (2000).

<sup>13</sup> See Hi Chin Chung, 페미니즘의 도전 [Feminism's Challenge] 222 (S ũ ng Hi Ri ed., Gyoyangin 2005) (2005).

<sup>14</sup> See Na-Young Lee, *Prostitution: For Feminist Radical Sexual Politics*, 한국여성학 [Korean Women's Studies], Vol. 21 No. 1, at 60 (2005) [hereinafter For Feminist Radical Sexual Politics].

<sup>15</sup> Oh, *supra* note 8, at 57. See also the Act on the Prevention of Prostitution and Protection of Victims Thereof, Statutes of South Korea, Act No. 7212 (Mar. 22, 2004) [hereinafter *Protection Act*]; the Act on the Punishment of Procuring Prostitution and Associated Acts, Statutes of South Korea, Act No. 7196 (Mar. 22, 2004) [hereinafter *Punishment Act*].

<sup>16</sup> See For Feminist Radical Sexual Politics, *supra* note 14, at 43; Sealing Cheng, *Korean Sex Trade 'Victims' Strike for Rights*, ASIA TIMES, Dec 22, 2004, available at <http://www.atimes.com/>

previous legal framework for controlling prostitution, which had stigmatized prostitutes.<sup>18</sup> The laws increased penalties for various activities within the sex industry,<sup>19</sup> but granted protection for victims of prostitution as well as prostitutes seeking to escape the sex industry.<sup>20</sup> However, the laws have not radically changed the previous prostitution policy.

The laws still contain some of the most inadequate provisions of the previous policy. They still retain the previous policy's discriminatory attitude against prostitutes. The laws still provide for the penalization of prostitutes who cannot prove that they are victims of prostitution.<sup>21</sup> By doing so, one purpose of the laws, protecting prostitutes from violence and exploitation, is made unachievable. Moreover, the laws give too much discretion to prosecutors and police officers on determining the victim status of prostitutes. These shortcomings highlight the legislature's failure to listen to the opinions of the women's organizations and pro-prostitute groups. Any revisions must heed the warnings and suggestions of all the various groups studying Korea's sex industry.

This Comment examines the Korean sex industry and the various viewpoints on prostitution in order to analyze the inadequacies of Korea's new prostitution legislation. Part II provides an overview of the nature of the Korean sex industry. Part III discusses the women's rights movement that initiated the legal reform of the prostitution policy and the various viewpoints on prostitution that were not heard during the reform movement. Part IV analyzes the legal inadequacies and loopholes that impede the government from achieving the intent of the laws. Finally, Part V recommends changes to the new prostitution policy that would cause it to better serve the interests of all prostituting women in the sex industry who may need protection from abuse and exploitation.

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atimes/Korea/FL22Dg01.html (last visited Jan. 8, 2007); David Scofield, *Korea's 'Crackdown Culture'- Now It's Brothels*, ASIA TIMES, Sept. 25, 2004.

<sup>17</sup> Oh, *supra* note 8, at 57-58.

<sup>18</sup> *Id.* at 58.

<sup>19</sup> 한국여성개발원[Korean Women's Development Institute], 성매매처벌법 시행 6개월, 무엇이 달라지고 있는가?[*The Enforcement of the Anti-Prostitution Legislation for 6 months, What Changes Are Being Made?*], 제25차 여성정책포럼[The 25th Women's Policy Forum 8], March 22, 2005.

<sup>20</sup> Protection Act, Act No. 7212, art. 1-5.

<sup>21</sup> Punishment Act, Act No. 7196, art. 21.

## II. KOREA'S MALE-DOMINATED CULTURE FUELS THE GROWTH OF THE SEX INDUSTRY AND THE SEXUAL EXPLOITATION OF WOMEN

Over the last few decades, prostitution in Korea has grown rapidly into a \$22 billion per year industry.<sup>22</sup> Prostitution has become a major source of entertainment for men in Korea's patriarchal and male-dominated culture.<sup>23</sup> It has also roped in hundreds of thousands of women, exposing them to physical and sexual violence as well as mental and economic oppression by their procurers,<sup>24</sup> sex purchasers, and the police.<sup>25</sup> By failing to enforce the old prostitution law, the Korean government encouraged prostitution to grow into an economically powerful industry.<sup>26</sup> However, the severe exploitation of women engaged in prostitution was eventually exposed and compelled women's rights groups in Korea to demand a change in the nation's prostitution policy.<sup>27</sup> To understand the impetus for and purpose of the reform of Korea's legal regime governing prostitution, it is necessary to understand the factors contributing to the growth of prostitution, the operation of the sex industry, and the working conditions of prostitutes.

### A. *Gender Inequality in Korea's Culture Creates Massive Demand for Sex but also Stigmatizes Prostitutes*

Prostitution in Korea reflects the gender inequality within Korea. In the teachings of Confucianism, which permeated Korea in the early years of the first millennium,<sup>28</sup> all authority in the family belonged to men. Society considered the purity of kinship crucial in keeping the family bloodline

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<sup>22</sup> See Hong, *supra* note 6.

<sup>23</sup> See Paradigm, *supra* note 10, at 5-6.

<sup>24</sup> The definition of procurer in the prostitution context is one who induces or prevails upon another to engage in an illicit sexual act. BLACK'S LAW DICTIONARY 1244 (8th ed. 2004). For the purposes of this paper, the term procurers will include owners of clandestine sex businesses and pimps. The legal definition of a pimp is "a person who solicits customers for a prostitute, usually in return for a share of the prostitute's earnings." BLACK'S LAW DICTIONARY 1186 (8th ed. 2004).

<sup>25</sup> See Korean Women's Development Institute, *supra* note 19, at 2.

<sup>26</sup> Chu Ch'öl Yun, *A Study on the Enforcement Failure of the Law Against Morally Depraved Act* at 76 (2002) (unpublished Masters dissertation, Seoul National University) (on file with the National Library of Korea).

<sup>27</sup> See *The Prevention of the Sexual Exploitation of Women in Korea: From Impunity to Punishing Procuring Prostitution and Purchase of Sexual Service*, WOMEN 21 (Korean Women's Associations United, Seoul, Korea), at 1-2 [hereinafter Korean Women's Associations United], available at [http://www.women21.or.kr/data/women21/EngPDS\\_X/050314\\_prostitution\(1\).pdf](http://www.women21.or.kr/data/women21/EngPDS_X/050314_prostitution(1).pdf) (last visited Jan. 8, 2007).

<sup>28</sup> Hyung-Ki Choi et al., *South Korea*, in THE INTERNATIONAL STUDY OF SEXUALITY (Robert T. Francoeur ed., Continuum Publ'g, 1997), available at <http://www2.hu-berlin.de/sexology/IES/southkorea.html> (last visited Jan. 9, 2007).

clean.<sup>29</sup> Women were forced to be chaste and faithful to their husbands so that the male bloodline would remain pure.<sup>30</sup> As a result of society's discrepant gender roles and expectations, a culture developed in which men and women were subject to different moral standards.<sup>31</sup> Korean society stressed female virginity and sexual fidelity, while men had the privilege of seeking sexual pleasures from their wives, concubines, and even prostitutes.<sup>32</sup> Society expected and encouraged philandering by men.<sup>33</sup>

Today, the hunt for pleasure permeates many parts of Korean males' lives and creates a huge demand for sex services. Men frequent brothels or other establishments that sell sexual services after drinking with male friends and coworkers.<sup>34</sup> Corporate practices have developed in which business clients and/or partners might be entertained in bars with female hostesses providing sex services.<sup>35</sup> The demand for prostitution is staggering. In 2002, Korean men made an estimated 170 million transactions for sex.<sup>36</sup> Before the reform of the prostitution policy, many people were unaware that prostitution was illegal; in a 2001 study conducted by the Ministry of Gender Equality and Family, 41.3% of people surveyed did not know prostitution was illegal.<sup>37</sup>

While men can easily find sexual gratification in Korea, the society stigmatizes prostituting women as morally corrupt. Confucianism had emphasized female chastity in the Korean society, and even the law labeled women engaged in prostitution as morally corrupt.<sup>38</sup> Prostitutes are considered as engaging in deviant behaviors and living abnormal lives.<sup>39</sup>

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<sup>29</sup> See Paradigm, *supra* note 10, at 3.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See Choi et al., *supra* note 28.

<sup>33</sup> Andrei Lankov, *Dawn of Modern Korea: Ladies of the 1950's Nights*, KOREA TIMES, Feb. 2, 2006.

<sup>34</sup> Dong Won Shin, *Sex Consumption and Culture of Male Sexuality*, at 25 (unpublished Masters dissertation) (on file with DBia) (Jun. 2006); see also 박신연숙 [Yonsuk Park-Shin], 성매매에 대한 인식의 현황과 과제 [The Current Awareness of Prostitution and Problems], 성매매에 대한 지역주민 의식 변화를 위한 간담회 [Discussion for the Change of Local Residents' Awareness of Prostitution], Seoul Women's Hotline, at 18, 45 (2003) (title translated by this author).

<sup>35</sup> John Lie, *The Transformation of Sexual Work in 20<sup>th</sup>-Century Korea*, 9 GENDER AND SOC'Y 310, 321-22 (1995).

<sup>36</sup> Youngsook Cho, General Secretary, Korean Women's Associations United, Keynote Address at Experiences and Lessons of the Legislations for Combating Sexual Exploitation in Asia-Pacific and Europe Symposium: Challenges and Accomplishments of Korean Women's Movement for Combating Sexual Exploitation Against Women 80 (Sept. 21, 2005).

<sup>37</sup> See Paradigm, *supra* note 10, at 24.

<sup>38</sup> LMDB Act No. 771. The law labeled prostitution as "Yullak-Haeng-Wi," which means a morally depraved act.

<sup>39</sup> Sang-Hie Han, *Anti-Prostitution Acts and Human Rights*, 민주법학 [DEMOCRACY REVIEW], Vol. 30, at 54 (2006).

The old prostitution policy—the LMDB—regarded prostitution as acts “which vitiate public morals.”<sup>40</sup> Under that legal regime, women who engaged in prostitution were labeled immoral, as well as criminal.<sup>41</sup> Such a belief also persisted in the National Assembly for several decades; a record of the assembly reveals that many legislators believed that prostitution resulted from morally corrupt women wanting to sell their bodies.<sup>42</sup> Because of society’s focus on the immorality of prostitutes, the actual working conditions for women in prostitution would not have garnered much attention.

*B. Thousands of Women Enter Prostitution Hoping to Earn a Living, but End Up Exposed to Exploitation and Violence*

Given the high demand for sexual services, the supply side of prostitution is correspondingly large and employs a great number of women. The sex industry provides sexual services through three different forms.<sup>43</sup> The first form consists of brothels clustered together in various areas throughout the nation.<sup>44</sup> In 2002, up to 69 brothel districts were found around the nation.<sup>45</sup> Another form involves businesses (excluding brothels) such as taverns, karaoke rooms, massage parlors, and barbershops that provide prostitutes clandestinely.<sup>46</sup> For example, the Korean Institute of Criminal Justice Policy (“KICJP”) found that more than 79% of the nation’s entertainment businesses provided sex services, as did 37.9% of massage parlors.<sup>47</sup> The last form does not involve a brothel or a service business, but is designed to directly connect prostitutes and their customers.<sup>48</sup> Most prominently, phone services and internet chat forums are set up to arrange sexual services.<sup>49</sup>

<sup>40</sup> LMDB, Act No. 771, ch. 1, art. 1.

<sup>41</sup> Ho-Joong Lee, *Critics on the Reform Agenda of Prostitution*, 형사정책 [KOREAN CRIMINAL REVIEW], Vol. 14 No.2 at 10 (2002).

<sup>42</sup> Hyung Cho & Pil Wha Chang, *Perspectives on Prostitution in the Korean Legislature*, 한국여성학 [KOREAN WOMEN’S STUDIES], Vol. 7, at 106 (Dec. 1990).

<sup>43</sup> Seong Young Sohn, *Sex-Trafficking in Korea and Suggestions for Alternative Policies*, 동덕여성연구 [DONGDUK WOMEN’S UNIVERSITY WOMEN’S STUDIES], Vol. 9, at 33.

<sup>44</sup> *Id.*

<sup>45</sup> Korean Institute of Criminal Justice Policy, *supra* note 7, at 392 (estimating the number of brothels in the 69 areas as 2,938).

<sup>46</sup> Sohn, *supra* note 43, at 34.

<sup>47</sup> Korean Institute of Criminal Justice Policy, *supra* note 7, at 127.

<sup>48</sup> Sohn, *supra* note 43, at 34.

<sup>49</sup> *Id.*

A procurer is almost always present in all three methods of providing sexual services and partakes in the prostitute's pay.<sup>50</sup> The definition of a procurer in the prostitution context is "one who induces or prevails upon another to engage in an illicit sexual act."<sup>51</sup> A procurer serves as a prostitute's boss as well as a middleperson between the prostitute and the sex purchaser. Most prostitutes in Korea are controlled by procurers.<sup>52</sup>

Women enter prostitution in a variety of ways. A majority of women enter prostitution between the ages of thirteen and nineteen.<sup>53</sup> A significant number of women enter prostitution through job advertisements in newspapers, magazines, and public places.<sup>54</sup> These advertisements are usually for legitimate service sector jobs, but they actually lead the women to service jobs that require them to provide sexual services.<sup>55</sup> Brothel owners and procurers also actively recruit women through these advertisements.<sup>56</sup> Rural women are at times "kidnapped and forced to work as prostitutes."<sup>57</sup> Some women voluntarily enter brothels because they believe that the only means by which they can earn a living is by prostituting themselves.<sup>58</sup>

According to KICJP's study, the three forms of businesses employ more than 330,000 women to provide sex services.<sup>59</sup> However, the number is likely even higher because of the difficulty in discovering the true number of prostitutes working clandestinely in businesses or underground sex services. A study conducted by the Korean Women's Development Institute ("KWDI"), a governmental institution, revealed in 1998 that close to 540,000 women were engaged in prostitution for businesses that sold sex services clandestinely, not including brothels, while the women's rights

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<sup>50</sup> Korean Institute of Criminal Justice Policy, *supra* note 7, at 19.

<sup>51</sup> BLACK'S LAW DICTIONARY 1244 (8th ed. 2004).

<sup>52</sup> Yun-Hi Kim, A Study on the Incheon Sungui-dong Brothel 'the Yellow house' - The Changes by the Act on the Punishment of Prostitution Crimes and Protection of Victims thereof & the Project for the Rehabilitation of the Brothel women, 20 (2006) (unpublished Masters dissertation, Seoul National University) (on file with the National Library of Korea) (on file with Seoul National University Library).

<sup>53</sup> Yun Hyon Suk, *70% of Prostitute Women Enter Prostitution in Their Teen Years*, YTN, June, 6 2004, available at [http://news.naver.com/news/read.php?mode=LSD&office\\_id=034&article\\_id=0000113125&section\\_id=102&menu\\_id=102](http://news.naver.com/news/read.php?mode=LSD&office_id=034&article_id=0000113125&section_id=102&menu_id=102) (last visited Jan. 8, 2007).

<sup>54</sup> Sun Hee Park, *A Study on Issue Management Strategy for Law of Prostitution Prevention—Focusing on Policy Public Relations Activities in the Process of Enactment and Enforcement* 59 (unpublished Masters dissertation, Seoul National University) (on file with the Library of Seoul National University).

<sup>55</sup> Lie, *supra* note 35, at 320.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Chung, *supra* note 13, at 236.

<sup>59</sup> *Id.*



group Sae Um Tõ estimated that 80,000 women were engaged in prostitution.<sup>60</sup>

Regardless of how women enter the sex trade, their procurers manipulate and abuse them economically. Economic manipulation involves debt bondage<sup>61</sup> and employment abuses.<sup>62</sup> Most prostitutes say that they had no debt when they first entered prostitution.<sup>63</sup> However, procurers (including brothel owners and sex business owners) lure women in with advance payments. They write employment contracts so that it is virtually impossible to pay back the debt.<sup>64</sup> Typical employment contracts include heavy penalties for failing to meet daily customer quotas, failing to sell a minimum number of drinks, chewing gum, talking to other club members, being tardy, etc.<sup>65</sup> Because most sex businesses front as a legitimate service business, like a restaurant or a bar, the contract on its face is likely to be regarded as legitimate. Procurers also require the women to buy clothes and makeup from designated sellers who inflate their prices and share the profits with the procurers.<sup>66</sup> Subsequently, women quickly incur great debt. According to KICJP, most prostitutes' debts grow to between \$21,000 and \$32,000 within a few years of becoming a prostitute.<sup>67</sup>

Prostitutes commonly experience physical and mental abuse. Procurers often hire gangsters to keep an eye on them.<sup>68</sup> When they complain or attempt to escape, they are beaten. For example, in one study, 76% of prostitutes surveyed in the province of Chun-Buk reported that they were physically beaten with sticks.<sup>69</sup> Public officials and the police have

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<sup>60</sup> Yun-Kyung Hyun, *Only 330,000 Prostitutes?*, HANGYORAE NEWS, Feb. 16, 2003. In addition to Korean women, close to 8,500 foreign women are estimated to be working in Korea as prostitutes. See MINISTRY OF GENDER EQUALITY AND FAMILY, RESEARCH ON THE ACTUAL CONDITIONS OF FOREIGN WOMEN IN PROSTITUTION 11 (Dec. 2003).

<sup>61</sup> Iyõul Cho, 성매매 문제의 열쇠? [The Key to Solving Prostitution Problem?], Labor Society Bulletin, No. 93, at 127 (2004).

<sup>62</sup> Korean Institute of Criminal Justice Policy, *supra* note 7, at 291.

<sup>63</sup> *Id.* at 333.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*; see also Jung Ok Lee, *The Globalization of Human Rights and the Human Security of Women in Sex Industry—With Special Focus on the Geopolitical Dynamics Among Global/National/Local Sectors for the Women's Security in Korean Village Near a U.S. Base*, 한국여성학 [KOREAN WOMEN'S STUDIES], Vol. 20, No. 1, at 210-1 (2004).

<sup>66</sup> Korean Institute of Criminal Justice Policy, *supra* note 7, at 334.

<sup>67</sup> *Id.*

<sup>68</sup> Keun-Moo Lee & Eun-Ju Yu, 성매매 여성들의 탈성매매 저해요인에 관한 연구 [A Study on the Factors Obstructing Prostitutes' Escape from Prostitution], KOREAN JOURNAL OF SOCIAL WELFARE, Vol. 58, No. 2, at 15 (2006).

<sup>69</sup> Eun Ju Kwon, *13% of Chõn Buk To Women In Their Twenties Are Victimized by Prostitution*, WOMEN NEWS, December, 12 2002, available at <http://www.womennews.co.kr/news/view.asp?num=17868> (last visited Jan. 8, 2007) (S. Korea).

largely ignored these abusive conditions.<sup>70</sup> Procurers also use the debt bondage as an excuse to confine women in their businesses.<sup>71</sup> Sadly, most women in prostitution come to accept their positions as slaves. They feel that they have no place else to go since Korean society vilifies them.<sup>72</sup> Additionally, while procurers and thugs abuse women, they also protect them from violent customers. Some women even expressed gratitude to their procurers for visiting them when they are in prison. Many prostitutes reportedly suffer from depression and feel uncertain about their future.<sup>73</sup> Once a woman enters prostitution, it is unlikely that she will be able to escape on her own due to severe economic, mental, and physical coercion.

### III. WOMEN'S RIGHTS GROUPS SPEARHEADED LEGAL REFORM OF KOREA'S PROSTITUTION POLICY, PROMOTING A FEMINIST APPROACH TO CURBING PROSTITUTION

Responding to the exploitation and tragic working conditions of women in prostitution, a women's rights movement began in the year 2000 and forced the government to face the horrific realities of the nation's sex industry.<sup>74</sup> Non-governmental organizations ("NGOs") working for women's rights argued that prostitution violates the human rights of prostitutes.<sup>75</sup> They organized themselves under an umbrella organization, KWAU.<sup>76</sup> The members of KWAU argued that the patriarchal society stigmatizes prostitutes while accepting men purchasing sex.<sup>77</sup> One argument these NGOs refuse to accept is that some women choose freely to enter into prostitution and that the choice to do so should be respected.<sup>78</sup> Some of these arguments reflect the three major feminist viewpoints: radical, social, and liberal feminism. This section will discuss how the reform movement mobilized the women's NGOs, what the main goals of the NGOs were, and how the groups' feminist values influenced the proposed legislation and the Korean legislature. This section will also examine the three major feminist

<sup>70</sup> Korean Women's Associations United, *supra* note 27, at 1.

<sup>71</sup> Korean Institute of Criminal Justice Policy, *supra* note 7, at 334.

<sup>72</sup> See Lee & Yu, *supra* note 68, at 17, 23.

<sup>73</sup> Hae Jung Suh & Ki Young Lee, Study on Development of the Sexually-Exploited Women's Self Rehabilitation Service, *춘추계 학술대회*, Vol. 1, No. 0 at 300 (2005).

<sup>74</sup> See Sohn, *supra* note 43, at 39.

<sup>75</sup> *Gunsan Fire Disaster One Year Later*, Update & Declaration, (Korean Women's Association United, Seoul, Korea), Sept. 18, 2001, available at <http://www.demos.or.kr/data/viewbody.html?bkind=%BF%A9%BC%BA%BF%EE%B5%BF&code=datacenter&dkind=normal&key=&keyfield=&number=37833&page=156> (last visited Jan. 8, 2007).

<sup>76</sup> Korean Women's Association United, *supra* note 27.

<sup>77</sup> See *id.* at 1.

<sup>78</sup> See *id.*

viewpoints on prostitution and how a further study of these viewpoints may have been missing in the NGOs' reform effort.

A. *A Fire Accident Exposed a System of Exploitation of Women in the Sex Industry and Fueled a Need for a Reform of Prostitution Policy*

The fire that broke out in the City of Gunsan, Korea in 2000 inspired a movement among women's NGOs.<sup>79</sup> In the brothel, prostitutes were sleeping in an enclosed room with windows fortified with metal bars when a fire broke out.<sup>80</sup> They were burned alive.<sup>81</sup> Even though the public officials in Gunsan could not have been unaware of the conditions in the city's brothel district, they stayed silent and allowed procurers to operate as they wished in exchange for bribes.<sup>82</sup> Outraged, KWAU<sup>83</sup> and other women's organizations helped the families of the victims bring a monumental suit against the public officials and the procurer who forced the women to perform sex services.<sup>84</sup> They claimed wrongful death of the deceased women on behalf of the families.<sup>85</sup> The lawsuit exposed rampant exploitation of women in prostitution as well as corruption in the police force.<sup>86</sup> More importantly, it raised public awareness about the exploitation of women.<sup>87</sup>

The lawsuit sparked a wave of reactions by various women's NGOs in Korea. They organized under the initiative of KWAU<sup>88</sup> and united under the position that prostitution was harmful to women in general and new laws were necessary to protect the human rights of women in the sex industry.<sup>89</sup> For the purposes of this paper, the women's NGOs will be referred to as

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<sup>79</sup> Oh, *supra* note 8, at 54.

<sup>80</sup> *Id.* at 3.

<sup>81</sup> *Id.*

<sup>82</sup> Chang Jae Yu, *The Nation Must Pay for Neglecting Prostitution Victimization*, OHMYNEWS.COM, Sept. 23, 2004, available at [http://www.ohmynews.com/articleview/article\\_view.asp?at\\_code=211621](http://www.ohmynews.com/articleview/article_view.asp?at_code=211621) (last visited Jan. 7, 2007).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* In 2002, the Court ordered the Korean government to pay damages of around U.S. \$67,000 to the three families, holding it responsible for the officials' failure to shut down the brothel as they should have under the law against morally depraved behavior. The pimp was ordered to pay close to \$6 million to the families.

<sup>85</sup> *Id.*

<sup>86</sup> Korean Women's Association United, Declaration: A Call for Punishment of Officials Who Received Bribes and Enactment of Law Against Prostitution, Apr. 30, 2002, available at <http://www.demos.or.kr/data/viewbody.html?bkind=%BF%A9%BC%BA%BF%EE%B5%BF&code=datacenter&dkind=normal&key=&keyfield=&number=37850&page=141> (last visited Jan. 8, 2007).

<sup>87</sup> Oh, *supra* note 8, at 74.

<sup>88</sup> For the purposes of this paper, I will use KWAU to represent the coalition of women's organizations that spearheaded the legislative campaign on anti-prostitution policy.

<sup>89</sup> Korean Women's Association United, *supra* note 27.

KWAU. They formed a Special Committee for the Enactment of a Law Preventing Prostitution to study potential prostitution polices and draft a model that would replace the then-present prostitution policy in Korea.<sup>90</sup>

*B. Feminist Theory Helped Guide and Inform KWAU's Movement Against Prostitution*

The contention of KWAU that prostitution violates human rights and that it must be eliminated is rooted in an amalgam of modern feminist theory. Prostitution is a difficult and complex subject for feminists.<sup>91</sup> Radical, social, and liberal feminist thoughts represent a few of the major doctrines on prostitution.<sup>92</sup> Radical feminists contend that prostitution arises out of the patriarchal domination over women.<sup>93</sup> In their view, women in the sex business are victims of male dominance, regardless of whether they entered voluntarily or involuntarily.<sup>94</sup> Prostitution degrades women and subjects them to cruel treatment.<sup>95</sup> In turn, this tramples upon their human rights and dignity.<sup>96</sup> Thus, radical feminists want laws that eradicate prostitution and define all women in prostitution as victims meriting protection.<sup>97</sup>

The socialist feminist argues that capitalism exploits the “labor of workers for the benefit of those who control the means of production.”<sup>98</sup> In their view, a woman enters prostitution for purely economic reasons. Because she is at an economic disadvantage to men and patriarchy ensures a livelihood via prostitution, capitalism—together with patriarchy—pushes women into prostitution. Thus, social feminists argue that women do not make a deliberate choice when entering into prostitution because “poverty

<sup>90</sup> *Id.*; Oh, *supra* note 8, at 56.

<sup>91</sup> Alexandra B. Stremler, *Sex For Money And The Morning After: Listening To Women And The Feminist Voice in Prostitution Discourse*, 7 U. FLA. J. L. & PUB. POL'Y 189, 196 (1995).

<sup>92</sup> Melissa Farley, *Prostitution, Trafficking and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 YALE J. L. & FEMINISM, 109, 110 (2006). See Gregg Aronson, Note, *Seeking a Consolidated Feminist Voice for Prostitution in the U.S.*, 3 RUTGERS J. L. & URB. POL'Y 357 (2006).

<sup>93</sup> Lee & Yu, *supra* note 68, at 7.

<sup>94</sup> See Seung-Hee Ju, *Feminist Legal Theory and its Influence on Prostitution Legislation in Korea*, 법철학연구[KOREAN ASS'N OF LEGAL PHIL. REV.], Vol. 8, No. 2, 275, at 281 (2005) (S. Korea).

<sup>95</sup> Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J. L. & GENDER 335, 349 (2006).

<sup>96</sup> Lee & Yu, *supra* note 68, at 7.

<sup>97</sup> *Id.*

<sup>98</sup> Susan E. Thompson, Note, *Prostitution — a choice ignored*, 21 WOMEN'S RTS. L. REP. 217, 234 (2000).

leaves women with little or no alternatives to turn to for help.<sup>99</sup> They argue that if there were no poor women, there would be no prostitution.<sup>100</sup> Social feminists advocate for decriminalization of prostitution since women exercise no conscious choice in engaging in it.

Finally, liberal feminists view prostitution as any other job and prostitutes as sex workers.<sup>101</sup> They believe that a woman should have the choice to do whatever she wants to do to earn money.<sup>102</sup> Because men and women should receive equal treatment, liberal feminists oppose the image of women as victims needing special protection.<sup>103</sup> Hence, they advocate for the regulation of contracts between prostitutes and their employers.

C. *KWAU's Model Legislation Embodied a Combination of Feminist Views on Prostitution, Emphasizing the Human Rights Violations Inherent in the Trade*

The views of KWAU did not fall clearly within any one category of feminist theory; rather its position reflected a mix of the radical and social feminist theories. It based this position upon the despicable conditions present in the Korean sex industry, as revealed by the governmental and non-governmental studies of it. It is certain, however, that KWAU disagreed with liberal feminism because KWAU views prostitutes as victims, not as choice-makers.<sup>104</sup> To KWAU, prostitution does not provide a source of jobs; instead, it inflicts violence on women. Patriarchy lures women into prostitution by presenting them with false hopes of livelihood, yet in reality it subjects them to male violence in the sex industry.<sup>105</sup> KWAU's primary concern was to protect the prostitutes' human rights.<sup>106</sup> Its position incorporates both radical and social feminist thought because it views

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<sup>99</sup> *Id.* at 235.

<sup>100</sup> Kuk Cho, *Prostitution Revisited*, 형사정책 [Korean Criminal Review], Vol. 15, No. 2, 255, at 262 (2003) (S. Korea).

<sup>101</sup> Jody Freeman, *The Feminist Debate over Prostitution Reform, Prostitute's Rights Groups, Radical Feminists, and the (Im)possibility of Consent*, in APPLICATION OF FEMINIST LEGAL THEORY 240 (D. Kelly Weisberg ed., Temple University Press 1996).

<sup>102</sup> *Id.*

<sup>103</sup> Nancy Levit, *Feminism for Men: Legal Ideology and the Construction of Maleness*, 43 UCLA L. REV. 1037, 1044 (1992).

<sup>104</sup> Tök Hyöng Yun et al., Memorandum: Victims of Prostitution as According to the Anti-Prostitution Legislation, Korean Women's Development Institute 17 (Dec. 2005); see also Na Young Lee, *Gendered Nationalism and Otherization: Transnational Prostitutes in South Korea*, 7 INTER-ASIA CULTURAL STUD. 456, 465 (Sept. 2006).

<sup>105</sup> For Feminist Radical Sexual Politics, *supra* note 14, at 42.

<sup>106</sup> *Id.* at 60.

women in the sex industry as having no meaningful choice or freedom over her body or mind.<sup>107</sup>

As a result, KWAU drafted and lobbied for a legislation that espoused certain principles. First, the legislation would label certain prostitutes as victims of prostitution<sup>108</sup> and not as morally depraved persons, unlike the then-present LMDB.<sup>109</sup> Second, it would institute penalties against procurers and sex purchasers who exploit the women.<sup>110</sup> Finally, the legislation would help prostitutes escape the sex industry by protecting them and providing them a support system that would include welfare facilities and vocational training.<sup>111</sup>

#### D. *Korea's Adoption and Modification of KWAU's Legislation Prompted Mixed Reactions*

The Korean government did not take any particular feminist stance on prostitution.<sup>112</sup> However, the government was open to reforming the prostitution policy<sup>113</sup> because of increasing international pressure to curb human trafficking.<sup>114</sup> The United States government placed Korea in "Tier 3" in its 2001 Trafficking in Persons Report.<sup>115</sup> Under the Victims of Trafficking and Violence Protection Act of 2000, if a country did not meet the minimum standard for curbing trafficking, it would risk losing non-humanitarian, non-trade related assistance from the U.S.<sup>116</sup> Korea, as a tier 3

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<sup>107</sup> KWAU also worked with the Coalition Against Trafficked Women (CATW). See *Voices 2005 and Beyond*, Proceedings of the Asia Pacific NGO Forum on Beijing + 10, Asia Pacific Women's Watch at 186 (2005). CATW also espouses a belief that "all prostitution exploits women, regardless of consent." See Coalition Against Trafficking in Women, <http://www.catwinternational.org/about/index.php#history> (last visited Jan. 9, 2007).

<sup>108</sup> Paradigm, *supra* note 10, at 43.

<sup>109</sup> Yun et al., *supra* note 104.

<sup>110</sup> Korean Women's Association United, *supra* note 27, at 2.

<sup>111</sup> Yun et al., *supra* note 104, at 22.

<sup>112</sup> Park, *supra* note 54, at 74 (The government as well as the women's organizations failed to clearly articulate why the nation must eliminate, rather than regulate, prostitution. The lack of a discussion indicates that the government did not adopt a particular feminist viewpoint and thus was unable and unwilling to promulgate a clear legal stance on prostitution.).

<sup>113</sup> Oh, *supra* note 8, at 59.

<sup>114</sup> Sealing Cheng, *supra* note 16. During the period of the women's prostitution policy reform movement, the Korean government was in the midst of developing strategies to prevent human trafficking. See also MINISTRY OF GENDER EQUALITY AND FAMILY, KOREAN GOVERNMENT'S ROLE IN PREVENTING TRANSNATIONAL TRAFFICKING IN PERSONS—FOCUSING ON TRAFFICKING IN WOMEN, Sept. 22, 2003.

<sup>115</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, V. COUNTRY NARRATIVES, KOREA (TIER 3), July 2001, available at <http://www.state.gov/g/tip/rls/tiprpt/2001> (last visited Jan. 7, 2007). Falling under tier 3 imposes a significant risk of losing favorable treatment, such as funding, from the U.S.

<sup>116</sup> Victims of Trafficking and Violence Protection Act, 22 U.S.C. § 7107 (2006).

country, had fallen below the minimum standard<sup>117</sup> and faced great international humiliation as well as scorn from the United States. Thus, the government welcomed KWAU's proposed legislation and supported the group's lobbying efforts.<sup>118</sup>

After four years of lobbying by KWAU, the National Assembly passed two laws on February 26, 2004:<sup>119</sup> first, an Act on the Punishment of Procuring Prostitution and Associated Acts ("Punishment Act"), and second, an Act on the Prevention of Prostitution and Protection of Victims Thereof ("Protection Act").<sup>120</sup> The former focused on penalizing procurers and traffickers, while the latter focused on protecting persons engaged in prostitution.<sup>121</sup>

Unexpected opposition surfaced immediately after the legislation's passage,<sup>122</sup> alerting KWAU and the government to voices that had gone unheard during the legislative process. Nearly 2,700 prostitutes took to the streets in protest in October and November 2004.<sup>123</sup> They claimed that they were legitimate laborers who entered into prostitution by choice and that they had the right to make a living as "sex workers."<sup>124</sup> In their opinion, the new legislation would push their work further underground and increase the risk of abuse.<sup>125</sup> These ideas reflect liberal feminism's notion that many choose to engage in prostitution and that their right to work must be protected. The protesters' viewpoint also reflects social feminist thought in that they showed the acute desperation for a livelihood through prostitution; they engaged in hunger strikes, a number of prostitutes shaved their heads,<sup>126</sup> and some even attempted to commit suicide.<sup>127</sup> A pro-prostitute group, Min

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<sup>117</sup> Korea also suffered international embarrassment when the Embassy of Philippines sued a club owner that had recruited and forced eleven Filipinas to perform sex services. See Na Young Lee, *supra* note 104, at 452.

<sup>118</sup> Oh, *supra* note 8, at 58.

<sup>119</sup> *Id.*

<sup>120</sup> The two new laws together are referred together as "성매매방지법," which can be translated as "Anti-Prostitution Legislation."

<sup>121</sup> KWAU made the law gender-neutral.

<sup>122</sup> Paradigm, *supra* note 10, at 43; see also Sang-Gyu Yim, *The Needs and Problems of the Special Anti-Prostitution Legislation*, 형사정책 [KOREAN CRIMINAL REVIEW], Vol. 17, No. 1, 179 at 180 (2005).

<sup>123</sup> Chung, *supra* note 13; Eun-Joo Cho, *Speaking about Subordination Challenger's Politics: Prostitutes Who Took to the Streets*, Korean Grand Alliance of Lab. Unions Res. Memorandum at 5 (Nov. 28, 2006).

<sup>124</sup> Cho, *supra* note 123, at 3.

<sup>125</sup> *Id.*

<sup>126</sup> Joo-Hyun Cho, *Intersectionality Revealed: Sexual Politics in Post-IMF Korea*, KOREA J., Autumn 2005, at 103 [hereinafter Joo-Hyun Cho].

<sup>127</sup> 김지은 [Ji-Eun Kim], 성매매 방지법, '언론과의 전쟁?' [Anti-Prostitution Law, the War with the Media], OHMYNEWS.COM, Oct. 26 2004, available at [http://news.naver.com/news/read.php?mode=LSD&office\\_id=047&article\\_id=0000052322&section\\_id=102&menu\\_id=102](http://news.naver.com/news/read.php?mode=LSD&office_id=047&article_id=0000052322&section_id=102&menu_id=102).

Sŏng No Ryŏn, reported that over 80% of sex workers were heads of households living in poverty,<sup>128</sup> signifying the economic desperation of many prostitutes. The protesters sought empowerment through bargaining and organizing methods so that they would not be subject to procurer oppression and abuse at the hands of their procurers.<sup>129</sup> The mere classification of prostitutes as “victims” failed to guarantee prostitutes’ livelihoods or safety.

The protest raised a number of difficult issues to which the government and KWAU failed to respond. The government claimed that the procurers manipulated women to engage in prostitution.<sup>130</sup> Women’s organizations that supported the legislation disagreed with the groups’ claims since they stood strongly against sex work and viewed prostitution as a patriarchal crime.<sup>131</sup> The protesters’ arguments were never thoroughly discussed.

When the National Assembly enacted the laws, KWAU hailed it as a triumph for gender equality as well as for the basic human rights of prostitutes.<sup>132</sup> Yet KWAU’s neglect of divergent viewpoints on prostitution meant that it failed to anticipate the inadequacies of the legislation. And with the government’s further revisions, some of the most effective aspects of the proposed legislation were lost without protest from KWAU.

#### IV. KOREA’S NEW ANTI-PROSTITUTION LAWS MAKE MINOR ADVANCES BUT FAIL TO ELIMINATE MAJOR INADEQUACIES IN KOREA’S EXISTING LEGAL REGIME

Despite the opposition, the government forged ahead in implementing the new Punishment Act and the Protection Act. It successfully brought public awareness to the abuse and exploitation of women in the sex industry. The new laws make positive changes to the old prostitution law by eliminating provisions that were discriminatory to the prostitutes and adding provisions that reflect a better understanding of the transactions that occur in prostitution. However, no radical change was made to the old prostitution law, and as a result, the new laws retain many ineffective aspects of the old

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<sup>128</sup> *Newsletter*, Min Sŏng No Ryŏn, Nov. 5, 2005 at 3.

<sup>129</sup> Joo-Hyun Cho, *supra* note 126, at 104.

<sup>130</sup> Cho, *supra* note 123, at 3. See Jong Mo Park, “Sex Work: Begins in Poverty,” PROMETHEUS, July 1, 2005, available at <http://www.prometheus.co.kr/articles/102/20050701/20050701095600.html> (last visited Jan. 8, 2007).

<sup>131</sup> Na Young Lee, *supra* note 104, at 465.

<sup>132</sup> Korean Women’s Associations United, *supra* note 27.



law. This section will discuss the legal inadequacies of the new laws and how they interfere with the legislative intent to protect prostitutes.

A. *The New Laws Removed Some of the Most Discriminatory Language in the LMDB but Remain Prejudiced Against Prostitutes*

The Punishment Act shifts the focus of the law from punishing “morally depraved” acts to targeting and eliminating the economic transaction of buying and selling sex. In order to do so, the title of the Punishment Act disposed of the term “Yullak (윤락)”<sup>133</sup> found in the LMDB (윤락 행위 등 방지법). Yullak describes a situation in which a woman’s moral depravity leads her to sell her body.<sup>134</sup> Instead of this term, the Punishment Act uses the term Sung-Mae-Mae (성매매), which describes the buying and selling of sex.<sup>135</sup> The term matches the definition of prostitution, which is the act or practice of engaging in sexual activity for money or its equivalent.<sup>136</sup> The Punishment Act specifies in its title that it punishes the act of procuring Sung-Mae-Mae or prostitution. This merely targets the people engaged in such transactions, instead of passing judgment on the morality of prostitutes.<sup>137</sup>

Instead of viewing prostitutes as morally corrupt, the new laws view prostitutes as potentially eligible for “victim” status. LMDB explicitly prohibited only a few activities including prostituting, buying sex, inviting, seducing or forcing someone to prostitution, providing a place for prostitution, and receiving or promising to receive benefits from a prostitute or a customer.<sup>138</sup> In contrast, the Punishment Act includes the key players in the economic transactions of the sex industry. This includes: 1) procurers who coerce or allure a person to purchase or sell sex, 2) persons who provide places, funds, land, or buildings for prostitution, 3) persons who voluntarily sell sex, 4) traffickers who transport people and force them to perform sex services, 5) victims—foreign and domestic—who are forced, coerced, or allured to provide sex services against their will, and 6) persons who use deceptive schemes or force others to make pornographic materials.<sup>139</sup> The law prescribes penalties for these persons, excepting only the “victims of

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<sup>134</sup> Joo-Hyun Cho, *supra* note 126, at 101.

<sup>135</sup> *Id.*

<sup>136</sup> BLACK’S LAW DICTIONARY 1259 (8th ed. 2004).

<sup>137</sup> Lee, *supra* note 41, at 10.

<sup>138</sup> LMDB, Act No. 771, ch. I, art. 4, sec. 1-5.

<sup>139</sup> Punishment Act, Act No. 7196.

prostitution.”<sup>140</sup> Victims include juveniles, disabled persons, persons who are forced to sell sex by means of deceptive schemes, force, or coercion, and those who have been intoxicated with narcotic drugs.<sup>141</sup>

Even though the law no longer labels prostitutes as morally corrupt, the new laws retain LMDB's judgmental biases against prostitutes. LMDB provided limited protection services such as counseling and welfare benefits to the prostitutes under 20 years of age.<sup>142</sup> It also provided that protective detention may be necessary to protect them.<sup>143</sup> Because LMDB made a moral judgment about all prostitutes, it designed the protection services as a way to correct the women's way of life.<sup>144</sup> In fact, welfare facilities under LMDB were designed to provide services that included “personal emotional composure and character building.”<sup>145</sup> LMDB presupposed that people entered prostitution of their own choice and because of some character flaw.

The two new laws fail to completely remove the judgmental characteristics because they allow prosecutors to determine the victim status of a prostitute based on her character and conduct. The stated purpose of the Protection Act is to “prevent prostitution and to support the protection and self-reliance of victims of prostitution and those who sell sex.”<sup>146</sup> Thus, it aims to provide support and protection for all prostituting persons and to guarantee their dignity without any moral judgment. However, to qualify for protective services, one must first demonstrate character and conduct that is deserving of the victim status under the Punishment Act's Chapter III, Article 12, Section 1. Under this provision, the prosecutor investigating a prostitute's case has the discretion to designate it as a protection case based on the character and the motive of the case and the character and conduct of the person.<sup>147</sup> The Act fails to define what character and conduct means and what traits or behavior might entitle the person to protection. But the character and conduct of a person do not factor into the determination of one's victim status under the Punishment Act. Chapter I, Article 2, Section 4 provides that victim status entails situations in which someone is forced

<sup>140</sup> Punishment Act, Act No. 7196, ch. II, art. 6, sec. 1.

<sup>141</sup> Punishment Act, Act No. 7196, ch. I, art. 2, sec. 4.

<sup>142</sup> LMDB, Act No. 771, ch. II, art. 8(1), (2).

<sup>143</sup> *Id.* See also National Assembly's Women's Affairs Committee, 성매매방지및피해자보호등에 관한법률안 성매매알선등행위의처벌및방지에관한법률안에 대한 의견제시의 건: 검토보고서 [Review Report of the Proposal of Anti-Prostitution Legislation's Act on the Punishment of Procuring Prostitution and Associated Acts] at 3, Oct. 2002. According to the report, many prostitutes were forced into the welfare services.

<sup>144</sup> LMDB, Act No. 771.

<sup>145</sup> LMDB, Act No. 771, ch. II, art. 10, sec. 2.

<sup>146</sup> Protection Act, Act No. 7212.

<sup>147</sup> Punishment Act, Act No. 7196, ch. II, art. 12, sec. 1.

through various means to perform sex services. Character and conduct of that person does not play a role in the victim definition. The Punishment Act thus gives prosecutors too much discretion to grant prostitutes protected status based on character.

*B. The New Laws Fail to Achieve Their Purpose Because They Criminalize Prostitutes*

The new prostitution legal regime suffers from another major drawback: the Punishment Act criminalizes prostituting women who cannot prove their victim status.<sup>148</sup> Women's activists and KWAU originally proposed decriminalization of the actual selling of sex by the prostitutes because all prostitutes qualify as victims of male violence against women.<sup>149</sup> However, when the South Korean government was reviewing and revising the laws, it retained LMDB's provisions of punishing both persons who sell sex and persons who buy sex.<sup>150</sup> Such a provision has many negative effects to all women in prostitution and decreases the effectiveness of the Punishment Act and the Protection Act. Fundamentally, this brings the purposes of the Acts into conflict.

*1. Criminalizing Prostituting Women Makes the Purposes of the Two Laws Clash*

Criminalization of prostitution makes the purposes of the new laws clash. Currently, the purposes of the Punishment Act and the Protection Act contradict each other due to the provision in the Punishment Act that criminalizes prostituting women who cannot prove their victim status.<sup>151</sup> The basic purposes of the two laws are to eliminate prostitution and protect victims and others who sell sex from exploitation, respectively.<sup>152</sup> To eliminate prostitution, the Punishment Act forbids the actual selling of sex under Chapter I, Article 4.<sup>153</sup> The actual selling of sex does not involve procurers.<sup>154</sup> Under this clause, any woman engaged in prostitution is presumed to be a criminal because she is engaged in a prohibited act. And under Chapter II, Article 21, such a woman faces imprisonment of no more

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<sup>148</sup> Punishment Act, Act No. 7196.

<sup>149</sup> Yun et al., *supra* note 104, at 16-7.

<sup>150</sup> Punishment Act, Act No. 7196.

<sup>151</sup> Punishment Act, Act No. 7196, ch. I, art. 1; Protection Act, Act No. 7212, art. 1.

<sup>152</sup> *Id.*

<sup>153</sup> Punishment Act, Act No. 7196, ch. I, art. 4.

<sup>154</sup> Procurers sell and profit off of women as commodities but women are the actual sellers of sex using their bodies.

than three years or a fine not exceeding 30,000,000 won (approximately \$3,225). She may, however, avoid the punishment if she can demonstrate that she is a victim of prostitution as defined under Chapter I, Article 2, Section 4. If she is a victim, she will be subject to protective disposition under the Punishment Act and be eligible for services under Article 5,<sup>155</sup> including board, housing, and other support. The contradiction arises because the purposes of the Protection Act is to provide protection and assistance to both victims of prostitution and others who sell sex, and yet the law requires the latter to prove victim status before being eligible for services. Under Article 5 of the Protection Act,<sup>156</sup> victims and prostitutes who are willing to quit prostitution are eligible for [the same or some] types of services. It is unclear whether the prostitutes who are willing to quit prostitution will be subject to the punishment of imprisonment or to fines. Thus, inherent contradictions in the purposes of the two laws arise out of criminalizing all prostitutes before their victim status can be proven.

The Act's contradiction is a result of the government's failure to exercise due care by passing the laws without thoroughly understanding KWAU's goals for them. KWAU argued that the nature of the sex industry is that all prostitutes suffer from economic, physical, and mental abuses.<sup>157</sup> Even if a woman enters prostitution voluntarily, she may be locked up in a brothel and be brutally controlled by her procurer.<sup>158</sup> Studies show that such a woman may even desire to stay in such a condition because she is so severely psychologically controlled by her procurer.<sup>159</sup> The line between who is forced to stay and who is not is simply unclear because the sex industry can make a woman oppress herself and allow for further exploitation.<sup>160</sup> In advocating this viewpoint, KWAU had advocated decriminalizing all women who sell sex. The National Assembly's Women's Affairs Committee even agreed with them that the human rights of all women in prostitution are violated.<sup>161</sup>

The government rejected KWAU's proposal without much consideration. By retaining LMDB's provision criminalizing the actual selling of sex, the government created a presumption that all prostitutes are breaking the law unless they can prove their victim status. Under this

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<sup>155</sup> Protection Act, Act No. 7212, art. 5.

<sup>156</sup> *Id.*

<sup>157</sup> See *supra* Part II, B. This section contains discussions of the abuses the prostitutes suffer in the sex industry.

<sup>158</sup> *Id.*

<sup>159</sup> Lee & Yu, *supra* note 68, at 26.

<sup>160</sup> Yun et al., *supra* note 104.

<sup>161</sup> WOMEN'S AFFAIRS COMMITTEE REPORT, *supra* note 2, at 14.

provision, not all women are eligible for the law's protection.<sup>162</sup> When the National Assembly's Women's Affairs Committee was reviewing KWAU's proposed legislation, which decriminalized the actual selling of sex by prostitutes, one of the reviewers noted that granting all women the victim status would make the legislation difficult to enact in the National Assembly.<sup>163</sup> The reviewer's comment is understandable since LMDB's focus was on moral judgment about prostitution, not on the welfare of prostitutes.<sup>164</sup> Moreover, a study of the National Assembly's discussion over prostitution issues reveals that the government had long taken a position that prostitution existed because women were willing to sell their bodies due to their immoral characters.<sup>165</sup> Instead of engaging in a deep discourse over the potential impact of a criminalization provision, the government simply made revisions to KWAU's proposed regulations and prepared it for the National Assembly's smooth passage.

What the government failed to recognize is that the possible reasons underlying nations' criminalization of the actual selling of sex are generally unachievable in reality and merely jeopardize the safety of prostitutes.<sup>166</sup> The first of the two main goals of criminalization is to eliminate or decrease prostitution.<sup>167</sup> The second is that law enforcement should take a public stance against prostitution because it is immoral.<sup>168</sup> However, there are a number of reasons why criminalization does not achieve any of these goals. When a law criminalizes the selling of sex by the woman, it fails to acknowledge the reasons why a woman might sell her body for money. Making money seems like one of the universally recognized motivations behind a woman's decision to enter into prostitution.<sup>169</sup> Lack of economic opportunity will inevitably drive a certain portion of low-income and perhaps less-educated women into prostitution because they may believe that prostitution is their only avenue to economic viability. Criminalizing a woman who sells her body out of economic desperation is unlikely to eliminate prostitution.

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<sup>162</sup> Punishment Act, Act No. 7196, ch. II, art. 6, sec. 1; ch. IV, art. 21.

<sup>163</sup> WOMEN'S AFFAIRS COMMITTEE REPORT, *supra* note 2, at 117.

<sup>164</sup> See *supra* Part IV.

<sup>165</sup> Cho & Chang, *supra* note 42, at 106-7. A review of the National Assembly record from the 1940s to late 1980s by two professors of Ewha Women's University demonstrates several prevailing attitudes of the assembly; a majority of members took a patriarchal attitude that prostituting women are morally corrupt while a man buying sex was acting out his human nature.

<sup>166</sup> LENORE KUO, PROSTITUTION POLICY: REVOLUTIONIZING PRACTICE THROUGH A GENDERED PERSPECTIVE 124 (Despina Papazoglou Gimble ed., New York University Press 2002).

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> See Freeman, *supra* note 101, at 241; see also Kuo, *supra* note 166, at 96.

Moreover, basing a prostitution legal regime on morality jeopardizes a woman's safety. If the law criminalizes women who sell sex because doing so is immoral, then the women suffer stigmatization as morally deviant people. Even when there may be blatant abuse of the prostitute, law enforcement may regard her as morally corrupt and undeserving of protection. Imposing criminal penalties on a woman estranges her from her family and from the community,<sup>170</sup> further isolating her from potential support networks. Doing so also makes her more dependent upon her procurer.<sup>171</sup> As a feminist scholar Catherine MacKinnon puts it, "women are dug deeper and deeper into civil inferiority"<sup>172</sup> by criminalization and stigmatization. The goals underlying criminalizing the selling of sex by prostitutes remain unmet; rather, criminalization merely jeopardizes prostitutes' safety.

## 2. *The Implementation of the Protection Act is Hindered by the Criminalization of Women Selling Sex*

The Punishment Act<sup>173</sup> criminalizes prostituting women who cannot prove their victim status and subjects them to further manipulation and exploitation by their procurers. Chapter IV, Article 21 of the Act subjects prostitutes to fines of close to 300,000 won (\$3,124)<sup>174</sup> or even imprisonment.<sup>175</sup> These fines make women unlikely to report to the police the abuse they suffer in prostitution because they can end up in jail. Prostitutes often cannot escape the sex industry due to fear of their procurers' retribution. Moreover, they distrust the police force, which does little to protect them. Before 2004, many police officers around the country rarely enforced the prostitution law because they were much happier taking

<sup>170</sup> Kuo, *supra* note 166, at 125.

<sup>171</sup> Eun-Kyung Kim, *Feminism Discours on Prostitution and Criminal Dilemmas*, 형사정책 [KOREAN CRIMINAL REVIEW], Vol. 14, No. 2, at 64 (2002).

<sup>172</sup> Catharine MacKinnon, *Prostitution and Civil Rights*, in *APPLICATION OF FEMINIST LEGAL THEORY* 225, (D. Kelly Weisberg ed., Temple University Press 1996).

<sup>173</sup> Punishment Act, Act No. 7196, ch. IV, art. 21.

<sup>174</sup> The average monthly salary for a Korean worker was around \$1,763 (1백64만3천원) in 2002. INCHEON TIMES, Nov. 17, 2002, available at <http://news.itimes.co.kr/Default.aspx?id=view&classCode=202&seq=88884> (last visited Jan. 8, 2007). The average monthly salary for a prostitute is uncertain; some prostitutes surveyed have said that depending on what kind of establishment one works at, the monthly earning could range from \$1,100 to \$5,400. However, the procurers take a significant portion of the earnings and often take almost all of the earnings through a penalty and fine system. Korean Institution of Criminal Justice Policy, *supra* note 7, at 304-5.

<sup>175</sup> Punishment Act, Act No. 7196, ch. IV, art. 21.

bribes from the procurers.<sup>176</sup> Even though there is a possibility of proving one's victim status under the two laws, it is questionable whether someone who had suffered long oppression and has no support system will seek the police's help and articulate her situation as a victim. Criminalizing the selling of sex also discourages prostitutes from turning their procurers in or testifying against them because there is always a risk that the prostituting woman may also be found guilty of a crime.

In addition to these practical barriers, the definition of victims of prostitution under the Punishment Act fails to capture all situations in which a prostitute may need protection. Under the Act, a victim of prostitution is defined to include: 1) a person who is forced to sell sex by means of a deceptive scheme, force, or other forms of coercion; 2) a person who sells sex and who, because of the person who protects or supervises them, is coerced to take illegal drugs, psychotropic medicine, or marijuana; 3) juvenile persons, a person with mental disorder, or a person with a disability; and 4) a person who is trafficked for the purpose of prostitution.<sup>177</sup> It is uncertain how many of the at least 330,000 women working in the sex industry will fit neatly into one of the above defined categories. Because the Punishment Act does not define the force or coercion that can happen in the sex industry,<sup>178</sup> prostitutes will feel uncertain of whether their situations qualify them as victims. For instance, the Punishment Act nullifies debt bondage, but it does not define debt bondage as a form of coercion. It does not stipulate the degree of physical and mental abuse one must suffer to qualify for victim status. Finally, prostitutes are subject to abuse from procurers, gangsters working for procurers, and even customers, but to qualify as a victim, one must prove that the abuse came from the person who forced her to sell sex.<sup>179</sup>

The Protection Act vests an unwisely broad amount of discretion in the prosecutors and police officers in determining the victim status of prostitutes.<sup>180</sup> In Korea, prosecutors play a key role in developing a criminal case. On top of their prosecutorial duties, they not only investigate the crimes but also direct and supervise police officers in the investigation. The police force initiates most criminal investigations but once the investigation

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<sup>176</sup> In the district of Yeongdeungpo in Seoul, KWAU uncovered that the police force took bribes from local procurers amount to around \$850 to \$1,600 a month over 117 times before getting caught. *See* Korean Women's Association United, *supra* note 86.

<sup>177</sup> Punishment Act, Act No. 7196, ch. I, art. 2, sec. 4.

<sup>178</sup> Punishment Act, Act No. 7196.

<sup>179</sup> Yun et al., *supra* note 104.

<sup>180</sup> Punishment Act, Act No. 7196, ch. II, art. 6, sec. 2.

ends, it refers all case files to the prosecutors for review.<sup>181</sup> Thus, Chapter II, Article 6, Section 2 of the Punishment Act gives full investigative powers to the prosecutor and the police officers.<sup>182</sup> However, the laws present few guidelines to help the police decide who gets amnesty other than the four categories of 'victims' mentioned above. The Punishment Act stipulates that after considering the character and motive of the case, combined with the character and the conduct of the person, the prosecutor shall send the case to the competent court as a protection case when there is a good reason to believe that the person who sells sex should be put under protective disposition."<sup>183</sup> In other words, the fate of a prostituting woman in a criminal case is placed almost entirely in the hands of the prosecutor or police officer who may happen to investigate her case. This only adds to the mutual distrust. And this is on the top of the fact that police officers had been a part of the exploitation of prostitutes before the prostitution police reform: many police officers around the nation had accepted bribes from procurers to secure brothel or other sex business operations.<sup>184</sup>

A study conducted by the KWDI a year after the passage of the Punishment Act and the Protection Act demonstrates the pitfalls of giving too much discretion to prosecutors and police officers. Because the police officers first develop a criminal investigation, they get the first stab at determining the victim status of an accused or a witness in a prostitution case.<sup>185</sup> KWDI discovered that prostitutes' calls to the emergency hot line are at times ignored.<sup>186</sup> Police officers often do not listen carefully to the stories of the prostitutes.<sup>187</sup> Many of them are actually unsure of how to distinguish between a victim and a person who voluntarily sold sex.<sup>188</sup>

Equally disconcerting is that the law readily presumes that prostitutes will have a legal representative or another person who may support her. When a prostitute enters a police department, an officer has the responsibility to determine her victim status based on her testimony.<sup>189</sup> An

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<sup>181</sup> Hochul Kim, Paper Presentation: The Investigative Role and Function of the Prosecution in Korea (January 13, 2006) (on file with the International Association of Prosecutors), available at <http://www.iap.nl.com> (last visited Feb. 8, 2007). Kim is a member of the Legal Expert Presidential Committee on Judicial Reform and a senior prosecutor of the Seoul Eastern District Prosecutors' Office of the Republic of Korea. This paper was presented by Kim at the 3rd Asia Pacific Regional Conference of the International Association of Prosecutors in Macau, China in 2006.

<sup>182</sup> Punishment Act, Act No. 7196, ch. II, art. 6, sec 2.

<sup>183</sup> *Id.*

<sup>184</sup> See Korean Women's Association United, *supra* note 86.

<sup>185</sup> Kim, *supra* note 181.

<sup>186</sup> Yun et al., *supra* note 104, at 60-62.

<sup>187</sup> *Id.* at 69.

<sup>188</sup> *Id.* at 81.

<sup>189</sup> *Id.* at 43.



officer also has great discretion over this matter: Chapter II, Article 6, Section 2 stipulates that in “a case where there is a good reason to believe that the accused or a witness is a victim of prostitution the prosecutor or the [police officer] shall immediately notify the victim’s legal representative, family members, relatives, or legal counsel.”<sup>190</sup> The provision recognizes the need for a legal counsel or some type of support for the prostitute to demonstrate her victim status, but it readily presumes that such support is available for prostitutes. A KICJP study showed that prostitutes left their families at young age due to money issues or abuses at home.<sup>191</sup> Given prostitutes’ vulnerable positions in the society, it is unlikely that they will secure a representative who can guide them through the police investigation. Additionally, the police do not seem to clearly promote the right to be accompanied by a support person<sup>192</sup> although they know many prostitutes have difficulty communicating.<sup>193</sup> Due to limited resources and distrust of police officers, prostitutes will have difficulties in proving their victim status.

The Punishment Act’s disparate treatment between victims and other prostituting women not only makes police investigation more difficult but also jeopardizes the safety of prostitutes. During the first year of the new laws’ implementation, only 2.8% of persons arrested under the Punishment Act were categorized as victims of prostitution.<sup>194</sup> During the last two years, around 3,507 women entered the welfare facilities,<sup>195</sup> which means out of 330,000 women in prostitution as estimated by the Korean Institute of Criminology, only 1.06% had actually used the facilities. The low rate of women being protected is likely the result of the Punishment Act’s disparate treatment between victims and other prostitutes. Part of the reason also includes other prostitutes hiding from the law enforcement officers, believing that they would be punished for work they claim they cannot quit. Because they are further ostracized from the legal process, the prostitutes are put at additional risk of manipulation by procurers. Criminalizing a woman for entering prostitution and suffering oppression does not help the

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<sup>190</sup> Punishment Act, Act No. 7196, ch. II, art. 6, sec. 2.

<sup>191</sup> Korean Institute of Criminal Justice Policy, *supra* note 7, at 293-94.

<sup>192</sup> Yun et al., *supra* note 104, at 65-66.

<sup>193</sup> *Id.* at 70-71.

<sup>194</sup> MINISTRY OF GENDER EQUALITY AND FAMILY, ONE YEAR ANNIVERSARY OF ACTS AGAINST PROSTITUTION: ENFORCEMENT SITUATION SUMMARY (성매매방지법 시행1년 추진상황 종합) 7 (Sept. 12, 2005), available at <http://www.mogef.go.kr> (last visited Feb. 8, 2007) (material found in the Archive section [자료실]).

<sup>195</sup> MINISTRY OF GENDER EQUALITY AND FAMILY, REPORT: SUCCESSES AND SUGGESTED IMPROVEMENTS FOR THE TWO YEAR ANNIVERSARY OF ACTS AGAINST PROSTITUTION (성매매방지법 시행2년 성과 및 향후 개선대책 발표) 5 (Sept. 19, 2006).

government eliminate prostitution. It only hinders protecting their health and safety.

V. KOREA SHOULD DECRIMINALIZE THE SELLING OF SEX OR REDESIGN THE PUNISHMENT ACT'S ENFORCEMENT MECHANISMS

Globally, all nations struggle to curb the exploitation and abuse of prostitutes through their laws. Whether a nation chooses to criminalize, decriminalize, or regulate prostitution, no nation's legal regime is perfect or entirely effective in stopping the exploitation and abuse of women. Moreover, feminists have yet to develop a coherent legal regime that effectively addresses the major issues in prostitution.<sup>196</sup> Even though developing and implementing a workable anti-prostitution legal regime is difficult, there are several recommendations that may help the Korean government better implement the goals of the new laws. The government must realize that the goal of eliminating prostitution through the criminalization of prostitutes interferes with the goal of protecting prostitutes from abuse and exploitation. It must open up a dialogue among all interest groups to discuss the merits of criminalization and the possibility for alternative legal strategies such as decriminalization or regulation. Additionally, the government must develop an alternative enforcement mechanism.

A. *Decriminalizing Prostitution Will Enable the Government to Achieve its Legislative Intent and Address Divergent Views on Prostitution*

Decriminalizing the selling of sex will enable the government to achieve its intent to protect all women engaged in prostitution. Two alternatives to criminalization are available: regulation and decriminalization. The regulation of prostitution would require licensing for businesses and for women to practice prostitution in a controlled environment.<sup>197</sup> Decriminalization can be designed to either abolish all penalties for selling and buying of sex or to limit penalties to the selling, arranging, or buying of sex. These descriptions do not begin to explore the workings of each legal regime, and for the sake of simplicity, this comment will limit the scope of the discussion to their application to the Korean sex industry.

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<sup>196</sup> Kuk Cho, *supra* note 100, at 258.

<sup>197</sup> 손종수 [Sun Jong-Soo], 성매매방지법의 형법적 한계 [Anti-Prostitution Legislation's Legal Limitations], 사회과학논집, [SOCIAL STUDIES REVIEW], Vol. 24, No. 1, 133, 138 (Jun. 30, 2005).

Decriminalization will better protect prostitutes in general and at the same time allow prostitutes to escape criminal stigmatization. Decriminalization can also achieve a compromise between KWAU and the pro-prostitute groups that protested against the Punishment and Protection Acts. Because the criminalization of prostitutes interferes with the goal of protecting all women in prostitution as described above, KWAU had already advocated for decriminalization of prostitution.<sup>198</sup> On the other hand, the pro-prostitute groups oppose the new legislation because criminalization merely stigmatizes them and raises the risks of their work by pushing it further underground. The groups do not want prostitutes to be categorized as a “victim” or a “criminal.”<sup>199</sup> Decriminalization will remove the problems associated with proving victim status to avoid criminal penalization. Police and prosecutors will also be deprived of the unchecked discretion to determine victim status. Instead, they can directly refer a prostitute to the welfare or protection facilities.

Pro-prostitute groups advocate regulation of prostitution, but such a legal regime is politically and culturally challenging, if not impossible. Because the government has taken a strong stance in favor of eliminating prostitution and the National Assembly maintains a conservative attitude towards prostitution, regulation of prostitution is simply not politically possible. Ensuring non-exploitative working conditions in an organized and regulated prostitution system is extremely challenging.<sup>200</sup> For example, in Nevada, in the United States, where brothels are licensed to provide sex services, prostitutes still suffer from abuse and limitations on their freedom.<sup>201</sup> Because the prostitutes do not operate the brothels, they are required to work long hours and receive less than their fair share of the brothel’s revenue.<sup>202</sup>

The regulation of prostitution has great potential to turn into merely another form of controlling women’s bodies and sexuality.<sup>203</sup> Prostitutes would still face stigmatization through the registration requirements and mandatory health examinations.<sup>204</sup> For a regulatory regime to work, compulsory registration of prostitutes may be required, “branding a woman for life as a prostitute and mak[ing] her rescue and rehabilitation far more

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<sup>198</sup> Yun et al., *supra* note 104, at 16-17.

<sup>199</sup> See *supra* Part III, D.

<sup>200</sup> See generally 권수현 [Gwon Su-Hyun], 성매매특별법과 관련하여 [Regarding Special Anti-Prostitution Legislation], 철학과 현실 [PHILOSOPHY AND REALITY], Vol. 64, 150, 159(2005).

<sup>201</sup> Kuo, *supra* note 167, at 82.

<sup>202</sup> *Id.*

<sup>203</sup> Thompson, *supra* note 98, at 242.

<sup>204</sup> *Id.*

difficult.”<sup>205</sup> It is possible that a small cooperative network of brothels could be created, as exists in the Netherlands. There, prostitutes have general control of their work, yielding the best working conditions.<sup>206</sup> However, prostitutes find it difficult to organize in such a manner.<sup>207</sup> Many prostitutes enter prostitution to escape abuses or economic desperation, and will usually settle for any work that a procurer offers.<sup>208</sup> Prostitutes are not likely to have the support or the necessary tools to build their own business, making such an alternative largely unattainable in Korea.

Pro-prostitute groups argue, just as liberal feminists do, that prostitution is a legitimate form of labor and women should be free to engage in it.<sup>209</sup> This is an important idea that should not be ignored. For the regulation model to work, Korea would need to accept the selling of sex as a legitimate profession. The Korean sex industry and its culture seem unprepared for such a model. Procurers dominate the Korean model and will not likely cede power to prostitutes.<sup>210</sup> Korean culture, steeped in Confucianism, is unlikely to accept the notion of a woman exercising her legitimate choice to earn a living through prostitution, further making regulation an untenable model.

Decriminalization, on the other hand, will protect prostitutes from human rights violations. It will exempt prostitutes from criminal status, allow them to seek help whenever necessary, and encourage them to assist the prosecutors and police officers in the investigation of procurers and human traffickers as well as testify against them. Meanwhile, the police officers and prosecutors can focus their energy on developing investigations against procurers and sex purchasers instead of struggling over determining the victim status of particular prostitutes. In the Korean sex industry, the procurers and sex purchasers are the true economic players of the sex industry. To eliminate prostitution, the laws should focus on catching the true players of the sex industry, not the prostitutes who have little or no control over the conditions of their work.

Decriminalization will not only meet KWAU's goals; it will also address the protesting prostitutes' concerns. Decriminalization may not satisfy the pro-prostitute groups' call for regulation of prostitution, but it nevertheless will help them escape criminal penalties. Criminalization sets

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<sup>205</sup> ABRAHAM A. SION, *PROSTITUTION AND THE LAW* 37 (Faber and Faber 1977).

<sup>206</sup> Kuo, *supra* note 167, at 97

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> Joo-Hyun Cho, *supra* note 126, at 104.

<sup>210</sup> *See supra* Part II, D.

barriers for prostitutes from seeking protection in the case of extreme abuse and exploitation, barriers decriminalization will help remove. The Punishment Act can be readjusted to punish only the sex purchasers, procurers, and traffickers, not the selling of sex, thus allowing for all prostitutes to avoid criminal penalties.

Sweden has implemented the specific decriminalization of the selling of sex and offers Korea a legal model for a middle ground between complete criminalization and regulation. In Sweden, several laws work together to eliminate prostitution, protect prostitutes, and curb human trafficking. The Swedish Law that Prohibits the Purchase of Sexual Services<sup>211</sup> decriminalizes prostituting women while it criminalizes sex purchasers.<sup>212</sup> Sex purchasers face a fine or imprisonment of up to six months.<sup>213</sup> Swedish law defines a procurer as a person who promotes or improperly financially exploits<sup>214</sup> sexual relations for payment of another person. Procurers can face up to four years of imprisonment. For aggravated forms of procuring, the imprisonment will be at least two but less than six years.<sup>215</sup> Both the Swedish and Korean governments are committed to eliminating prostitution and protecting all women in prostitution. KWAU in fact originally designed the Punishment Act to decriminalize selling of sex while criminalizing all other activities including purchasing and procuring sex services as well as human trafficking. The National Assembly also considered Swedish prostitution policy and yet it did not make clear why it chose not to accept KWAU's proposal.

The Swedish law clearly influenced the women's associations and female politicians in Korea as indicated by various discussion materials published by the Korean National Assembly's Women's Affairs Committee.<sup>216</sup> As to the basic viewpoint about prostitution, Sweden and Korea both have accepted that prostitution is a form of violence against women.<sup>217</sup> However, the two nations differ in their approach to dealing with this problem. Sweden focuses on protecting the women by targeting the

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<sup>211</sup> Lag om förbud mot köp av sexuella (Svensk författningssamling [SFS] 1999: 408) (Swed.).

<sup>212</sup> Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, VIOLENCE AGAINST WOMEN, VOL. 10, No. 10, 1187, 1191-92 (Oct. 2004).

<sup>213</sup> NORDIC BALTIC WORKING GROUP, NORDIC-BALTIC CAMPAIGN AGAINST TRAFFICKING IN WOMEN: FINAL REPORT 2002 54 (Nordic Council of Ministers 2002).

<sup>214</sup> *Id.* at 55

<sup>215</sup> *Id.* at p. 56 (human traffickers are punished).

<sup>216</sup> WOMEN'S AFFAIRS COMMITTEE REPORT, *supra* note 2, at 30-2.

<sup>217</sup> KOREAN MINISTRY OF GENDER EQUALITY AND FAMILY & MINISTRY OF JUSTICE, BROCHURE ON THE PREVENTION OF PROSTITUTION LEGISLATION, available at [http://www.mogef.go.kr/htm/issue/issue01/data/sungmae\\_02.pdf](http://www.mogef.go.kr/htm/issue/issue01/data/sungmae_02.pdf) (last visited Feb. 8, 2007); Ekberg, *supra* note 213, at 1189.

persons who expose women to danger, while Korea focuses on eliminating prostitution once and for all as a way to stop the human rights violations against prostitutes. The sex industries, sexual cultures, and gender equality issues in Sweden and Korea may be vastly different. However, the Swedish theoretical approach to prostitution can be adopted in Korea since the primary concerns that sparked the prostitution policy reform in Korea were about protecting the prostitutes. Decriminalization will allow the Korean government to attack prostitution by targeting the true economic players of the sex industry such as procurers and human traffickers, while protecting the human rights of all prostitutes who are at risk of exploitation and abuse. If the government still aims to take that position, the Swedish prostitution legal regime provides a viable model for decriminalizing the selling of sex. This would require amending the Punishment Act's Article 21 so that it no longer subjects prostitutes to possible imprisonment or fines.

All in all, the government must also recognize that no one legal regime may successfully achieve its anti-prostitution goals. Even the Swedish prostitution policy has faced some criticisms about pushing prostitution deeper underground.<sup>218</sup> Korea must be willing to test out new strategies and modify its laws and regulations as time goes on. More importantly, it must open up a dialogue among various interest groups and feminist voices so that they can fully and frankly discuss the pros and cons of different legal regimes.

*B. The Government Must Create Enforcement Mechanisms that Encourage Prostitutes to Report Abuses and Prove Their Victim Status*

If the government does not decriminalize selling of sex, it must at least change the enforcement mechanisms of the new laws. Because of the history of distrust and bribery,<sup>219</sup> police and prosecutors are not the proper authorities to handle enforcement of the new laws as to the provisions on the protection of victims and prostitutes who want to escape the sex industry. Therefore, Korea must create an independent authority to handle protection-related cases. The first point of the investigation must start in an environment in which prostitutes will feel secure in telling their stories. This authority may need to be a NGO, such as a women's rights group, operating through a governmental contract. Such a group will need to handle

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<sup>218</sup> Halley et al., *supra* note 95, at 396. See also Kyung Mi Huh, *A Study on the Issues regarding Punitive Laws of Prostitution*, JOURNAL OF KOREAN ASSOCIATION OF PUBLIC SAFETY AND CRIMINAL JUSTICE, Vol. 15, 227, 232 (2003).

<sup>219</sup> See *supra* Part III, A.

investigations and inform prostitutes of their rights under the Punishment and the Protection Acts. The group should have the authority to determine the woman's victim status in a supportive environment. A supportive environment will not only help the prostitutes communicate better—it will allow them to be more willing to report abuses and seek out help. The group must also be able to advise them on the debt issue which was found to be one of the most critical problems prostitutes face in escaping prostitution.<sup>220</sup>

Moreover, the government must remove the language found in the Punishment Act that grants the investigator of a prostitute's case the discretion to designate it as a protection case based on "the character and conduct of the person."<sup>221</sup> The character of a prostitute has nothing to do with whether she needs protection from abuse. Prostitutes already feel that they are being judged by everyone and suffer social stigmatization. In a time of need, the last thing a prostitute should be subjected to is judgment about her character. Instead of the character and conduct of the person, the investigator should use the prostitute's testimony and surrounding facts of the case as the basis for protection determination.

In addition, the government should design a better mechanism for connecting the prostitutes' report on abuses from their procurers and the investigation of the procurers. Currently, the government operates a 117 hotline for prostitutes to call when they need to report abuses and connects the caller to the victims of Prostitution Emergency Assistance Center.<sup>222</sup> Though the 117 hotline demonstrated some success in assisting the callers, it is unclear how the caller can report against her procurers or abusive customers. A study conducted by the KWDI revealed that the Center sometimes does not transfer the caller's report on the procurer's criminal behaviors to the investigation department.<sup>223</sup> There were incidents in which the 117 hotline required evidence of the procurer's criminal behavior and told the caller that the evidence over the phone was not enough.<sup>224</sup> The government must devise a better guideline for the Center to facilitate the investigative process. Instead of requiring the caller to present evidence, a call should prompt the police to start the investigation process and not rely on the call itself to provide evidence of criminal behavior.

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<sup>220</sup> See 윤덕경 [Yun Duk Kyung], Address at the Korean Women's Development Institute's Women's Policy Forum (Mar. 22, 2005).

<sup>221</sup> Punishment Act, Act No. 7196.

<sup>222</sup> Jin-Whan Chung, *Women Victim's Hotline is 1366, Report on Prostitution*, MUNHWA ILBO, Aug. 22, 2005 at 117.

<sup>223</sup> Yun et al., *supra* note 104, at 52.

<sup>224</sup> *Id.* at 60.

## VI. CONCLUSION

There exists no perfect solution to the problem of prostitution.<sup>225</sup> However, the Korean government took a great stride towards curbing the rampant growth of the sex industry<sup>226</sup> and protecting prostitutes who are exposed to severe exploitation and violence by passing two new laws. But the new laws contain several provisions that impede the government from achieving its legislative goals. The laws still discriminate against prostitutes and create a presumption that they are all criminals. These provisions do not further Korea's goals for its prostitution policy, nor do they accord with the views of many women's rights organizations and pro-prostitute groups which seek to secure prostitution as a legitimate type of work. The government must open up a dialogue among all interest groups to discuss the merits of criminalization and the possibility for the alternative legal strategy of decriminalization. At the very least, the government must develop an alternative enforcement mechanism to provide a reasonable means for prostitutes to obtain protection.

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<sup>225</sup> A year after passage of the anti-prostitution legislation, a nation-wide survey revealed that prostitution was still rampant. Cheong-Won Kim, *Sex Buying Practices Still Rampant: Survey*, KOREA TIMES, Dec. 15, 2005.

<sup>226</sup> Efforts were also made to curb human trafficking in Korea. See KOREAN MINISTRY OF GENDER EQUALITY AND FAMILY, REPORT OF THE EXPERT GROUP MEETING ON PROSECUTION OF INTERNATIONAL TRAFFICKING, 25, 31 (Nov. 13-15 2005).