

Dangerous Sex, Invisible Labor

Sex Work and the Law in India



Prabha Kotiswaran

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Dangerous Sex, Invisible Labor

For my parents, Bama and Sekhar

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ABBREVIATIONS

| | |
|------------|--------------------------------------|
| AK Street | Abinash Kabiraj Street area |
| AP | Andhra Pradesh |
| DMSC | Durbar Mahila Samanwaya Committee |
| IPC | Indian Penal Code, 1860 |
| IT Section | Immoral Traffic Section |
| ITPA | Immoral Traffic Prevention Act, 1956 |
| NNSW | National Network of Sex Workers |
| PASS | People's Action for Social Service |
| SHIP | STD/HIV Intervention Programme |
| SLL | special and local laws |
| SRBs | self-regulatory boards |
| STIs | sexually transmitted infections |
| TTD | Tirumala Tirupati Devasthanams |
| WINS | Women's Initiatives |

CONTENTS

Acknowledgments *ix*

Abbreviations *xii*

Part One Theorizing Sex Work

One Dangerous Sex, Invisible Labor: An Introduction 3

Two Revisiting the Material: Recasting the Sex Work Debates 24

Three Theorizing the Lumpen Proletariat: A Genealogy of Materialist
Feminism on Sex Work 50

Part Two The Political Economy of Sex Markets

Four Not on the Lord's Agenda: The Traveling Sex Workers
of Tirupati 85

Five Born unto Brothels: Sex Work in a Kolkata
Red-Light Area 137

Part Three Toward a Theory of Redistribution in Sex Markets

Six Regulating Sex Markets: The Paradoxical Life of the Law 185

Seven Toward a Postcolonial Materialist Feminist Theory
of Sex Work 212

Notes 251

References 265

Index 285

PART ONE

Theorizing Sex Work

Dangerous Sex, Invisible Labor

An Introduction

All day long, there was a buzz in the office. A rally had been called. Shanti, a sex worker in the Bow Bazaar area of central Kolkata, had been assaulted by her landlady, Ritu. Shanti had been behind on her rent for the past three weeks, and when she asked Ritu for more time since she didn't have any customers, Ritu had taken her to a nearby alley and beat her black and blue with a thick bamboo stick. Shanti showed us the bruises on her back, hands, and legs. She had been in the Durbar Mahila Samanwaya Committee (DMSC) office all day with her lover and ten-month-old son.¹ A meeting was held in the director's office in the morning. And by 3:00 PM, sex workers and project staff from all twenty-one Kolkata field areas of the DMSC converged on Bow Bazaar. When there is a protest rally at the DMSC, *everyone*, including the accountants, project coordinators, administrative staff, computer room staff, and "visitors" like myself, is required to join it. Projects are important, but at the DMSC there is a belief that its most important goal is to fight for sex workers' empowerment. By the time I reached Bow Bazaar with Mitra Routh, a field supervisor for Sonagachi, another major red-light area in North Kolkata, the narrow Prem Chand Boral Street was filled with sex workers and DMSC staff. At the end of the street, a small makeshift stage had been set up. The Polli Milan Sangh, a local club where the DMSC clinic is held, was teeming with sex workers taking shelter from the sweltering July heat.

Soon the meeting started, and many sex workers went up to the stage to address the gathering. This included leaders like Swapna Gayen, a sex worker and secretary of the DMSC and a longtime resident of Bow Bazaar, through whom the DMSC got to know about Shanti's abuse. Then there were branch committee members for the red-light area and older sex workers who were resident there who spoke out against Ritu's abusive behavior. Being at DMSC events, it is easy to forget how unusual it is for Indian sex workers to grab the mike and come out in front of hundreds of people to say they are sex workers, that they have been abused, and that we should do something about it. It is not surprising that the DMSC often uses these protest rallies as a training ground to improve

the confidence and public-speaking skills of sex workers who can otherwise barely manage to say a few words. Some of the project staff and advisors to the DMSC also spoke, as did the president of the local club. Finally, it was Shanti's turn. She was very emotional and expressed her rage and frustration at Ritu. Then the rally started. There were about three hundred of us. The rally circled around the neighborhood. As we passed by, the people living in houses, and those working in the gold jewelry shops that Bow Bazaar is famous for, just stopped and stared at us. For me, the most unforgettable scene was when I peered into a blacksmith's shop and saw five men's faces in a row as they halted their work to look out at us.

We finally arrived at Ritu's house. A short sex worker right behind me was shouting slogans in Bengali against Ritu in a powerful voice. "DMSC is against *dalals* [touts/agents], *mastans* [hooligans], and abusive *malkins* [landladies].² Watch out, oh perpetrators of violence against Shanti, Durbar is here." After a few minutes in front of Ritu's house, we marched to the area police station, an old red brick colonial building. There, as we sat outside the police station, a few representatives of the sex workers went inside. A case had already been registered with the police the evening before. The police had arrested Ritu, who was released on bail that morning. While waiting there, I heard from Mitra that another sex worker had been beaten by Ritu two nights ago. She hadn't told anyone about it, but when she saw the strength of the rally, she came forth and accompanied Durbar representatives to the police station to register a case against Ritu. Such is the influence of the DMSC, which has been at the forefront of campaigning for workers' rights for Indian sex workers for more than a decade now.

The striking image of mobilized third world sex workers must startle us, bombarded as we routinely are by the media and the international human rights community with horrific stories of trafficking, wherein the embattled figure of the enslaved third world sex worker makes her way into the popular imagination in a highly particularized way.³ Not that these reports of trafficking are untrue. Yet the contrasting images of the protesting sex worker and enslaved sex worker embody profound normative contestations over how we understand the sale of sexual services for money. The proliferating images of third world sex slavery also contain within them a story of the politics of mobilization, of the disparately unequal spaces of international civil society (Batliwala 2002) wherein the struggles of localized and marginalized social movements like that of Kolkata's sex workers are barely audible. This stands in sharp contrast to the influence of feminism, both in international and national contexts, which is increasingly being propelled into the hallways of power, leading some of us to characterize it as "governance feminism"⁴ (Halley et al. 2006, 340; 2008a, 2008b). Many stories of movement politics, both on the part of sex workers and feminists, remain to be told. Yet those stories are not the focus of my book. I am instead interested here in exploring what the contemporary sex work debates render less visible,⁵ namely, the third world sex worker's normative demands that she be treated as a worker. Note what sex workers had to

say (Durbar Mahila Samanwaya Committee 2006) on the occasion of a rally organized under the aegis of the National Network of Sex Workers (NNSW), a network of Indian sex workers' organizations, including the DMSC, in March 2006 when protesting amendments to the federal anti-sex work law (or the Immoral Traffic Prevention Act, 1956, also called the ITPA) then pending before the Indian Parliament. The amendment criminalized customers of sex workers.

We demand that sex work be put in the occupation schedule of the Ministry of Labour. Once we sex workers start enjoying all the rights that the workers of the land enjoy—then the STDs and the raging HIV/AIDS pandemic can be successfully tackled by us, as occupational hazards of the sex sector.

So why put up with this immoral IT(P)A, which is singularly clueless about human trafficking in our country? Let us scrap it. Let us tackle real issues instead. These are the realities of: sexual exploitation of girls and child brides in the vast majority of our homes, where trafficking begins; our stunted, topsy-turvy yet multi-faceted sexual culture; our sex-ratio imbalances; our avoidance of sex education; and the reality of human trafficking in our vast human ocean of wage less slavery.

In this book, I want to ask what it means for the four-thousand-odd sex workers at the march to the Indian Parliament to have sex work listed as an occupation by the Ministry of Labour. What is one to make of sex workers' strategic self-deployment at the front lines of the fight against HIV and their recasting of the "problem" of the trafficking of women, not for sex work but for marriage? What aspects of sex workers' subalternity do these rights claims bear the imprint of? At the most general level, what is at stake here in legitimizing sex work, not just as a form of female sexual labor that is empirically observable but as a legitimate form of work (the "work position")? Should we as a society permit the sale of sex; if so, who should sell how much sex and under what conditions? Who benefits from this labor? What do sex workers get in the process? Is engaging in sex work a zero-sum game for them? Do we as feminists have a vocabulary that is adequate to theorize sex work as work in all its complexities? Are there genealogies of feminist theorizing on sex work that might help build this vocabulary, in particular, to theorize the form of female reproductive labor that it constitutes, its materiality and subjectivity at a microlevel, and the contours of the labor market that it inhabits? Do we have a theory that might delineate its relationship with other labor markets that employ female reproductive labor, such as marriage and the informal economy,⁶ and the macroeconomic backdrop against which sex markets are situated? More important, what are the prospects for laws to ensure the interests of sex workers themselves should we choose to adopt the work position?

Some may already detect an insidious conspiracy of global capitalism in my attempt to reframe sex workers from belonging to the ranks of the lumpen

proletariat to being legitimate sexual laborers. What better indication than that under the monstrously unequal conditions of contemporary global capitalism, sex work becomes the last frontier for the pauperization of women, leading us all to do “sex work” in some form or the other? After all, nothing could have prepared the *New York Times* columnist Nicholas Kristoff for being held up when the Cambodian sex worker he was rescuing from her brothel keeper refused to be “freed” until he also released her pawned cell phone and jewelry (2004b, A27)! Yet, when Kristoff tried to pull off a similar rescue operation in Sonagachi a year later, he had to settle for the less dramatic story of an ex–sex worker in a squalid Kolkata slum who had married an erstwhile customer; “poor but free,” he had effused (2006, 17). Should we then understand sex workers’ claims that they be treated as workers as a rejection precisely of this demand that they stay poor rather than engage in sex work? Essential to evaluating these competing claims is the larger backdrop against which they have arisen. It is to the two international phenomena of the renewed abolitionist movement against sex work and the public health efforts at HIV/AIDS prevention that I now turn.

■ The Global Sex Panic Situated; or, Abolitionism Renewed

Every morning on news channels across the world, the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) airs a sixty-second public service announcement where against the background of a cheerful song, a white male tourist wanders about a marketplace, oblivious to three instances of human trafficking—two young men in forced labor eating scraps of food fallen on the pavement; a young boy coerced into begging being beaten by his trafficker; and a middle-aged white man negotiating with a brothel keeper for sex with a minor trafficked sex worker. As the john smacks his lips and the door closes on the sex worker, we are exhorted to *Open [y]our eyes to human trafficking*, reminded that *It’s a hidden crime*, and that *It’s happening all around us*. Curiously, it is almost impossible to detect the geographical setting of the announcement, although the traffickers, the customer, and our unsuspecting male tourist are all white men, while the trafficked victims are racially diverse. This erasure of the concrete social setting in which trafficking occurs might well have been intended to underscore the “universal” nature of the problem. Yet the decontextualized portrayal of trafficking and its hyperreality is symptomatic of the global sex panic (Brennan 2008, 49; Weitzer 2006) in which we find ourselves at the contemporary moment. In this context, the temptation to rescue third world sex workers has been especially hard to resist.⁷ Zana Briski, in her 2005 Oscar-winning documentary *Born into Brothels*,⁸ chronicled her attempts to bring hope to the lives of sex workers’ children in Kolkata’s red-light areas through photography. Elsewhere, righteous journalists like Kristoff had embarked on the ultimate liberal fantasy—to purchase the freedom of Cambodian sex workers from Poipet’s brothels (*Girls for Sale* 2004a, A15). Meanwhile,

saviors were also in the making. In November 2008, at a packed auditorium at the London School of Economics, the radical feminist icon Catharine MacKinnon held audience with several hundred students, where, to rapturous applause, she held up recent antitrafficking laws as one of the most promising venues for challenging women's subordinate status internationally. She carried on her message to India where, in January 2009, she called upon the Indian government to pass the proposed amendments to the ITPA, which, following the Swedish model, criminalized customers of sex workers.

The articulation of the "problem" of sex work and trafficking internationally over the past two decades has taken place against the backdrop of a global sex panic fueled largely by an abolitionist movement consisting of U.S. radical feminists and religious conservatives and operationalized worldwide by the Bush administration (Bernstein 2007b, 130). The abolitionist position maps onto the radical feminist analysis of sex work, which views it as an institution of coercion and discrimination and understands sex workers as victims and sex slaves. For abolitionists, the figure of the sex worker, far from being morally dangerous, is displaced by an image of her as being subject to considerable harm and danger herself. They also place a heightened emphasis on the power of criminal law to eliminate the sex industry by having a unidirectional repressive effect on sex markets. The centrality of criminal law to the abolitionist project is exemplified by the international proliferation of the Swedish model of decriminalizing the sex worker but criminalizing the customer. The criminal law approach is similarly reiterated in the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (UN Protocol), supplementing the 2000 United Nations Convention Against Transnational Organized Crime, and the U.S. law, the Victims of Trafficking and Violence Protection Act, 2000 (VTVPA). Under the VTVPA, the U.S. Department of State releases rankings of national governments the world over who received U.S. aid, based on their performance in three areas to combat human trafficking, including the prevention of trafficking, the prosecution of traffickers, and the protection of victims of trafficking. Countries that perform poorly and do not comply with a certain minimum standard for the elimination of trafficking fall within Tier 3 of the annual Trafficking in Persons (TIP) Report and risk the withholding of nonhumanitarian, non-trade-related foreign assistance (Halley et al. 2006, 363). The threat of U.S. sanctions has had considerable ramifications for domestic prostitution law reform. To illustrate, prostitution law reform had been in discussion in India for at least the past twenty years, starting with the discovery of the HIV virus in 1986. Yet the U.S. State Department's demotion of India from Tier 2 to the Tier 2 Watch List in 2004 accelerated the pace of reform in the direction of abolition or partial decriminalization, culminating in the proposed amendment to the ITPA. Anecdotal accounts from Indian activists suggest that the sanction-based regime and related U.S. measures, such as the need to take the prostitution pledge to avail of funding, has had a chilling effect on the discursive spaces inhabited by a range of domestic actors,⁹ including activists, nongovernmental