

# Born unto Brothels—Toward a Legal Ethnography of Sex Work in an Indian Red-Light Area

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*The global sex panic around sex work and trafficking has fostered prostitution law reform worldwide. While the normative status of sex work remains deeply contested, abolitionists and sex work advocates alike display an unwavering faith in the power of criminal law; for abolitionists, strictly enforced criminal laws can eliminate sex markets, whereas for sex work advocates, decriminalization can empower sex workers. I problematize both narratives by delineating the political economy and legal ethnography of Sonagachi, one of India's largest red-light areas. I show how within Sonagachi there exist highly internally differentiated groups of stakeholders, including sex workers, who, variously endowed by a plural rule network—consisting of formal legal rules, informal social norms, and market structures—routinely enter into bargains in the shadow of the criminal law whose outcomes cannot be determined a priori. I highlight the complex relationship between criminal law and sex markets by analyzing the distributional effects of criminalizing customers on Sonagachi's sex industry.*

## INTRODUCTION

On Friday the women plan to participate in a procession wearing black and white masks. . . . The sex workers will also tie their hands in chains made of paper, a symbol of their bondage. After reaching Sonagachi early on Friday, they will make a bonfire and burn their chains and masks.

*(Times of India 2004)*

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Sonagachi, as we know from Zana Briski's Oscar-winning documentary *Born into Brothels*,<sup>1</sup> is the largest and most prominent red-light area in the Indian state of West Bengal. Sex workers' suggestion of throwing off the shackles of "sex slavery" upon entering Sonagachi would seem jarring to modern sensibilities. After all, in the early twenty-first century, we are in the throes of a global sex panic (Weitzer 2006) around sex work and trafficking that has occupied the energies of nation states, international agencies, non-governmental organizations (NGOs), and feminist researchers and activists alike. This sex panic has even entered our popular consciousness through dramatized series such as Lifetime Television's *Human Trafficking*. Moreover, the fractious and polarized debates over the moral status of sex work accompanying this sex panic find expression in a plethora of legal and regulatory projects at the international, regional, and national levels (Halley et al. 2006). Examples include the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking Against Persons at the international level; the 2002 South Asian Association for Regional Cooperation Convention on Combating the Crime of Trafficking in Women and Children for Prostitution at the regional level; and the 2000 Victims of Trafficking and Violence Protection Act, a U.S. domestic law with international ramifications. Further, there has been a flurry of domestic legislative activity in the Netherlands, Germany, Australia, New Zealand, and Sweden. Despite the vastly varied political positions on sex work that these legal projects assume, one thing is clear: both supporters and critics of the criminalization of sex work tend to have a simplistic understanding of the relationship between criminal law and sex markets. Therefore, those who view sex work as a form of violence understand the criminal law as capable of repressing sex markets, assuming that the criminal law is in fact enforced. Any reform project is then centered around redirecting the energies of the criminal law toward the "true" offenders (rather than sex workers, for instance), adjusting criminal penalties to ensure their effectiveness and incentivizing the enforcement machinery to enforce the law. On the other hand, those who are less equivocal about the solely violent characterization of sex work favor decriminalization, because in their view the costs of criminalization are disproportionately borne by sex workers, so that any increased criminalization of sex work will only punish them more. If sex work were instead decriminalized, sex workers would be better off.

In this article, based on my ethnographic work in Sonagachi, I argue that the minute we shift the lens through which to understand the criminalization of sex work toward the local level operation of the law in sex markets, a very different picture of the criminal law emerges. From the get-go, even a cursory analysis of the sociological data indicates that there is no one category of sex worker in Sonagachi upon whom the impact of

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1. Produced and directed by Zana Briski and Ross Kauffman, December 8, 2004.

the anti-sex work criminal law can be discerned. Sex workers are highly internally differentiated according to their mode of organization of sex work and their relationship to the institution of the brothel. As a result, the interests of sex workers differently positioned within the institution of the brothel do not necessarily overlap and in many instances are opposed to each other. This is similarly true for other stakeholders in Sonagachi such as landlords and brothel keepers. Furthermore, despite the primacy of the criminal law in regulatory discussions around sex work, once we approach Sonagachi with a legal realist mindset, a plethora of formal legal rules (such as rent control laws), informal social norms (such as entrenched tenancy practices) and market structures relate to each other in complicated ways, forming a rule network in which the criminal law finds itself ensnared. Against the backdrop of this plural legal playing field, stakeholders, including sex workers, find themselves differentially endowed by the rule network and engaging in routine bargains with each other such that the outcomes of their bargains cannot be determined *a priori*. Moreover, the fluidity of the market means that stakeholders are constantly reorienting themselves toward each other. Equilibriums emerge, but are also open to destabilization and reformation. I argue that it is only in light of this understanding of Sonagachi's sex industry that we can realistically test the implications of any change in the formal legal rules. Irrespective of our normative agenda then, this exercise may lead us to fundamentally reassess the centrality of criminal law in debates over prostitution law reform.

It is useful here to briefly locate, even if at the risk of oversimplification, current feminist theorizing around sex work. Two oppositional touchstone positions dominate the feminist debates around sex work and trafficking and have been characterized variously as structuralist/individualist (Halley et al. 2006), as abolitionist/sex work (O'Connell Davidson 2002), or as favoring the subordination approach versus the autonomy approach (Hernández-Truyol and Larson 2006). The structuralists or abolitionists adopt a subordination approach, which is typically against the commodification of sex; they view sex work as nothing but coercion and violence and view sex workers as victims who lack agency and are slaves to institutionalized violence. Individualists or sex work advocates adopt an autonomy approach, are indifferent to the commodification of sex, and they understand sex work in terms of choice and work and view sex workers as agents who can negotiate within institutions as individuals. The bulk of feminist theorizing around sex work and trafficking, of course, falls largely between these two oppositional camps while remaining sympathetic to the concerns of both—I have offered a critique of strands of such middle-ground feminism elsewhere (Halley et al. 2006). For purposes of this article, I will merely locate myself as interested in theorizing sex work as work that ought to be recognized as such, with the explicit goal of addressing the feminist critique that this work position is undertheorized (Sunder Rajan 2003), with the result that it falls back on the liberal discourse around choice, consent, work, and the market (O'Connell Davidson 2002).

In other words, I suggest it is possible that a critical theory of sex work views sex work as a form of work and is at the same time attentive to questions of power. This article is one step in that direction. This, however, hardly implies any simplistic operationalization of a regulatory framework of workers' rights. Instead, my article has the more modest goal of understanding Sonagachi as a sex market in order to evaluate the role of the law in it. I realize that my normative assumptions, the methodology I employ, and my characterization of Sonagachi's sex workers as rational choice actors will be perceived by some as deeply problematic and alienating. I would be surprised if they did not. My hope, however, is that my experimental approach in this article will produce analytical gains.

My article consists of three main sections. In Section I, I present a sociology of sex work in Sonagachi. Central to this undertaking is an understanding of the brothel, an institution that is unique to the sex industry.<sup>2</sup> I will identify the institutional coordinates of the brothel by delineating its three foundational relations: the labor relation between the brothel keeper and the sex worker; the tenancy relation between the landlord and the owner or operator of the sex business; and the service relation between the sex worker and the brothel (if any), on the one hand, and the customer, on the other. I will locate stakeholders who are situated both internally as well as externally to the brothel. Folded into this sociology of sex work is a description of the heterogeneous legal playing field in operation in Sonagachi. In Section II, I will detail the conventional understanding of the role of criminal law in sex markets that I call the structural bias thesis. I will frame my legal ethnography of Sonagachi's sex industry in light of insights from the work of legal realists and scholars of illegality and private ordering in the shadow of the law in order to present a critique of the structural bias thesis. In Section III, I will present an analytical model within which to understand the likely consequences on Sonagachi of a proposed amendment to the anti-sex work law currently tabled before the Indian Parliament that criminalizes the customers of sex workers.

## METHODOLOGY

This article is based on my interviews of roughly fifty sex workers, brothel keepers, landlords, *dalals* (touts), employees of the local sex-worker organization, the Durbar Mahila Samanwaya Committee (DMSC) in Sonagachi, and real estate developers over the summers of 2004 and 2006. Since 2002, I have also been involved with legal advocacy work for DMSC, a sixty thousand-member

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2. Sex work can be performed in several other institutional settings such as the street economy, the entertainment sector, and the family with varying degrees of organization.

organization of sex workers that calls for the recognition of sex workers as workers in the informal economy. For this, I studied Indian labor laws that could be made applicable to sex workers and organized two legal advocacy workshops on the various international models of regulation of sex work and relevant Indian labor laws in which sex workers actively participated. I have also participated since 2002 in two international conferences of sex workers organized by the National Network of Sex Workers (NNSW), a network consisting of DMSC and NGOs working all over India with sex workers and who share DMSC's approach to sex work. The first conference, in 2002, called *Shanti Utsab* (Festival of Peace), was organized by DMSC in Kolkata. The second, in 2003, called the Festival of Pleasure, was organized by the Kerala Sex Workers Forum, an NNSW member in Thiruvananthapuram. On both occasions, I interacted closely with NNSW member organizations, sex workers, social workers, donor agencies, activist lawyers, journalists, public health specialists, and intellectuals sympathetic to DMSC's struggle. I supplemented my field work with secondary sources, typically project reports and surveys produced over the past fifteen years by DMSC and its HIV prevention project. All references to the ethnographic work in this article derive from my dissertation (Kotiswaran 2006) and all names of sex workers have been changed to protect their identity.

## I. SOCIOLOGY OF SEX WORK AND LEGAL ETHNOGRAPHY OF SONAGACHI

Formulating the sociology of sex work in Kolkata is complicated, given the burdens of popular representation surrounding both Kolkata and its sex industry illustrated most vividly by Briski's *Born into Brothels* and its complete denial of sex-worker agency in Sonagachi. Moreover, government narratives unflinchingly produce a fixed national stereotype of the trafficked sex worker forced and beaten into sex work in big-city brothels (Sen and Nair 2004). More generally, there is an assumption in feminist theory of monolithic categories of stakeholders in the sex industry such as the "sex worker" or the "brothel keeper" or the "landlord." I problematize this lumping through the use of stakeholder analysis by which I mean "an approach, a tool or set of tools for generating knowledge about actors-individuals and organizations—so as to understand their behavior, intentions, interrelations and interests; for assessing the influence and resources they bring to bear on decision-making or implementation processes" (Varvasovszky and Brugha 2000, 338).

I do not, however, use stakeholder analysis to forward a nexus theory whereby the interests of certain stakeholders routinely stack up against sex workers. Instead, its use is informed by a Foucauldian understanding of power and, in particular, three ideas that Foucault presents in volume I of *The History*

of *Sexuality* (1978). First, there is no unity of domination (92); hence, the explanatory powers of patriarchy and capitalism are inadequate for explaining why women sell sex for money. Nor do the interests of landlords, brothel keepers, customers, hoodlums, and the police routinely stack up against those of sex workers within any particular sex industry. Second, Foucault urges us to understand power as the multiplicity of force relations that either form a chain or a system, or act in a mode of disjunction, contradiction, or isolation from one another (92). Further, he asserts that major dominations are the hegemonic effects of such confrontations between power relations (94). Finally, Foucault explains that resistance is never exterior to power (95). Hence, even in the most exploitative and violent mode of organization of sex work, there is an elaborate interplay of power and resistance between all stakeholders; by the same token, sex-worker agency cannot be valorized because it is always in interaction with power, and as Foucault notes, great radical ruptures are possible but rare (96).

For detailing the legal ethnography of Sonagachi's sex industry, I use as my starting point the basic legal realist insight into the importance of background rules. Summarized by Kennedy (1993), in the realist analysis, the two particularly important general categories of rules affecting bargaining strength are "the rules governing the conduct of the parties during bargaining" and "rules that structure the alternatives to remaining in the bargaining situation" (87). Further, he writes:

we do not assume that the legal system as a whole deliberately decrees one thing or another. . . . Rather, we conceptualize the network [of private rights and public regulations] as providing background rules that constitute the actors, by granting them all kinds of powers under all kinds of limitations, and then regulating interactions between actors by banning and permitting, encouraging and discouraging particular tactics of particular actors in particular circumstances. (Kennedy 2002, 80)

As the substantial sociolegal and anthropological literature on the law demonstrates (Santos 2002), the formal state law is in constant interaction with several other legal orders including social norms, customs, community-based dispute resolution mechanisms, social practices, and market structures. Moreover, in the postcolonial setting, the pervasive nature of illegality, especially of living and working arrangements, adds yet another dimension to the study of legal pluralism. The legal realist insights into the workings of formal state law can then be usefully extended to a legal pluralist setting by accounting for the role of informal social norms and illegality (Kennedy 2002). I use this approach in plotting the relational dynamics between stakeholders, the heterogeneous playing field in which they operate, and the bargains they strike, all of which in turn sustain the institution of the brothel.

## Sex Workers of Sonagachi—A Brief Profile

Sonagachi is Kolkata's largest red-light area and is rumored to have existed as such since the early nineteenth century, if not for the past three hundred years (Banerjee 2000). According to DMSC, which was formed in Sonagachi in 1995, there are approximately 26,095 sex workers (All India Institute of Hygiene and Public Health 1994, 39)<sup>3</sup> scattered over twenty-one red-light areas in Kolkata proper and its twin city of Howrah. In Sonagachi itself there are an estimated 7,091 brothel-based or residential sex workers and 3,262 flying sex workers, also referred to as floating sex workers.<sup>4</sup> Flying sex workers travel to Sonagachi on a daily basis in order to do sex work. Despite my focus on brothel-based sex work in this article, note that it is exceptional in Kolkata's sex industry, and the majority of its sex workers are self-employed and earn relatively low amounts for selling sex.

### The Brothel as an Institution

Sex workers in Sonagachi are a highly internally differentiated group. In 1992, when the All India Institute of Hygiene and Public Health initiated the STD/HIV intervention project (SHIP), or the Sonagachi Project as it came to be known, it categorized sex workers according to their *income levels*. Category A sex workers earned more than one hundred rupees<sup>5</sup> per customer for a single sexual encounter, affording opportunity for release within a definite period of time (or "per shot," in industry parlance). Category B sex workers earned between fifty and one hundred rupees per shot, and Category C customers earned less than fifty rupees per shot (All India Institute of Hygiene and Public Health 1994). From 1998, the Sonagachi Project classified sex workers according to their *mode of organization of sex work*, which was a gauge not just of their income but their conditions of sex work as well. In increasing order of functional independence, these modes are *chhukri* (involving bonded labor), *adhiya* (involving sharing the income from sex work with a brothel keeper), and the independent mode. I describe these modes in detail below. Further, even within a certain mode of organization of sex work, the *scale* of the brothel as a sex business, as I will show, has important implications for the functional independence of sex workers.

Irrespective of the mode of organization of sex work, the brothel emerges as the fundamental unit of Sonagachi's sex industry. The brothel is an

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3. Accounting for the high mobility of sex workers, the constant flow of sex workers from rural areas, seasonal prostitution, and high-end sex work involving call-girls and flying sex workers, DMSC puts the actual number between fifty thousand and one hundred thousand (All India Institute of Hygiene and Public Health 1994, 39).

4. Sex Workers Population 2003 (in possession of author).

5. Forty Indian rupees are roughly equivalent to one U.S. dollar.

institution involving a particular configuration of the organization of labor, both sexual and social, backed up by a set of living and working arrangements, practices, ideas, norms, ideologies, and consciousness that are unique to the sex industry. These structural and cultural aspects of brothel-based sex work are fundamentally shaped by the spatial concentration of brothels in a red-light area. Unlike institutions such as the school, family, church, military, or prison that can be characterized as public or private, the brothel operates at the crossroads of the market and the family, harboring both sex workers and brothel keepers as well as their families. This permeates every aspect of institutional life within the brothel. For example, brothel rents reflect commercial levels, but the living conditions of the property do not approximate standards of commercial property since the brothel is the living space of its sex workers and brothel keepers, who are its laboring and entrepreneurial classes, respectively. Similarly, unlike the family where the wife socially reproduces<sup>6</sup> her husband, in a brothel the sexual labor of several women, managed by the entrepreneurial labor of a brothel keeper (often a woman herself), socially reproduces a collectivity of male customers. At the same time, the brothel's economy, like that of the family, includes the labor invested by the brothel keeper in reproducing the sex workers as laborers as well as the reproductive labor that both sex workers and brothel keepers invest in their families who reside with them in the brothel.

A triangular set of relations form the institution of the brothel. These three relations (see Figure 1) are as follows: (1) labor relation between the brothel owner or brothel keeper, on the one hand, and the sex worker, on the other; (2) tenancy relation between the landlord and either (a) a lessee with no functional role in the sex industry, (b) a brothel owner or brothel keeper (where a labor relation exists) or (c) an independent self-employed sex worker (where no labor relation exists); and (3) the service relation between sex workers and a brothel (if any), on the one hand, and customers, on the other.

Internal stakeholders occupy the terminal points of these relations and include the landlord, lessee, brothel owner, brothel keeper, sex worker, and customer. External stakeholders, despite their influence on the three relational dynamics, are not party to them; they include DMSC, the police, *goondas* (local goons), vendors, and money lenders. A sex worker's bargaining position in Sonagachi's sex market is determined by her mode of organization of sex work, which encompasses the material and cultural attributes of the three relational dynamics that form the institution of the brothel.

The institutional salience of the brothel in Sonagachi's sex industry should not be taken to imply a nexus theory that assumes the existence of

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6. I use this term in the same sense that socialist feminists did to connote and render visible the female labor involved in housework, child care, providing care and emotional support for adults, and maintaining family and social ties.



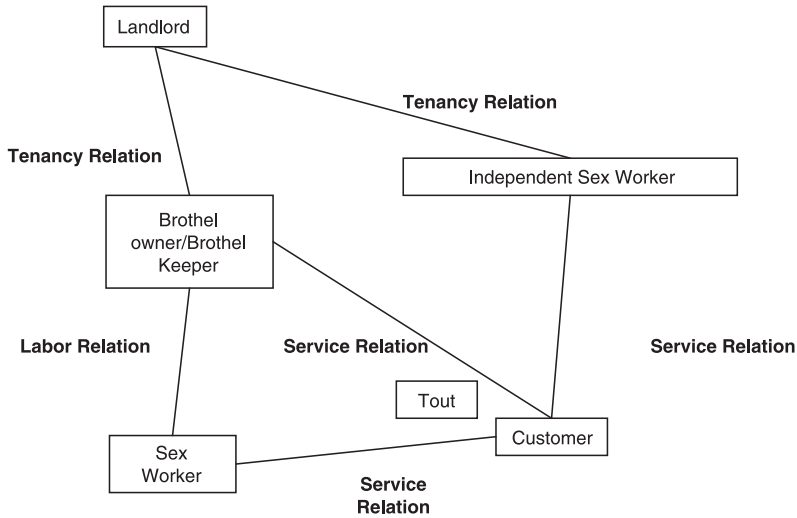


Figure 1. Relational dynamics of brothel-based sex work.

all three relational dynamics wherein the interests of all institutional stakeholders are routinely stacked up against that of sex workers. Indeed, the law—as well as sex workers’ own conceptualization of the brothel—does not always presume the existence of all three relational dynamics. In particular, consider the labor relationship. We typically associate a brothel with the existence of a brothel keeper and therefore a labor relationship. In contrast, Section 2(a) of the 1986 Immoral Traffic Prevention Act (ITPA), the extant Indian anti-sex work law, conceptualizes the brothel as constituting “any house, room, conveyance or place or any portion of any house, room, conveyance or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes.” The phrase “for the mutual gain of two or more prostitutes” suggests that a brothel, for purposes of the law, does not necessarily require a labor relationship and that even two self-employed sex workers who do sex work under the same roof can constitute a brothel. Indian courts, following English law, held that a single woman receiving customers will not constitute a brothel.<sup>7</sup> Turning to sex workers’ self-conceptualization of a brothel, the Sonagachi Project defines the brothel as “one unit where the number of sex-workers ranging between 1 and 15 work under one madam” (All India Institute of Hygiene and Public Health 1998, 10), implying the need for a labor relationship, whereas for enumerative purposes, the project

7. See, later in this article, “The Effect of Enforced Partial Decriminalization on The Tenancy Relation,” for the details of the case law.

dispenses with the need for a labor relationship and considers each self-employed sex worker to constitute one brothel unit.

The legal definition is overinclusive for the effective criminalization of the organization of sex work, whereas the overinclusive sex-worker conceptualization tries to redefine the labor relationship whereby the sex worker is viewed as capable of having her own-account sex business. I use the term brothel to connote any combination of the three relational dynamics that I have outlined above, because even where the tenancy or labor relationship is formally absent, its absence has significance for the existing relational dynamics. Correspondingly, the different modes of organization of sex work within brothel-based sex work can encompass different combinations of relational dynamics. For example, where the sex worker works under a brothel keeper in Sonagachi, there is a labor relationship but no tenancy relation between the sex worker and the landlord. Conversely, an independent sex worker will have no labor relationship because she works independently of a brothel keeper, but will have a tenancy relation with the landlord.

Before I detail the relational dynamics of the brothel, I will briefly outline the legal treatment of sex work under Indian law. There are four major policy options for regulating sex work (Halley et al. 2006). These are: complete criminalization where all aspects of sex work and actors, including sex workers, are criminalized; complete decriminalization where any special anti-sex work criminal law is repealed leaving sex work to be regulated by other laws applicable to all citizens, including the general criminal law; partial decriminalization where all aspects of and players in sex work, including customers, are criminalized although sex workers themselves are not; and legalization, where the form of regulation could vary, but where in addition to the repeal of the anti-sex work criminal law, special rules regulating sex work are put into place. Against this regulatory backdrop, the ITPA, the federal anti-sex work Indian law, is an anomaly. It does not criminalize the sale of sexual services per se, but criminalizes many of the activities necessary in order to do sex work. Section 2(f) of the ITPA defines prostitution as “the sexual exploitation or abuse of persons for commercial purposes” (Reddy 2004, 35). The act of sexual intercourse for consideration therefore is not illegal per se; however, every other act required to carry out prostitution, as listed below, is a crime. The aim of the legislation, as made abundantly clear from the Preamble to the 1956 version of the ITPA, is “to inhibit or abolish commercialised vice namely, the traffic in women and girls for the purpose of prostitution as an organised means of living” (Beotra 1981, 10). Note the conflation between trafficking and sex work in this statement. The ITPA punishes anyone maintaining a brothel (Section 3), living off the earnings of prostitution (Section 4), procuring or detaining a woman for the sake of prostitution (Sections 5 and 6), and seduction of a person in custody (Section 9) (Reddy 2004). The Act also punishes any person who solicits or seduces for the purpose of prostitution (Section 8) or who carries on prostitution

in the vicinity of public places (Section 7) (*ibid.*). Moreover, Section 15 allows the police to conduct raids on brothels without a warrant, based on the mere belief that an offense under the ITPA is being committed on the premises (*ibid.*). As such, under Section 20, which is vaguely worded, a magistrate can order the removal of a prostitute from any place within his jurisdiction if he deems it necessary to the general interest of the public (*ibid.*). In addition, the Act provides for the establishment of corrective institutions in which female offenders are detained and reformed. There is no specific section punishing the customer, but customers can be prosecuted under Sections 7 and 8 for prostitution in a public place and soliciting, respectively. In effect then, the tenancy, labor, and service relations are all criminalized. The legal sale of sex under the ITPA would be restricted to scenarios where a sole sex worker sells sex for her own benefit in a discrete manner in a place that is not in or near any public place, but even she can be evicted by a magistrate under Section 20, in the interests of the general public.

### Relational Dynamics of the Brothel—The Labor Relation

The first relational dynamic of the institution of the brothel is the labor relationship.<sup>8</sup> The labor relationship varies according to the three modes of organization of sex work in Sonagachi, which include *chhukri*, *adhiya*, and the independent mode. The *adhiya* and independent modes in turn encompass other submodes of organization of sex work as detailed below.

#### *Chhukri Mode of Organization of Sex Work*

The *chhukri*<sup>9</sup> (“girl” in Hindi) mode of organization of sex work is described as follows:

*chhukris* are virtually bonded to their madams, who usually make a down payment in advance, either to agents who supply sex workers or to the sex workers’ relatives or associates for contracting the services of the sex worker. A *chhukri* is obliged to work under the madam until she earns enough for the latter to pay off the advanced amount. The conditions of work are extremely harsh as the madam tries to extract as much income from the *chhukri* as possible, allowing her neither leisure nor choice over clients and sexual practices. (Society for Human Development & Social Action 1999, 7)

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8. I use the term labor relation rather than employment relation to denote the unequal bargaining power of the parties.

9. The terms for modes are also used in noun form for the sex workers.

The brothel keeper expends considerable energy in maintaining the *chhukri* in bonded sexual labor. Hence, brothels with *chhukris* are likely to have no more than ten *chhukri* sex workers, irrespective of their income category. Despite DMSC's claim that *chhukri* has been eradicated in Sonagachi, it exists, albeit to a lesser degree than prior to DMSC's efforts at sex worker organization. As I will detail later, brothel keepers who traffic in *chhukris* are engaging in what would, in the calculus of the local police, constitute high-risk criminal behavior. Paying substantial bribes to the police will stave off prosecution under the ITPA. Despite these high costs, the *chhukri* mode is highly profitable, which explains why a brothel keeper, having more than recovered her initial costs, will allow the sex worker within a few months to visit her family without escort or even allow her to work for another brothel keeper on an *adhiya* basis, which I will detail below. The *chhukri* mode of organization of sex work is therefore a high-investment, high-risk, and high-return venture.

### *Adhiya Mode of Organization of Sex Work*

Under the second mode of organization of sex work, the *adhiya* mode, possibly derived from the Hindi word *adha* (half), the brothel keeper, in exchange for a place to stay, takes half the price per shot from the sex worker. A few high-end brothels routinely use a *dalal* (tout), who is paid 25 percent of the price per shot before the brothel keeper and sex worker divide the income. Brothel keepers typically charge the sex worker extra for food, clothing, and medical expenses. The sex worker bears the risk of illness, although her medical costs for minor illnesses are subsidized by DMSC-run primary health and STD clinics in Sonagachi. The *adhiya* mode of organization of sex work predominates in Sonagachi.

*Adhiya* sex workers can typically choose to work under a brothel keeper in far less severe conditions than those typical of the *chhukri* mode. When *chhukri* sex workers have paid off their debt, or perhaps escaped from abusive brothel keepers, they will often work for a brothel keeper on an *adhiya* basis. Then there are newer sex workers who enter sex work relatively voluntarily. That is, they do not enter sex work because a third party has physically coerced or deceived them into sex work. Rather, they enter sex work under severe force of circumstance. Such sex workers also opt for the *adhiya* mode. They do not go independent because they cannot afford to pay *selami* (a premium for the right to rent a property, detailed in the next section) for a room in Sonagachi, nor do they have the contacts to attract customers or the resources to avoid arrests and police harassment. According to brothel keepers, there is considerable turnover in *adhiya* sex workers, who either move to another brothel keeper or begin to operate independently.

While *adhiya* signifies the formula for apportionment of income between the sex worker and the brothel keeper, the *adhiya's* bargaining power also

depends on the scale of the brothel. In this, she is unlike sex workers in the *chhukri* and independent modes, who are more likely to work in smaller brothels. For the *adhiya*, the scale of the brothel radically determines the organization of sexual and reproductive labor and the material conditions of sex work within it as well as its profitability. There are three categories of brothels based on scale: the small brothel with one *adhiya* sex worker, the medium brothel with more than one but less than ten *adhiya* sex workers, and the large brothel with more than ten *adhiya* sex workers. The risk and profitability profiles of these brothels vary considerably. I describe them in detail below.

### *Adhiya in a Brothel with One Sex Worker*

Here, the brothel keeper lives with one *adhiya*. The lone sex worker is already self-interested in maximizing the number of customers. Yet any related pressure from the brothel keeper depends on several other variables such as whether the brothel keeper has an alternate means of employment and income. For instance, if the brothel keeper has no family living with her, she is likely to be doing sex work herself, in which case she is less dependent on the *adhiya* sex worker. Similarly, she may derive a regular income from working as a DMSC peer educator. If she has no such income, then the brothel keeper invests her own reproductive labor in the maintenance of the brothel by cooking for the sex worker. From the brothel keeper's vantage point, this submode of organization of sex work involves a relatively moderate investment, low legal risk, and moderate profit.

### *Adhiya in a Medium-Sized Brothel*

A medium-sized brothel typically has more than one but less than ten sex workers in addition to the brothel keeper, often an ex-sex worker. Typically the brothel keeper lives in the brothel with her family. She often does not have the capital to traffic *chhukris*, and sex workers are recruited by word-of-mouth or a more fortuitous basis. There is a high turnover of *adhiya* sex workers in such brothels. The brothel keeper will typically hire at least one domestic helper, usually female, who either resides in the brothel building or commutes to Sonagachi to cook, clean, run errands for sex workers and their customers, and take care of children. Instead of a regular salary, these helpers earn a small amount for every customer who visits the brothel. Unlike brothels of *Agrawalis*<sup>10</sup> (literally translated as a woman from the city

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10. Many *Agrawalis* are said to belong to the Bedia caste, whose women routinely enter sex work while its male members get married; they are generally also fair-skinned, when compared to Bengali women, and have a reputation for adopting young girls and grooming them into sex workers.

of Agra in the neighboring state of Uttar Pradesh) and other A category sex workers, a medium-sized brothel operating in the *adhiya* mode does not routinely retain *dalals*, and in the odd instance that a *dalal* brings in a customer, he is paid a 25 percent commission of the price per shot. Given that the risk of enforcement of the ITPA against this category of brothel is low, from the brothel keeper's point of view, sex work in this submode involves moderate investment, low legal risk, and moderate profits.

### *Adhiya in the Large Brothel*

The large brothel operating in the *adhiya* mode has more than ten sex workers, usually belonging to the A category, and is highly profitable. One indication of this is the fact that the brothel owner no longer manages the brothel and lives a much-desired life of middle-class respectability outside Sonagachi. Unlike a small- or medium-sized brothel, the large brothel has a managerial class operating its day-to-day affairs, supported in turn by several salaried male domestic helpers who perform the reproductive labor necessary for sustaining the sex workers. Although the brothel owner has to invest substantially in the rooms and the initial set-up costs of the brothel, she does not usually purchase sexual labor or maintain *chhukris*. Although sex workers may stay at the brothel typically for up to three years, customer demand for novelty induces sex worker mobility between red-light areas. The brothel uses *dalals* only occasionally and relies instead on a regular customer base. To protect its profits, the brothel owner pays a bribe to the landlord that he passes on to the local police, who desist from enforcing the ITPA. In effect, from the brothel owner's point of view, sex work involves moderate investment, moderate legal risk, and high profits.

### *Independent Mode of Organization of Sex Work*

The third mode of organization of sex work in Sonagachi is where a sex worker operates independently and appropriates the income from her own sexual labor. Strictly speaking, there is no labor relationship here. There are three further categories of functionally independent sex workers based on the nature of their tenancy interest in Sonagachi's real estate market. The first category is the flying sex worker, who does not reside in Sonagachi but visits there on a daily basis to do sex work. A high percentage of flying sex workers are wives; some are street-based sex workers who, tired of the harassment they face elsewhere in Kolkata, prefer Sonagachi, where there is security in numbers and prospects for a higher rate per shot. Others are lower-middle-class and middle-class housewives who do sex work in high-end Sonagachi brothels on an *adhiya* basis. The second category of independent sex workers is the residential sex worker who rents her room

from a tenant who has paid a premium for the right to sublet the property and who has a secure tenancy interest in the property. The lessee in this case does not have a functional role in the sex business. The third category of independent sex worker resides in Sonagachi and has paid a premium for the right to rent her own room to do sex work, and therefore has a secure tenancy interest in the rental property. I describe each of these categories of sex workers below in the ascending order of the security of their tenancy interest, although I will elaborate on the tenancy relation in the next section.

### *The Flying Sex Worker*

An independent flying sex worker does not reside in Sonagachi, but rents a room whenever she visits Sonagachi, either directly from the landlord or from a brothel keeper. Both the sex worker and landlord benefit considerably from this arrangement. The landlord earns more income from renting out a room on a daily or even hourly basis and does not have to deal with a regular tenant's demands. The sex worker, on the other hand, is not tied down by a lease, has the mobility to work in different red-light areas, and can better manage the risk of enforcement by the police. Moreover, she can perfectly align her rental costs to customer demand. Often she rents a room for less than an hour, the costs of which are transferred to the customer. Finally, the independent flying sex worker has more security in Sonagachi than other public places where street-based sex workers operate. Her risk of being apprehended by a policeman is lower in Sonagachi than it would be in a public place but is higher than it is for a brothel-based residential sex worker. Whether the high customer footfall in Sonagachi means increased income for her or decreased income due to competition is unclear. Yet this submode of organization of sex work is a low-investment, low-risk, and moderately profitable venture, and is preferable from the sex worker's point of view (Gonzales et al. 1999).

### *The Independent Sex Worker Under a Lessee*

In this case, the sex worker rents a room from a lessee of a rental property who has no functional role in the sex industry. The sex worker is unable to pay the high premium for the right to rent a brothel room directly from the landlord and gain relative independence in the tenancy relation. At the same time, she does not want to relinquish control over her income and conditions of work by working on an *adhiya* basis. Instead, she lives with a lessee landlord and her family and pays them rent and money for food and maintenance. Her investment in a room is relatively low and she is referred to locally as renting a room on a "contract" basis.

An independent sex worker living with a lessee has complete control over her earnings and conditions of work and may therefore agree to a lower

rate per shot with a customer rather than lose him. This is unlike working on the *adhiya* basis where there is less price elasticity because the income has to be divided between the sex worker and brothel keeper. Independent sex workers may also travel outside Sonagachi and Kolkata through an agent to do sex work, although most prefer the security of working in Sonagachi to the higher earning potential outside Sonagachi. Since she is the only sex worker in the brothel, there is a low risk of enforcement of the ITPA. Hence, for an independent sex worker working under a nonfunctional intermediary or lessee, sex work calls for low investment and low legal risk with moderate to high returns.

### *The Independent Self-Employed Sex Worker*

The last category of sex worker is the self-employed sex worker who resides in a brothel room. She is in charge of the conditions of her own sex work. Since she retains the entire payment per shot, she has the flexibility to do sex work according to her need. Invariably she would have started out as a *chhukri*, who then became an *adhiya*, and has finally saved enough money to pay the requisite premium for the right to rent a brothel room, colloquially referred to as *selami*. She typically pays a maid to perform domestic duties. She is likely to have a lover (*babu*) because unlike an *adhiya* working in a brothel, the independent sex worker has her own private living space. For this category of sex workers, sex work involves a moderate to high investment in real estate, the risk of enforcement of the ITPA is low, and returns from sex work are moderate, relatively speaking, since she makes more than the street-based sex worker or the sex worker in a medium-sized brothel operating on an *adhiya* basis, but perhaps less than a sex worker in a large brothel working on an *adhiya* basis.

As of 2001, a SHIP survey estimated that roughly 29.3 percent (one-third) of the sex workers in Sonagachi were self-employed or operating independently while the rest were working under brothel keepers (STD/HIV Intervention Programme 2001). Unfortunately, this data is not further differentiated in terms of whether sex workers working with brothel keepers worked as *chhukris* or *adhiyas*. More generally, there is no correlation between income and the mode of organization of sex work. Higher income or superior bodily capital does not imply functional independence. Neither does lower income necessarily imply the lack of functional independence. In fact, a 2001 DMSC survey indicated that more Category A sex workers worked under a brothel keeper (1,006) than were self-employed (867) (*ibid.*). Similarly, more Category B sex workers worked under a brothel keeper (1,122) than on their own (855) (*ibid.*). However, more Category C sex workers (1,813) were self-employed than those working under a brothel keeper (1,438) (*ibid.*). Again, based on this, we cannot conclude that high income is related to lesser control over one's conditions of sex work.



## Relational Dynamics of the Brothel—The Tenancy Relation

Tenancy practices are the single-most decisive factor in the economics of Sonagachi's sex industry. Landlords in Sonagachi are either from the state of West Bengal or they are *Agrawali*. *Agrawali* landladies, unlike Bengali landlords, play a significant functional role in Sonagachi's sex industry as brothel owners, brothel keepers, and traffickers of *chhukris*, and are perceived by Bengalis to be intensely materialistic. The role of Bengali landlords in Sonagachi's sex industry, which tends to be more ancillary<sup>11</sup> than functional, depends on whether the landlord resides in the building or elsewhere in Sonagachi and the location of his property within Sonagachi. Land ownership in Sonagachi is fragmented. A landlord will typically own a two- or three-storied brothel building, consisting of anywhere between five and fifty rooms, each room being typically occupied by more than one sex worker (*ibid.*). In most parts of Sonagachi, landlords are nonresident and manage their properties through caretakers and collection agents. These landlords either lease out the property directly to sex workers, to brothel keepers, or through subtenancy arrangements. Figure 2 illustrates typical tenancy practices in Sonagachi.

### *Renting upon Payment of Premium*

There are three types of tenancy arrangements in Sonagachi. In descending order of the security of the sex worker's tenancy interest, these arrangements are where (1) the tenancy interest is based on the payment of a premium for the right to rent (*selami*); (2) the tenancy interest is based on payment of rent on a daily, weekly, or monthly basis, also referred to colloquially as renting "on contract"; and (3) the tenancy interest is based on the payment of rent per sex work transaction, locally known as renting on "commission." The predominance of any one type of tenancy arrangement varies within different parts of Sonagachi. The right to rent upon payment of *selami* is the oldest, most popular, and most secure of tenancy arrangements in Sonagachi. I will detail each tenancy arrangement and demonstrate how sex workers' stakes in Sonagachi's real estate market vary dramatically.

Kolkata's real estate market, like that of other Indian metropolitan cities has been subject to waves of rent control legislation starting in 1920. In 1956, the state of West Bengal passed the West Bengal Premises Tenancy Act, which sought to protect the rights of tenants against arbitrary eviction and exorbitant rents. Commentators suggest that the 1956 Act, for reasons

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11. This could either have a positive impact on sex workers (where a landlord arranges for bail or offers protection against a goon) or a negative impact (a landlord is himself a goon or finances the trafficking of *chhukris*, compels sex workers to purchase consumables at a premium, or collects bribes to pay off policemen).

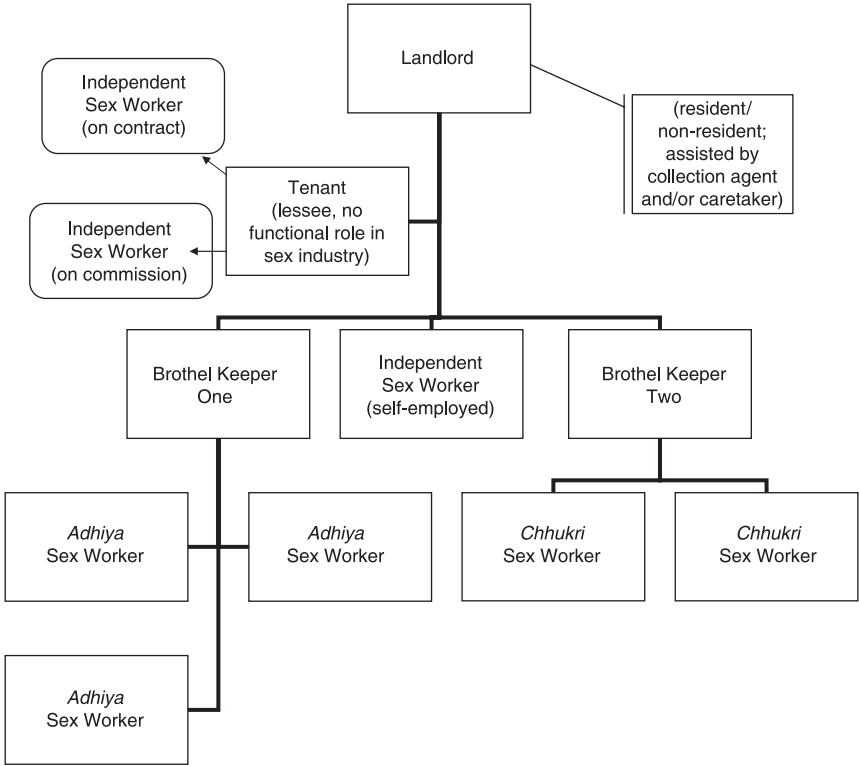


Figure 2. Typical tenancy arrangements in Sonagachi.

typically attributed to urban rent control laws, “became a major factor in retarding housing development in the city” (Ramaswamy and Chakravarti 1997, 65). Many of Sonagachi’s tenants are protected under the 1956 Act with some paying a monthly rent of twenty rupees, fixed back in the 1960s. Even otherwise, each brothel building has a high number of tenants who typically rent no more than one room, so the monthly rent is unlikely to cross the rent threshold for controlled properties under the 1997 West Bengal Premises Tenancy Act, which replaced the 1956 Act (the rent threshold is 6,500 rupees for residential purposes and 10,000 rupees for commercial purposes—whether letting property for use as a brothel is one or the other is unclear). Interviews with older sex workers suggest that rent was the only payment that tenants made to the landlord in the 1970s and 1980s. However, as statutory revisions to the rent levels could not keep up with market prices, landlords began to recover the appreciation of their properties by requiring tenants to deposit a premium, locally referred to as *selami*.

*Selami* could be defined as a one-time payment, payable either as a lump-sum amount or in installments at the landlord’s discretion, but in either case payable by the tenant to the landlord as a premium in exchange for

the right to rent the property for a controlled rent.<sup>12</sup> The Kolkata high court in *King v. Earl Cadogan* (1915) understood *selami* (which has been in existence at least since colonial times) as “a cash payment made to the lessor, and representing, or supposed to represent the capital value of the difference between the actual rent and the best rent that might otherwise be obtained” (Judge Warrington 1915, 492, cited in *Sarkar Bros. (Properties), Ltd. v. Anil Kumar Dutta* 1952, 102.) Judge Ridley, in the same case, construed *selami* to be a premium or

a consideration passing in lieu of rent from the tenant to the landlord, generally speaking upon the grant of a lease. In a sense, it is capitalized rent, something that is payable, not as an annual rent, but as a payment down to take the place of part of what otherwise would be calculated and paid as an annual rent. (*King v. Earl Cadogan* 1915, cited in *Sarkar Bros.* 1952, 103)

Such payment practices for the right to rent exist in other Indian urban land markets, although known by other local terms. *Selami* is also found in other parts of Kolkata<sup>13</sup> and is therefore not unique to the red-light areas of Kolkata. In fact, *selami* is not purely a creation of rent control laws. *Selami* is said to originate from a feudal system of tenancy arrangements where it signified more generally a payment payable by peasants to their *zamindars* (landlords) for the right to perform a certain activity ranging from the right to cut trees, mortgage land beyond a certain time, transfer lands without permission of landholders, build concrete structures, and dig tanks and ponds (Asiatic Society of Bangladesh 2006). Law lexicologist Ayer, for instance, defines *selami* as “a free gift made by way of compliment or in return for a favour” (cited in *Sarkar Bros.* 1952, 102).

*Selami* is illegal under both the 1956 and 1997 West Bengal Premises Tenancy Act. In the 1997 Act, under Section 14, any demand for premium or any sum in cash or in kind in excess of the rent and receiving or paying any sum exceeding one month’s rent in advance are prohibited. In fact, the introduction of a fifty thousand rupee fine by the 1997 West Bengal Premises Tenancy Act for violating Section 14, which was not in the 1956 Act, suggests that the prohibition against *selami* in the 1956 Act was ineffective and that it persisted into the late 1990s.

Typically, the *selami* payable by a tenant in Sonagachi is a function of her point of entry into its real estate market. Sex workers I interviewed said that even twenty years ago, *selami* equaled one month’s rent. Today, however,

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12. Section 18 of the 1997 Act requires the fair rent to be automatically increased by five percent every three years.

13. Indeed in West Bengal, *selami* is common in most tenancy arrangements, with even the state government requiring its payment when selling tea estates to private parties (*Business Line* 2003).

*selami* can range from between twelve to one hundred times the monthly rent. At one brothel, the *selami* for a room a year ago was double the *selami* for a room twice its size in the same building ten years ago. Once a sex worker exits the brothel rental market, she has no future claim on the right to rent it at the old rent or *selami* and will be charged the current market rate for both *selami* and monthly rent at reentry.

The need to pay *selami* is closely related to a sex worker's functional independence in sex work. A sex worker who escapes from being a *chhukri* quickly realizes that she cannot afford to pay *selami* for a secure tenancy and therefore works as an *adhiya* or an independent sex worker on contract until she has saved enough money for this payment. *Selami* in this sense acts as a barrier to independent sex work. Once a sex worker pays *selami* for a secure tenancy, she is likely to either continue in self-employed sex work or run a brothel with *adhiya* or *chhukri* sex workers, or rent out her room to other sex workers as a lessee. Whatever use the sex worker puts the property to, she, for reasons well articulated by critics of rent control laws the world over (Dev 2006), is unlikely to vacate her property. Unless she decides to have nothing to do with the sex industry, other additional push and pull factors unique to the sex industry reinforce this decision.

Moving to another Kolkata neighborhood essentially means forfeiting *selami* paid in Sonagachi and paying *selami* anew. However, Kolkata's tenancy culture is extremely hostile toward single women. Therefore, no sex worker in any other residential part of Kolkata can have several unrelated men visit her on a daily basis without arousing suspicion and possible legal action. Under these circumstances, the transaction costs of moving outside Sonagachi become particularly high, and there is considerable risk. Pull factors include the customer foot traffic in Sonagachi, which is much higher than anywhere in Kolkata. Moreover, a room in the red-light area ironically provides a sex worker with security against abusive customers and police raids. She does not have to explain to a landlord or a brothel keeper what to do in case she is arrested in a brothel raid. Even in less dramatic circumstances, renting on payment of *selami* offers the most legal protection against eviction by the landlord and assures the landlord's support in disputes with external stakeholders, when compared to sex workers with other tenancy interests that I will describe shortly. Meanwhile, given the high threshold to a secure tenancy and independent sex work, *chhukris*, *adhiyas*, and independent sex workers without secure tenancy rights are always on the look-out for tenants with secure tenancies. Hence, despite the poor living and working conditions in brothels due to deterioration and neglect by landlords of their controlled properties, falsities in the accounts produced by landlords and overpriced rent,<sup>14</sup>

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14. The monthly rent for a two hundred square foot room in Sonagachi is three times the rent for an eight hundred square foot room in a middle-class residential neighborhood of North Kolkata.

amenities, and utilities, sex workers with secure tenancy rights continue to stay in Sonagachi, sustaining a strong demand for properties there.

However, isn't the economic value of secure tenancy rights of sex workers in Sonagachi undermined by the illegality of the rental arrangement from which presumably no legal rights flow? First, the tenancy relation is prohibited under Section 3 of the ITPA. Second, because the object of the contract is against public policy, it would be void under Section 23 of the 1872 Indian Contract Act. Third, the right to a secure tenancy upon payment of *selami* violates Section 14 of the 1997 West Bengal Premises Tenancy Act. Further, given the strong demand for rental properties in Sonagachi, what prevents landlords from routinely evicting sex workers after collecting *selami* from them? Some landlords, with the help of local goons, have done exactly this (Gonzales et al. 1999). Yet, this is a far less regular phenomenon in Sonagachi than one might expect. What accounts for such landlord restraint?

In examining possible explanations, I will address here only the implications of the illegality of the tenancy relation under private law, namely, the 1997 West Bengal Premises Tenancy Act and the 1872 Indian Contract Act, and will postpone discussion of the ITPA to a later section on the enforcement practices of the police. We can assume for the time being that due to the criminalization by the ITPA of all three relational dynamics of brothel-based sex work in Sonagachi, there is a symmetry in the risk of illegality such that whenever either the landlord or the sex worker asserts his or her rights in the tenancy relation, they are both exposing themselves to potential prosecution under the ITPA. This puts in place a default preference for resolving contentious issues and disputes informally as far as possible without invoking the state machinery. This works well under conditions of de facto decriminalization where the police effectively do not always enforce the ITPA in Sonagachi, thus creating an atmosphere of apparent abeyance of the criminal law in the shadow of which internal stakeholders negotiate with each other.

The first explanation for landlord restraint in evicting sex-worker tenants once they have paid *selami* is economic. Sonagachi, unlike most other Kolkata red-light areas, is almost exclusively populated by brothels with little diversification of the tenant pool. Since sex work is illegal and stigmatized, commercial establishments other than those that service the sex industry are reluctant to set up shop in Sonagachi. Moreover, the Kolkata real estate developers I interviewed explained that few buyers from outside the sex industry were interested in buying property in Sonagachi and North Kolkata more generally, due to fragmented land ownership patterns, the heavily tenanted nature of the properties, the small parcels of land on which properties were set, and the poor quality of the properties themselves. Hence, a landlord in Sonagachi is effectively operating in a closed real estate market where he has no hope of renting his property to commercial tenants other than sex workers and brothel keepers. Hence, sex worker demand for rental

properties in Sonagachi is matched to some extent by the landlord's need for tenants from the sex industry. Against this backdrop, landlord restraint is explained by the reputational costs of landlords' behavior. After all, repeated evictions by the landlord of sex-worker tenants will lead sex workers to avoid paying him a substantial *selami* for a room, resulting in a low occupancy rate, which is problematic in a rental market like Sonagachi.

The second significant reason for landlord restraint can be found in the formal legal rules of the 1997 West Bengal Premises Tenancy Act, which specifies very limited grounds under which the landlord can evict his tenants. From the very outset then, formal legal rules considerably strengthen the bargaining power of the sex-worker tenant vis-à-vis the landlords, and sex workers are keenly aware of this. When I asked one sex worker what she would do with a difficult landlord, she responded that she would have "rent control done to the landlord," implying that even asserting a claim as to the rent controlled nature of the property was enough to bring the landlord to the negotiating table. This is because of the costs of litigation and the fact that during the litigation the property is tied up, and the landlord cannot sell a tenancy right in the property for *selami*. In other words, rent control signified doom for the landlord. The strength of sex-worker tenants is also indicated by the kind of issues over which they litigate. For instance, one independent sex worker I interviewed in Sonagachi had sued her landlord because he refused to allow her to have a telephone connection in her room. In my interviews with landlords, irrespective of whether they knew about the ITPA or not, they all shared a keen appreciation of the leverage of sex-worker tenants as beneficiaries of rent control legislation, possibly due to its long history in Kolkata.

In fact, rent control laws have altered the demand-supply profile in Sonagachi to such an extent that some landlords will pay a tenanted sex worker a high fraction (between 50 and 65 percent) of the market value of the property or at least the current rates of *selami* in order to have her leave the property. After all, he can almost immediately recover the current levels of *selami* from a new tenant and increase the rent. Several older sex workers and brothel keepers I met were confident that their rooms would each fetch at least one hundred thousand to one hundred and fifty thousand rupees from the landlord, if they wanted to vacate their rooms and return to their hometowns. When sex workers want to leave Sonagachi, some DMSC social workers advise them that for a high compensation they should simply tell the landlord that they will be out of town for a couple of months, leaving the room locked. For a landlord, a locked room means the immediate loss of rental income, the inability to lease it out anew, and more generally, a throwback to a legal no man's land. Where sex-worker tenants traveling to do sex work on contract are difficult to track down, the landlord then has two options—breaking into a sex worker's room that could invite DMSC

protest or pursuing a protracted and costly litigation; both options are palpably unattractive. Sex workers' sense of their ability to leverage Sonagachi's rental property market is also evident in a sex worker leader's demand that sex workers be compensated for vacating rented premises.<sup>15</sup> Alternatively, sex workers themselves are known to sell secured tenancies and pay the landlord a portion of the proceeds, although both these arrangements are illegal under Section 14(2) of the 1997 West Bengal Premises Tenancy Act, which prohibits the tenant from claiming or receiving any payment in consideration of the relinquishment, transfer, or assignment of her tenancy.

Rent control laws are, however, not completely one-sided in favor of tenants. Section 6(g) of the 1997 Act gives the landlord the right to evict a tenant where property has been put to immoral or illegal use. The Kolkata high court has interpreted Section 6(g) in seemingly contradictory ways when the property is used for sex work. In a 1970 case, the high court held that where the landlord knowingly lets a room to a sex worker to carry on prostitution, the landlord can neither recover rent nor evict the tenant on the basis that the contract is void because it is against public policy under Section 23 of the 1872 Indian Contract Act (*Smt. Parul Bala Chandra & Ors. v. Jamuna Bala Dasi & Ors.* 1970). This strengthens sex-worker claims in their negotiations with landlords. In a subsequent case, however, the high court held that where a landlord was not relying on any part of a contract to enforce his right to possession of the rental property, he still had an independent right as owner to eject the tenant from his premises by reason that it was being used for immoral purposes (*KamalaBala Devi v. D.C. Dutta* 1972). The court, however, also acknowledged that it was not always easy to distinguish between scenarios where the landlord relied on the tenancy contract and where he relied on his inherent rights as a landlord. This decision is clearly less favorable to sex workers. However the interpretive ambiguity around Section 6(g) could be deployed by both sex workers and landlords to their respective advantage. In reality, it is more likely that neither sex workers nor landlords in Sonagachi are aware of the nuances of Section 6(g). Although we may think that landlords in Sonagachi must share some minimum understanding of tenancy laws, my interviews with them suggested otherwise. One landlord, who lived in a brothel building, was illiterate and was jockeyed around by his sex-worker tenants, while another landlord spoke English fluently and thrust a copy of the 1997 West Bengal Premises Tenancy Act in my hands. Meanwhile, another landlord seemed to know the rent related provisions of the 1997 Act, but could not articulate why he had

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15. This interview is one of several interviews conducted by the DMSC-TAAH project with sex workers. They are unpublished and I have a copy of the interviews. The said interview is with Srimati Goyal and was conducted on February 4, 2004, in Kolkata by members of the DMSC-TAAH Research Project.

recently made a huge compensation payment to an older tenant when he could have evicted her for engaging in illegal activity. The foregoing discussion illustrates how the elaborate interplay of formal legal rules, informal social norms, and market structures produces a constrained and complex negotiating space within which landlords make decisions about evicting sex-worker tenants.

Although sex-worker tenants benefit the most from the market appreciation of rental properties, some landlords stake a claim in this value in one of several ways. First, the landlord might charge the brothel keeper a daily rent of twenty-five to thirty rupees per *adhiya* sex worker, irrespective of whether she is residential or flying and irrespective of the customer flow of that brothel. Second, a landlord may restrict the number of *adhiya* or independent sex workers that a lessee can maintain. In an affluent section of Sonagachi, for instance, the brothel rules are that if a sex-worker tenant herself does sex work, she can maintain only one other sex worker. If she does not do sex work, she can maintain two sex workers, and if she keeps more than two sex workers then she has to pay the landlord 10 percent of their income from sex work, which for sex workers with an average number of customers, is much higher than a fixed daily rental payment. A third plausible arrangement is where the landlord demands from the lessee a fixed monthly payment for every sex worker that the lessee leases her room to. Under a fourth arrangement, the landlord charges the brothel keeper ten rupees for every customer who visits the brothel. These arrangements violate Section 4(4) of the 1997 West Bengal Premises Tenancy Act, which prohibits a landlord from demanding or receiving any premium or consideration for consenting to the subletting by the tenant of the whole or any part of the premises. The only instance where landlords are in fact strict about subletting practices is where a brothel keeper maintains a minor sex worker. Here, given the high risk of enforcement of the ITPA and the high costs of conviction, the payoff for the landlord would be a high multiple of any additional rent he would earn from one additional sex worker, whereas the brothel keeper has a lot more to gain from the minor's income. Landlords who have not devised elaborate rules for a stake in their property's rental value instead extract a premium for amenities and utilities from sex workers, including by rationing them—although Section 4(3) of the 1997 West Bengal Premises Tenancy Act requires the landlord to ensure the maintenance of essential supplies and services.

The demand and supply of rental property in Sonagachi for sex work thus suggests the existence of an equilibrium that favors older independent sex workers, and that is shaped by a radically plural legal field in which internal stakeholders, including sex workers, have very different stakes. However, this equilibrium is also fluid and shifts can occur for several reasons. One such reason is the emergence of alternative tenancy practices in Sonagachi such as renting on “contract” and on “commission.”



### *Renting on Contract*

The second tenancy practice that has gained considerable popularity in Sonagachi in the past four to seven years is renting a room on contract. A sex worker renting on contract from a landlord or lessee pays rent on a monthly, weekly, or daily basis, although monthly rental payments are more common. In addition to rent, sex workers must pay a substantial deposit called *jamma*, ranging from one year's rent to one hundred times the monthly rent, which is refundable without interest. The deposit protects both the landlord (or the lessee, as the case may be) and the sex worker from default in rent payment. From the sex worker's point of view, renting on contract is less secure than renting a room on payment of *selami*. Of course, landlords typically do not formalize tenancy arrangements with sex-worker tenants. In that sense, there is no formal difference between renting on payment of *selami* and renting on contract. The only way the application of rent control laws can be avoided is to either negotiate a rent above the rent control threshold or to enter into a leave-and-license agreement that does not create any property interest in the tenant. Yet, even in the space of nonformalized tenancy arrangements, landlords and sex workers assume a hierarchy of tenancy interests.

Three categories of internal stakeholders rent out rooms on contract in Sonagachi. The first category is the landlord. Landlords who rent out on contract tend to reside in the brothel building and have a mixed profile of tenants with varied tenancy interests in the same building. Renting on contract is popular with landlords because their ability to raise rent is unfettered, and if they decide to terminate the arrangement, they are not expected to compensate a tenant renting on contract in the way they would a tenant with a secure tenancy right. The landlord thus perceives that he has more control over the room.

In addition to landlords, lessees with secure tenancy rights rent rooms to sex workers on contract. Although relatively uncommon in Sonagachi, some of these lessees have no role in the sex industry and have inherited a secure tenancy right. More often, however, lessees are ex-sex workers, who, having paid a low *selami* for their secure tenancies several years ago, are less inclined to operate a brothel or to invest in the reproductive labor necessary to sustain sex workers or take the risk of the sex market. Such ex-sex workers instead rent out their rooms to independent sex workers on contract that provides them with a steady flow of income. This is enabled by the fact that landlords impose minimal restrictions on such subleasing practices and, at most, expect a lessee to pay five to fifteen rupees per day per sex worker and ensure that the sublessee not cause nuisance or purchase alcohol from outside the brothel.

On the demand side, renting on contract is popular with sex workers aspiring to functional independence in sex work without having to pay *selami* or working as an *adhiya*. Such sex workers do sex work independently while

paying a relatively low price for accessing Sonagachi's real estate market. Even *chhukri* sex workers, freed recently, are known to rent a room on contract from a landlord. This leads us to the third tenancy practice to be found in Sonagachi.

### ***Renting on Commission***

Of late, Sonagachi's sex industry has witnessed an increase in the number of flying sex workers—a shift that has had a huge impact on its massive political economy. At least one *Agrawali* I interviewed resented flying sex workers because they were, in her view, “low class” sex workers who drove down the price of sex to an abysmal thirty-five rupees per shot, wore garish makeup, were indecent and aggressive, swore instead of behaving politely, consorted with poor men, spread disease, flirted with policemen (inviting trouble), and generally spoiled the culture of the red-light area. Why should an *Agrawali*, an elite member of Sonagachi's sex industry, resent so intensely a low-class flying sex worker who poses no direct economic threat to her? After all, the class profile of customers in Sonagachi corresponds to that of sex workers. The *Agrawali*'s reaction signifies more generally the cultural and economic resentment that residential sex workers bear toward flying sex workers in Sonagachi.

Residential sex workers resent flying sex workers because the latter, who are usually wives, enjoy the social status and economic securities of marriage that residential sex workers, a high proportion of whom were once married but are now single,<sup>16</sup> do not. This resentment, however, is also economic. Irrespective of the mode of organization of sex work, or the category of sex worker, or the scale of the brothel, a brothel keeper views herself as making a considerable investment in the tenancy relation in the form of *selami* and various layers of rental payments. In addition, she invests in a managerial class, in sexual labor, domestic help, and commission to *dalals*. Although some flying sex workers are absorbed into brothels as *adhivayas*, other street-based flying sex workers entirely bypass the institution of the brothel to compete

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16. In a 1998 SHIP survey, 73 percent of the sex workers, irrespective of their category, had been married before entering sex work (All India Institute of Hygiene and Public Health 1998). An older sex worker expressed her resentment of flying sex workers thus: “My mind has been filled with resentment and anger—not only towards men, but also towards some women and housewives. Some women who live in families as wives come here on the sly and make money. This part of their life is hidden from society. Some of them are caught red-handed, even college girls have been found here. But all the contempt of society is directed toward us. Why? Why can't we have a decent place in society? Why do people marry our children knowing fully well about their parentage and later abuse them? What steps does society take against such oppressions?” DMSC-TAAH Research Project. 2004. Interview of Sangeeta Routh (transcription is in author's possession). The interview was conducted on February 5, 2004, in Kolkata by members of the DMSC-TAAH Research Project.

with medium and small brothels with B or C category *adhiyas* for the same customer pool without incurring any of its costs—unless of course, the brothel has a regular customer base.

Central to the economic impact of flying sex workers is their ability to rent a room on commission or per sex work transaction, typically from a lessee with a secure tenancy right and less frequently directly from the landlord. This is the least secure of the three tenancy practices, as a flying sex worker is not assured of a room when she needs it. As with renting on contract, this arrangement suits both the landlord and sex worker. Faced with limited tenant mobility, a landlord can earn more from renting out on an hourly or daily basis than on contract or payment of *selami*, provided he resides in the building and can manage the flow of flying sex workers.<sup>17</sup> Moreover, he has no obligations to a flying sex worker. She, on the other hand, can stay mobile while being able to access Sonagachi's customer pool and real estate market at a lower price than residential sex workers. In reality, however, since most landlords do not, in fact, reside in Sonagachi, the economic opportunity of renting out on daily contracts or on a commission basis accrues to ex-sex workers with a secure tenancy right who can now function as landladies rather than as brothel keepers. This is an attractive option because landlords are yet to lay systematic claim to the benefits of this tenancy arrangement.

Renting on commission and contract have dramatic implications for access to Sonagachi's real estate market and therefore for the institution of the brothel. After all, older sex workers had to work as *chhukris* and *adhiyas* before acquiring a secure tenancy right and functional independence. More recent entrants do not necessarily follow this path. This means that brothel keepers lose a pool of sexual laborers who would have earlier been forced to work in brothels on an *adhiya* basis due to the unaffordable levels of *selami*, but who can now work independently by renting on contract or commission and compete with brothels for their customers without incurring the costs that a brothel keeper bears. This means increased mobility for sex workers to independent sex work, higher income, and, therefore, a relatively shorter stay in sex work leading to the demise—or at the very least, a reconfiguration—of the institution of the brothel. Alternatively, the equilibrium may readjust to reinforce the existing power relations in the brothel. More specifically, a brothel keeper losing customers to street-based flying sex workers may force her *chhukri* and *adhiya* sex workers to entertain more customers at lower prices or under riskier conditions. This will mean far less bargaining power for a *chhukri*, and while the *adhiya* is mobile, her threshold for leaving a brothel

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17. Over one year, a landlord requiring a *selami* of 50,000 rupees and monthly rent of 1,000 rupees makes 62,000 rupees, while a landlord renting a room to a flying sex worker for 30 rupees an hour, will make 240 rupees per day and approximately 90,000 rupees a year.

keeper under such circumstances will be higher, especially if poor market conditions will mean a similar deal, even if she switched brothel keepers.

### Relational Dynamics of the Brothel—The Service Relation

The third relational dynamic of the brothel is the relationship between sex workers and the brothel, if any, on the one hand, and customers, on the other. Sexual services in Sonagachi are categorized in terms of the price per shot, price per hour, or price per night. The primary gauge for sexual services, therefore, is temporal, although there is some geographical differentiation in terms of the bodily capital of sex workers and the availability of certain kinds of sexual services. Customers are stratified along class lines in terms of their education, income, occupational status, recreational habits, and sexual practice, and this corresponds with the category of sex workers that they visit. To illustrate, customers of Category A sex workers tend to be older, better educated, and drink alcohol, while customers of Category C sex workers are less educated and prefer smoking to drinking, paralleling the recreational habits of Category C sex workers themselves (All India Institute of Hygiene and Public Health 1993).

Given the criminalization of the sale of sex under the ITPA, customers, sex workers, and brothel keepers are perpetually entering into contracts that they know cannot be enforced in a court of law. The ability of the brothel keeper and sex worker to negotiate the service relation with the customer primarily with respect to price, but also the level of abuse, depends on whether or not the sex worker resides in Sonagachi, her mode of organization of sex work, the scale of the brothel as a business, whether the customer enters into—in Ian Macneil's (2001) terms—a relational or discrete contract with the brothel, and ultimately the state of the sex market, which is affected by factors such as the monsoons and male abstinence during religious festivals.

Generally speaking, residential sex workers in Sonagachi have more bargaining power vis-à-vis the customer than a flying sex worker, who is unable to fall back on the brothel setup, the local community of sex workers, or DMSC in dealing with a customer. A *chhukri* has little or no negotiating power in terms of price or level of abuse vis-à-vis the customer when compared to an *adhiya* sex worker. The service relation of the customer of a *chhukri* vis-à-vis the brothel is further mediated by a perverse logic whereby a brothel keeper will permit her abuse, but only so long as he is not diseased, does not subject the *chhukri* to visible physical injuries, and does not rescue her. As for *adhiya* sex workers working in a small brothel compared to those working in a large brothel, the latter may have less negotiating power economically speaking vis-à-vis the customer, but can depend on the sheer numbers of workers in the large brothel in countering a violent or noncompliant customer

when compared to the former. A small brothel can, however, summon DMSC in disputes with the customer.

The service relation between a brothel and a customer also depends on whether they enter into a relational contract or a discrete contract. For example, a wealthy customer visiting a high-end brothel is likely to be a repeat customer who, being in a relational contract, has more bargaining power vis-à-vis the brothel keeper or brothel owner than a one-time or infrequent customer. Even then, a customer in a relational contract cannot expect to repeatedly exceed the terms of his service relation with a sex worker. The relational or discrete nature of the service relation is, however, an independent variable because both contractual relations are common across the board in Sonagachi irrespective of the mode of organization of sex work, scale of brothel, or category of sex worker.

Independent sex workers can call upon community sex workers and the DMSC when the customer inflicts or threatens physical violence. They are, however, highly vulnerable in negotiating the economic terms of the service relation. For example, where a customer agrees to a certain rate at the brothel gate, but demands a lower rate inside the sex worker's room, she, having competed with other sex workers for the customer, would rather agree to a lower rate from which she can keep the entire income than lose the customer.

Based on my interviews and review of secondary sources, problems related to customers assumed low priority on sex workers' scale of problems. If anything, despite the economic strength of customers and the various factors on which the service relation depends, customers as nonresidents can be physically vulnerable and risk their reputation by visiting Sonagachi,<sup>18</sup> and few can afford to pay a *dalal* to protect them from internal and external stakeholders in Sonagachi. As for unruly and abusive customers, sex workers were particularly confident of resisting violence from them by gathering local support from sex-worker neighbors and taking him to the police station if the need arose (Gonzales 1999). Sex workers clearly experience security in numbers in Sonagachi.

Since relational contracts are common in all modes of organization of sex work, irrespective of the scale of the brothel or the category of the sex worker, an occupational hazard that sex workers and brothel keepers are wary of is the formation of affective relationships with customers. Sex workers refer to such customers as *babus* (fixed customers). Roughly 30 percent of the sex workers in Sonagachi have *babus* (All India Institute of Hygiene and Public Health 1994). *Babus* are in turn classified into *denewala babus* (Hindi for *babus* who give) and *khanewala babus* (Hindi for *babus* who take). *Khanewala babus* live with the sex worker and live off her earnings, and in

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18. In 1993, the majority of customers visiting Sonagachi were businessmen, 8.81 percent were students, and 8.2 percent were drivers (All India Institute of Hygiene and Public Health 1993).

some instances have a marriage-like relationship with her. The *denewala babu*, on the other hand, does not always live with the sex worker but provides her with financial security because he is a regular client. An occupational analysis of *babus*<sup>19</sup> reveals that 2 percent of the *babus* were pimps, 3 percent were caretakers at brothels, and 6 percent were unemployed and had no means of income (West Bengal Sexual Health Project 2001). Thus, *babus* typically do not have an active functional role in the sex industry and are usually employed outside it.

### External Stakeholders

Having delineated the relational dynamics between internal stakeholders in Sonagachi, I briefly locate its external stakeholders. These include *goondas*, DMSC, the local sex-worker organization, and finally, the local police, all of whom considerably influence the bargaining power of sex workers vis-à-vis stakeholders in the sex industry.

### *The Casual Residuum of Kolkata—Goondas in Sonagachi*

*Goondas*, referred to as the “casual residuum of Calcutta” (Das and Ray 1996, 1), are those ubiquitous actors of urban Indian life whose presence is not unique to Sonagachi or other Kolkata red-light areas and who operate in many of the city’s slum and lower-middle-class neighborhoods (Bando-padhyay and Kerrigan 2004).<sup>20</sup> Between 1946 and 1971, particularly in North Kolkata, there was “a close link . . . between brothels and ‘goondas’” (Das and Ray 1996, 12). Many *goondas* started as pimps and procurers and engaged in drinking bouts, assaults, and chain-snatching in Sonagachi, as well as running gambling, liquor, and drug dens. They routinely extorted money from customers and sexual favors and money from sex workers by threatening violence if they refused. With the advent of the DMSC, this level of *goonda* violence in Sonagachi has reduced dramatically.

Existing *goonda* harassment in Sonagachi comes from members of local clubs (or neighborhood associations) and branch offices of political parties. Although local clubs offered a critical entry point early in DMSC’s work, they now resent the increasingly assertive sex workers (Gonzales et al. 1999) and an influential DMSC. They have a strong nexus with powerful brothel

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19. Forty-three percent of the *babus* earned a daily income, most likely in the informal economy, while another 36 percent earned on a monthly basis, indicating that they had salaried jobs (West Bengal Sexual Health Project 2001).

20. See also Moorhouse (1971), who notes that a *goonda* was most likely to live in a *basti* (an informal illegal dwelling that was subsequently regularized).

keepers and the police in Sonagachi, act as an impediment to DMSC's antitrafficking activities, sexually abuse new sex workers, and extort money from sex workers for religious festivals. Like local club members, members of local party offices engage in trafficking and extortion (Dasgupta 1998). Given their political clout however, the local police in Sonagachi are reluctant to take action against such local party members.

### *Organizing Sex Workers: The Role of DMSC*

Influential in Sonagachi today is the presence of the DMSC offices steps away from its southern boundary. These offices have been a site for much sex worker organizing in the past decade. In West Bengal, drawing on resources for HIV prevention, DMSC has attempted to rewrite the prevalent script of trafficking, forced sex work, and victimhood into one where sex work is viewed as a form of livelihood. In Sonagachi itself, DMSC has intervened at three levels—to change sexual *practices* by increasing condom usage amongst sex workers and their customers, to transform *norms* by countering physical abuse from internal or external stakeholders against sex workers, and to transform *institutions* by creating DMSC-run branch committees and self-regulatory boards that regulate the entry of new sex workers and their conditions of work. These efforts have substantially altered the bargaining endowments of sex workers (Misra, Mahal, and Shah 2005) in those areas where change is consonant with the market logic of the sex industry (such as condom usage<sup>21</sup>) or where change is relatively uncontroversial (physical violence from brothel keepers<sup>22</sup>) rather than, for instance, the abolition of *adhiya*.

### *Premiums of Illegality: The Police as Stakeholders in Sonagachi*

As I have outlined earlier, all three relational dynamics of brothel-based sex work in Sonagachi are criminalized under the ITPA. Further, there is an implicit correlation in the ITPA between the penalty and mode of organization of sex work. For example, a brothel keeper who has trafficked a minor *chhukri* could face a long litany of charges under various sections of ITPA,

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21. For example, when the Sonagachi Project was initiated in 1992, the condom usage rate in Sonagachi was 1.11 percent, whereas by 2001 it had increased to 81.87 percent (Durbar Mahila Samanwaya Committee 2004, 7).

22. In a study of sex workers in Sonagachi, 83 percent said they had not experienced insults, harassment, threats, beatings, torture, eviction, or extortion in the last three months (Bandopadhyay and Kerrigan 2004). Over 80 percent said that violence and discrimination against them had reduced in the past several years.

including (1) keeping a brothel; (2) living on the earnings of prostitution with aggravated imprisonment for living off the earnings of a minor child; (3) procuring, inducing, or taking a child for the sake of prostitution; (4) detaining a person in premises where prostitution is carried on; and (5) for seduction of a person in custody, with the most serious punishment extending to life imprisonment and substantial fines. An independent sex worker, on the other hand, could be arrested for prostitution in the vicinity of a public place and/or soliciting for purpose of prostitution, with convictions for either violation not extending beyond a three month imprisonment and fine of five hundred rupees.

Despite the apparent sophistication of the ITPA in targeting the most exploitative forms of sex work, Sonagachi is today a bustling red-light area. Paradoxical as this is, the explanation is far more complicated than the mere nonenforcement of the ITPA. Yet, since rent-seeking practices by the Indian police are rampant and hardly limited to the sex industry, I characterize the police as an active external stakeholder in Sonagachi's sex industry. There is no systematic study of the enforcement of the ITPA vis-à-vis the different categories of sex workers and brothels in Sonagachi or in Kolkata more generally. DMSC, based on its longitudinal view over the past thirteen years, however, suggests that police harassment of sex workers has been on the decline in recent years. To quote Mitra Rana, a sex-worker leader (and an ex-president of the DMSC), "police behaviour has undergone sea change from [what it was] earlier. Not all police personnel are bad. We get a lot of support from local police stations—fear of the police has actually reduced. As I said, our main fear is social fear."<sup>23</sup>

Yet, irrespective of the varied economic impact of the enforcement of the ITPA on different categories of internal stakeholders, they are all motivated to strike a bargain with the local police through varied combinations of sexual favors and monetary bribes, in exchange for escape from arrest and prosecution. What then are the patterns of enforcement of the ITPA—or should we say bargains—in Sonagachi? Based on interviews and secondary sources, I suggest that there are three modalities of engagement by the police with Sonagachi's internal stakeholders. These are nonenforcement, payoffs, and pay-ups.

Large swathes of Sonagachi's sex industry are untouched by the local police. For instance, small- and medium-sized brothels with B and C category *adhiya* sex workers do not pay regular bribes to the police, and many never

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23. DMSC-TAAH Research Project. 2004. Interview of Mitra Rana (transcription is in author's possession). The interview was conducted on February 5, 2004, in Kolkata by members of the DMSC-TAAH Research Project. This change in police behavior has been gradual. Three years after DMSC was established, a 1998 report noted that "harassment by police in the form of raids on brothels, and violence from clients has reduced somewhat, over the years, but not enough to make a difference" (Gonzales et al. 1999, 102).



pay any bribes at all. The underlying threat of potential enforcement is, however, always present and fundamentally fashions the bargaining relationship between internal stakeholders and the police. On the other hand, payoff transactions are struck on a more routine basis in highly profitable brothels with category A *adhiya* sex workers. Here “protection money” is regularly collected and handed over by the landlord to the police, and this does not preclude occasional extortionist demands in the form of “donations.”

There are then essentially only two instances in which the police are known to raid brothels in Sonagachi, according to DMSC; these are when the brothel traffics a minor or when a criminal suspect is visiting a brothel. The police also enforce the ITPA when customers and flying sex workers cause “public nuisances” near a main entrance to Sonagachi that is off of a busy arterial road running through North Kolkata, resulting in what I term as pay-ups under the ITPA and related laws. The local police, therefore, have an internal organizational calculus of certain kinds of illegal activities that warrant their intervention, the calculus being driven by both the seriousness of the harm, such as trafficking and visibility, as with street-based sex work. A further consideration is profitability: any attempt to enforce the ITPA resulting in a pay-up could very quickly become a payoff transaction. Local police are known to threaten *Agrawali* brothel keepers with corrective detention for up to six months unless they pay them at least two hundred thousand rupees. Similarly, when flying sex workers and their customers are arrested, customers pay bribes and sex workers provide sexual favors to be released. To their credit, the DMSC, which represents mostly B and C category workers, has effectively limited the police’s use of the ITPA in Sonagachi in at least two ways. In response to the DMSC, the police have limited their use of the ITPA to harass internal stakeholders engaging in the most harmful, illegal activities, and/or who can afford to pay bribes to resist prosecution. However, in order to maintain credibility in the public eye, the police curtail flying sex workers and their customers.

## II. THEORIZING LEGAL PLURALISM IN SONAGACHI

So far, I have focused on the brothel, an institution unique to the sex industry, and I have presented a disaggregated view of its internal and external stakeholders in order to locate them more precisely within it. In the process, I have employed the insights of legal realism to enumerate the several sets of formal legal rules, informal social norms, and market practices that, in fluid interaction with the anti-sex work criminal law or the ITPA, produce varied bargaining potentials for sex workers and other stakeholders in Sonagachi’s highly internally differentiated sex industry. In this section, I locate my findings on the legal pluralism of Sonagachi’s sex industry against the predominant view of the role of the law in sex industries that I call the

structural bias thesis, as well as the considerable sociolegal scholarship on illegality. Although focused on the Indian context, it is highly likely to bear resonance in other national settings.

The *structural bias* thesis views the ITPA as suffering from a range of biases that when enforced are exacerbated, leading ultimately to discrimination against sex workers. The ITPA, the argument goes, suffers from a *substantive bias* because it criminalizes sex workers who are in effect victims of capitalist, patriarchal economies. A *bad faith bias* operates when corrupt police officers collude with politicians and brothel keepers and do not enforce the law stringently against brothel keepers. *Procedural bias* makes gathering sufficient proof to sustain convictions difficult (D'Cunha 1991) and produces a time lag between filing a case and the final conviction. Also, the bailable nature of the offense of trafficking allows the accused to flee or engage in excessive delaying tactics to avoid trial (Blackwill 2003). At the *operational level*, the sexist local police machinery uses the ITPA to overwhelmingly target sex workers rather than brothel keepers, traffickers, and customers. For example, of the 65,602 persons arrested between 1997 and 2001, 87 percent were females (Sen and Nair 2004). Also, 90 percent of those arrested, mainly under Section 8A of the ITPA, and 90 percent of those convicted were women (Sen and Nair 2004).<sup>24</sup> The number of females arrested under the ITPA is roughly four times that of males (Government of India 1998). Jean D'Cunha (1991) confirms this trend for Mumbai under the predecessor statute to the ITPA. A more recent study showed that 66 percent of cases registered against sex workers in Kamathipura, Mumbai, and 56 percent of cases registered in G. B. Road, New Delhi, were lodged under Section 8 of the ITPA (any person who solicits or seduces for the purpose of prostitution), with a 90 percent conviction rate against sex workers (Lawyers Collective 2003). Convicted sex workers end up doing more sex work in order to pay off penalties imposed under the ITPA. Finally, even benevolent provisions of the ITPA relating to rehabilitation produce *perverse results* in that sex workers live in subhuman conditions in state facilities where they are physically and sexually abused, receive no job training skills, and are forced to return to sex work.

Further, even where the ITPA is not enforced, the criminal status of sex work fundamentally skews the bargaining potentials of internal stakeholders across the three relational dynamics. For example, landlords do not issue rent receipts for fear of acknowledging an illegal tenancy relationship. Sex workers similarly cannot ensure performance of the terms of their labor and service relations with brothel keepers and customers, respectively, due to their illegality under the ITPA. Further, the ITPA produces a ripple effect

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24. Although this data is not differentiated in terms of whether these women were sex workers or brothel keepers, Sen and Nair (2004) assume that it is sex workers, or "victims of commercial sexual exploitation," who suffer from discriminatory enforcement patterns (5).

on a range of social interactions into which sex workers enter. For example, sex workers borrow money from brothel keepers or money lenders because Sonagachi banks only recently permitted opening an account by stating sex work as one's occupation<sup>25</sup> and required identity documents and proof of residence, which were impossible to obtain due to the illegality of the tenancy agreement.<sup>26</sup> A money lender would, meanwhile, charge a sex worker an annual interest rate of 158 percent, impose fines for failure to repay loans, prohibit repayment until the principal loan amount was paid in full,<sup>27</sup> and require sexual favors at every stage of the transaction, because a sex worker, given her criminal status, was unlikely to file a police complaint against him. Apart from this spiraling effect of the ITPA on individual sex workers, the criminalization of sex work also adversely impacts the collective associational lives of sex workers, as evidenced by DMSC's difficulty in registering itself and its affiliates as nonprofit organizations.

Despite the fractious and polarized nature of the normative and policy debates around sex work, the structural bias thesis finds support on all sides. Opponents of the decriminalization and legalization of sex work will use the structural bias thesis to reiterate the need for a robust anti-sex work criminal law, provided that biases against sex workers are excoriated from its framework (Sen and Nair 2004; Government of India 1998; Joshi 1997; D'Cunha 1991). Proponents of decriminalization and legalization, on the other hand, will use the structural bias thesis to reiterate the social exclusionary effects of criminal law on sex workers in general (Misra, Mahal, and Shah 2005). For them, bias can be truly eliminated only by repealing the ITPA, upon which sex workers will have increased bargaining power in the labor, tenancy, and service relations. Both camps thus view the criminal law as having a unidirectional repressive effect on the sex industry. For the abolitionists, payoffs and biases detract from the efficiency of this repression, but for those supporting decriminalization, the costs of repression are disproportionately borne by sex workers.

The structural bias thesis is certainly relevant in Sonagachi. Even DMSC attributes sex worker harassment under the ITPA to the long-standing and powerful nexus between landlords, brothel keepers, pimps, local *goondas*, politicians, and the police.<sup>28</sup> However, the structural bias thesis requires

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25. In June 2004, the State Bank of India branch near Sonagachi started issuing passbooks with sex work in the occupation line, where earlier a sex worker described herself as a housewife or domestic help (*Hindustan Times* 2004).

26. This requirement was waived for three hundred sex workers, who were recommended by DMSC to open accounts at the State Bank of India (*Financial Express* 2004).

27. DMSC-TAAH Research Project. 2004. Interview of Mili Chattopadhyaya (transcription is in author's possession). The interview was conducted on February 4, 2004, in Kolkata by members of the DMSC-TAAH Research Project.

28. For a similar articulation of a nexus theory by the Indian state of how sex workers are continually victimized before trafficking, during trafficking, and posttrafficking by society and "vested interests," see Sen and Nair 2004, 279–80.

considerable qualification. First, it does not account for the *highly internally differentiated* nature of the sex industry. From my sociology of sex work in both Sonagachi and Tirupati, a South Indian temple town, it is apparent that there does not exist any one category of sex worker, or for that matter any other internal stakeholder, upon whom the impact of a given element of the rule network is uniform or can be assessed a priori. On the contrary, interests of the various categories of sex workers are often in conflict. For example, the popularity of renting on contract in Sonagachi enables several sex workers to achieve functional independence in sex work, but can also have dire consequences for *adhiya* and *chhukri* sex workers who continue to work in brothels.

Second, the structural bias thesis views the ITPA in isolation and understands the operation of other laws only by reference to the ITPA. If instead, we expand the *legal playing field* to include civil laws such as rent control laws, informal social norms, such as *selami*, and the parallel universe of norms and practices produced by an illegal market in sexual services, several things become clear. To begin with, legality and illegality are co-constitutive of each other rather than operating in an on-off relationship. There is considerable porosity between the legal and illegal aspects of individual and collective life in Sonagachi, which internal stakeholders negotiate with varying levels of awareness, skill, and resources. Further, there are multiple layers of illegality that operate in tandem. For instance, current tenancy relations in Sonagachi are illegal under the ITPA, the 1872 Indian Contract Act, and the 1997 West Bengal Premises Tenancy Act. But there is no hierarchy of illegalities such that the illegal transfer of *selami* payments can occur only if the ITPA were somehow in abeyance. To be sure, if the ITPA was enforced all the time, the red-light area in Sonagachi would not exist. But it is not as if the selective enforcement of the ITPA in Sonagachi amounts to a de facto suspension of the application of the ITPA, allowing stakeholders to freely bargain in the shadow of the criminal law. Instead, the threat of enforcement of the ITPA is always present. Although stakeholders can predict to some extent the points of potential enforcement of the ITPA and can access tested ways of negotiating enforcement with the local police in the form of pay-ups and payoffs, the outcomes of these bargains are never certain. At the same time, there exist symmetries of illegality that keep the various stakeholders in check in their dealings with each other, since no one stakeholder would necessarily use the illegality of any of the relational dynamics under the ITPA to gain leverage over another stakeholder for fear of implicating his or her own illegality.

Although there is no necessary hierarchy between the different levels of illegality, they can produce vastly different orientations and subjectivities on the part of the stakeholders. For instance, the practice of *selami*, despite its illegality, is a pervasive, persistent social norm inextricably woven into the socioeconomic fabric of life in North Kolkata. While stakeholders in

Sonagachi deeply resist the logic of the ITPA, they are more accepting of *selami*, around which has emerged a common social understanding of the hierarchy of tenancy interests. However, this informal social norm is not definitive in any sense. So while an older ex-sex worker with a secure tenancy interest can anticipate compensation at current levels of *selami* for vacating her room, she cannot be certain of it. Further, there are no informal dispute resolution mechanisms<sup>29</sup> in which this collective knowledge is anchored and enforced. Also, stakeholders' decisions are influenced by varying levels of legal consciousness, which in turn is influenced by uneven levels of knowledge about the law and preferences for risk that stakeholders are willing to take in light of that information. This renders a resilient material practice like *selami* quite malleable.

Third, the structural bias thesis fails to recognize the *fluidity of norms and practices* within the sex industry, whether it is due to changes in tenancy practices or the impact of sex worker organizing, and how this causes stakeholders to reorient themselves vis-à-vis each other. For example, the most exhaustive study of the enforcement patterns of the ITPA in India to date, the report commissioned by the National Human Rights Commission (NHRC) (Sen and Nair 2004), makes no reference whatsoever to informal social norms or practices within sex industries, much less takes note of their temporalities. Yet the difficulties of gathering such resolutely local information must not be understated. Even the most likely repositories of such knowledge, DMSC peer educators, either did not register these changes or when they did, always qualified their information as partially true for their areas within Sonagachi rather than the red-light area as a whole. Finally, the structural bias thesis fails to contemplate the sex industry as a whole, as a *market*. The reason for such blind spots in the literature on sex work is ideological (a feminist reluctance to study sex markets as such and therefore the sex industry as an economic sector),<sup>30</sup> disciplinary (feminist social theory does not always go well with sociologies of sex work), and methodological (longitudinal studies of sex industries are few and far between).

However, my discussion of the tenancy relations reveals the role of market structures in influencing stakeholder decisions. Landlords, for example, do not routinely evict sex workers with secure tenancy rights due to the reputational costs they would face in a closed real estate market. Here

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29. DMSC is emerging as a mediating body, although its interventions have been ad hoc; an organizational position is not discernable either. *Agrawalis* have their own community council for resolving disputes. An *Agrawali* I interviewed sought my legal advice on suing a nephew who had cheated her of a substantial sum he had taken for investment in a mutual fund. Referring the matter to the community had not helped, and court action would have affected her daughter's marital prospects. *Dalals*, touts who hail from a certain community in Bihar, also have their own *panchayat* (council) for resolving disputes.

30. The response to the ILO report, the Sex Sector, labeling the sex industry as an economic sector is one such example, despite the ILO's specific disclaimer that it was not calling for the decriminalization or the legalization of sex work (see Raymond 1998).

again, stakeholder knowledge and perceptions of market practices and how it affects them vary dramatically. From the vantage point of any sex worker, landlord, or brothel keeper in Sonagachi then, depending on their position within Sonagachi's sex industry, making a bargain with other stakeholders in any of the three relational dynamics is a finely calibrated decision that takes into account a myriad number of factors, only some of which include its illegal characterization under the ITPA. In other words, the ITPA is routinely ensnared in a highly plural rule network consisting of other formal legal rules, informal social norms, and market structures.

My findings on Sonagachi will come as no surprise to scholars of urban illegality, especially in the developing world. After all, much has been written about illegality, of the legal architectures, and enforcement machineries that multiple illegalities do or do not incite into action, the lived coexistence of legality and illegality (Perdomo and Bolívar 1998), the negotiations of private disputes in the shadow of illegality (Yonder 1998), the state's role in fostering illegal markets and its toleration of certain forms of illegality more than others (Varley and Fernandes 1998), and urban illegality as a site of political negotiations with the state (Charles et al. 2002; Azuela and Duhau 1998; Yonder 1998). Similarly, in the context of illegal migration, Emily Ryo (2006) and Xin He (2005) have theorized that the lack of compliance with the law is not related merely to instrumental factors that make noncompliance a rational choice, but also to the presence of opportunity structures and normative considerations where subjects do not consider the law to be legitimate.

While the scholarship on illegality outlined above highlights the utterly unexceptional nature of illegality in the sex industry despite attempts in the popular and regulatory discourse to conflate it with the highest levels of criminal illegality, namely, organized crime, this scholarship has limitations. First, studies of urban illegality focus largely on the urban poor even though middle- and high-income groups are acknowledged as resorting to unofficial and illegal housing developments (Perry 1998). In Sonagachi, where there is considerable segregation by class, a mapping of the differential equation—that sex workers in different modes and submodes of organization of brothel-based sex work and class positions bear to illegality—is essential. Second, while theories of noncompliance are a valuable corrective to rational actor models, in the postcolonial context, noncompliance is commonplace, considering the exigencies of colonial rule under which liberal legality was received. This is not a point about any essentialist despotism of third-world law but rather that, at the level of legal consciousness, the politics of law are deeply experienced in day-to-day life by postcolonial subjects (Baxi 1982). Under these circumstances, normative explanations for the disregard of the law are intuitive. Instead, in fact, what this scholarship bears testimony to is the sheer exceptionalism that accompanies the current day discussion of sex work, so that while the discourse of rational actors is too readily available

to the study of illegal migration, it is almost entirely unavailable to the study of sex work. This may change as feminists engage more frontally with economics and economists study sex industries (Collins 2003).

More generally, much of the literature on illegality strives to redeem illegality. For instance, the more critical strain of this scholarship is defiant of the state's characterization of the living and working arrangements of many of the world's poor, and reworks illegality in less pejorative terms such as extralegality (Sen 1976) or paralegality (Chatterjee 2004). Important as this critique of modern law is, it tells us little about the economies of illegality—the markets it produces, the terms of entry to such markets, the types of working arrangements it fosters, and how the risks and costs of illegality are apportioned. Where scholarship does focus on these aspects, as evident in writings on the informal economy, there is an unarticulated anticipation that formal legal status can eliminate the deleterious effects of the market (Jhabvala 2000) as decriminalization and legalization is assumed by feminists to transform the context of sex work.

It is precisely in an attempt to produce a critical economic analysis of anti-sex work laws that, in the third section of my article, I present, in light of the foregone sociology of sex work and legal pluralism, an analytical model within which to examine the economic implications of a current state proposal for law reform on a sex market *as a whole*; that is, Sonagachi.

### III. IMPLICATIONS OF PARTIAL DECRIMINALIZATION FOR SONAGACHI'S SEX INDUSTRY

As mentioned earlier, at least four regulatory options are available in relation to sex work: complete criminalization, complete decriminalization, legalization, and partial decriminalization. In this section, I focus on partial decriminalization to assess the implications of rule changes for Sonagachi's stakeholders for two reasons. First, partial decriminalization is being actively considered by the Indian government in the form of the 2006 Immoral Traffic (Prevention) Amendment Bill. Second, under pressure from the U.S.-led abolitionist agenda and its sanction-based scheme under the 2000 Victims Against Trafficking and Violence Protection Act (Halley et al. 2006; Chuang 2006), national governments the world over seem to favor partial decriminalization when considering reform. Moreover, partial decriminalization is a preferred regulatory position for many feminists who, despite their many differences, are almost unanimously against complete criminalization, but are at the same time ambivalent about both legalization and complete decriminalization, which some feminists perceive as legitimizing the inequalities of the sex industry.

Section 5C of the proposed 2006 Immoral Traffic (Prevention) Amendment Bill provides that any person who visits or is found in a brothel for the purpose

of sexual exploitation of any victim of trafficking shall be punished for up to three months, or receive a fine of up to twenty thousand rupees, or both; the fine alone is forty times the amount currently imposable under the ITPA. In the case of a second or subsequent conviction, the customer can be imprisoned for up to six months and pay a fine of up to fifty thousand rupees. Trafficking is broadly defined to include a wide range of means by which a person can be trafficked, rendering almost all sex workers in Sonagachi trafficked and almost all customers liable for prosecution under Section 5C. In addition, the proposed amendment seeks to repeal Section 8 of the ITPA, which is currently disproportionately used against female sex workers for soliciting, as well as Section 20, which grants magistrates wide powers to evict sex workers from any place in their jurisdiction. The proposed amendment also creates the offense of trafficking under Section 5A<sup>31</sup> and exponentially increases the existing penalties for brothel keeping and detaining a person in premises where prostitution is carried on. In effect then, the 2006 Immoral Traffic (Prevention) Amendment Bill seeks to decriminalize the sex worker while further criminalizing the customer and other internal stakeholders; this is partial decriminalization in real terms.

Let us assume that the proposed amendment is passed and that the police actually enforce it instead of engaging in rent-seeking behavior. What then are the distributional consequences of enforced partial decriminalization for internal stakeholders in Sonagachi? Does adopting a legal realist view of its sex industry and a bargaining model for negotiations between internal stakeholders offer us any insights into the workings of a formal rule change? I argue that it does and that, in fact, the proposed amendment could have far-reaching consequences for the labor, tenancy, and service relationships in brothel-based sex work in Sonagachi that are not visible from alternative theories.

### **The Effect of Enforced Partial Decriminalization on the Tenancy Relation**

A landlord with no functional role in the sex business could be prosecuted under the ITPA under Section 3(2) (for allowing premises to be

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31. "Section 5A: Whoever recruits, transports, transfers, harbours, or receives a person for the purpose of prostitution by means of (a) threat or use of force or coercion, abduction, fraud, deception; or (b) abuse of power or a position of vulnerability; or (c) giving or receiving of payments or benefits to achieve the consent of such person having control over another person, commits the offence of trafficking in persons. *Explanation.* Where any person recruits, transports, transfers, harbours or receives a person for the purposes of prostitution, such person shall, until the contrary is proved, be presumed to have recruited, transported, transferred, harboured or received the person with the intent that the person shall be used for the purpose of prostitution" 2006 Immoral Traffic (Prevention) Amendment Bill.



used as a brothel), which, if convicted, could mean two years' imprisonment and a fine of two thousand rupees the first time, and five years' imprisonment and a fine for subsequent convictions, and Section 7(2) (for knowingly permitting prostitution in or in the vicinity of a public place<sup>32</sup>), which, if convicted, could entail three months' imprisonment, or a fine of two hundred rupees, or both. Under both sections, an absentee landlord could be acquitted if he can prove ignorance as to the use of the building, although this argument is more tenuous for a resident landlord.

If the landlord leases a room to a sole independent sex worker, however, he could argue that his property is not being used as a brothel in light of the definition of a brothel under Section 2(a) of the ITPA and its interpretation by Indian courts following English law, effectively exempting a sole woman who receives a number of men (*In re John and Others* 1966, following *Strath v. Foxon* 1956). Similarly, the Madras high court held that

where a single woman practices prostitution for her own livelihood, without another prostitute, or some other person being involved in the maintenance of such premises, her residence will not amount to a "brothel." There cannot be any clearer indication of the purpose of the Act, which is to strike down commercialized vice, not to make the unfortunate prostitute, herself often a victim of economic pressures and social maladjustment, a criminal under the law. (*In re Ratnamala* 1962, 33)

Moreover, the phrase, "sexual exploitation or abuse for the gain of another person" has been narrowly interpreted by courts, and there is no indication that payment of rent to a landlord from the earnings of sex work could amount to "gain of another person."<sup>33</sup>

Section 7(2), unlike Section 3(2), relates to knowingly and willfully leasing property in a public place to a sex worker for "prostitution" rather than use of premises as a brothel. Since prostitution under the amended ITPA will be defined as "the sexual exploitation or abuse of persons for commercial purposes or for consideration in money or in any other kind," an independent sex worker could argue the lack of sexual exploitation for commercial purposes since she does own-account sex work. Based on this, her landlord could be acquitted of a charge under Section 7(2).

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32. A place is said to be in the vicinity of a public place if it is within two hundred meters of a public place; there are several public places in Sonagachi, including a hospital, a main road, schools, and temples, putting most properties in close proximity of a public place.

33. Most cases under this section concern a brothel keeper rather than the landlord. Even where a manager of a sex business accepts money from the decoy-customer, courts have held that mere acceptance of the cash does not imply that sex work was performed for the manager's gain (*In re Dhanalakshmi* 1974). Similarly, even where a wife did sex work in her marital home while her husband was traveling, the court required that there be satisfactory evidence that the wife's prostitution was for the gain of her husband to sustain the charge that the premises in question were used as a brothel (*In re John and Others* 1966).

Unless the landlord is renting his properties to sole independent sex workers, he could be found guilty under Sections 3 and 7. Under Section 18(2), a magistrate could, upon conviction of the landlord under either of these two sections, or even otherwise (provided there is prior hearing), order the eviction of all current occupants of the building and require the court's approval every time he tries to rent it out for either one year or three years (if a minor or child is found in the brothel). Although failure to comply with this restriction attracts a fine of a mere five hundred rupees, the landlord is unlikely to re-lease his property to sex workers given the constant enforcement of the amended ITPA by the police and higher penalties for subsequent convictions. From the landlord's point of view, Section 18(2) amounts to a global eviction order, allowing him to realize the market value of his property, hitherto tied up by sex workers with secure tenancy rights, and without incurring any transaction costs in the form of compensation payable to the sex workers. Except for sole independent self-employed sex workers, who could argue that they do not keep a brothel and are not sexually exploited and therefore not engaging in prostitution, other tenants of the landlord, including brothel keepers and lessees,<sup>34</sup> would lose their secure tenancy rights. Older sex workers who paid a low *selami* several years ago would lose the appreciation in the property value that they viewed as retirement insurance. More recent tenants would forfeit the substantial *selami* they paid to the landlord for a secure tenancy right. The landlord could now collect *selami* payments from a whole host of eager new tenants, including householders, who, given the increased enforcement of the amended ITPA, would be less dissuaded by the reputational costs of living in Sonagachi. Demand for properties in Sonagachi would likely increase, and assuming that rent control laws are not enforced, both rents and *selamis* would increase substantially. This would further increase the threshold to functional independence for sex workers. Only independent self-employed sex workers with secure tenancy rights would continue to live and do sex work in Sonagachi.

### The Effect of Enforced Partial Decriminalization on the Labor Relation

A brothel keeper with a *chhukri* sex worker could be prosecuted under Section 3(1) of the ITPA for keeping a brothel, punishable by imprisonment for between two and three years in case of a first conviction, in addition to a fine of ten thousand rupees. She could be prosecuted under Section 4 for living on the earnings of prostitution and if the *chhukri* is less than eighteen

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34. One might argue that lessees should remain unaffected by the amended ITPA because they have no functional role in sex work. However, to the extent they continue to constitute a layer of intermediaries between sex workers and the landlord, courts may not treat sex workers renting on contract and commission as necessarily being independent.

years old, which is highly likely, then she could be imprisoned from seven to ten years. The brothel keeper could be imprisoned (1) for life under Section 5 for procuring, inducing, or taking a child for the sake of prostitution; (2) for seven years and a fine of one hundred thousand rupees under Section 6 for detaining a person in premises where prostitution is carried on; and (3) for at least seven years and a fine under Section 9 for seduction of a person in custody. If the *chhukri* is arrested either under Section 7 for prostitution in a public place or under Section 8 for soliciting, the brothel keeper would be liable for the fine since a *chhukri* technically has no money of her own. Upon conviction under the enumerated sections, the brothel keeper would lose her advance payment to the trafficker as well as her *selami*. A brothel keeper with one *chhukri* belonging to the B or C category would lose less than an *Agrawali* running a medium-sized brothel with several *chhukris* belonging to the A category. Still, their brothels would be shut down and the *chhukris* sent to a government home for rehabilitation, from where they could eventually leave the sex industry.

A brothel keeper with adult *adhiyas* could be prosecuted under Sections 3 and 4, the punishments for which are substantial. She could also be prosecuted under Section 5 for procuring—the consent of an adult *adhiya* sex worker is irrelevant—with imprisonment from three to seven years and fined up to two thousand rupees. Although the imprisonment periods under these three sections are less than those applicable to a brothel keeper with a *chhukri*, a brothel keeper with *adhiyas* also forfeits her *selami* payment to the landlord. Again, the brothel keeper of a large brothel with A category sex workers working on an *adhiya* basis would suffer more financial loss than a brothel keeper of a small brothel with one *adhiya* sex worker belonging to the B or C category. *Adhiyas* who could not afford the preenforcement *selami* levels would not be able to afford the higher postenforcement *selami* levels. They would either borrow capital to pay *selami* to a landlord and become independent or exit sex work and work in the informal sector with relatively low bargaining power.

Enforced partial decriminalization would have a differential impact on varied categories of independent sex workers. The flying sex worker would continue to be arrested under Section 7 for prostitution in a public place and, upon conviction, be imprisoned for up to three months, during which time she foregoes earnings. Since she is likely to be doing sex work in Sonagachi without her husband's knowledge, overnight detention from being arrested under the ITPA would make her highly vulnerable by revealing her sex-worker status to her husband. She may then have to quit sex work or lose considerable bargaining power in her marriage. To avoid these options, she may do street-based sex work under less safe conditions in other parts of Kolkata.

With an independent sex worker renting on contract, her lessee may be arrested under Section 3(1) for allowing premises to be used as a brothel

for which she could be imprisoned for up to three years with a fine of ten thousand rupees, despite the fact that she has no functional role in the sex industry. Upon conviction, she would forfeit her *selami* and have to move out with her family, in addition to facing imprisonment. The sex worker, on the other hand, may be arrested under Section 7. With the eviction of the lessee, the sex worker would have lost the opportunity to rent a room in Sonagachi without paying *selami*. She may, therefore, borrow money to pay *selami* for a secure tenancy right or exit sex work altogether.

Although the independent self-employed sex worker may be arrested under Section 3(2) for keeping a brothel, she could argue that she does own-account sex work and that her brothel room is not used for “sexual exploitation or abuse for the gain of another person.” Since Indian courts understand the goal of the ITPA as targeting commercialized vice, and not vulnerable sex workers operating on their own, she is likely to be acquitted (*In re John and Others* 1966; *In re Ratnamala* 1962).

As for a charge under Section 7(1) of prostitution in a public place, she could argue that own-account sex work does not amount to prostitution under the amended ITPA. If this interpretation fails, she could be imprisoned for up to three months. Assuming that she cannot sublease her room to another sex worker for the period that she is imprisoned, she may lose her room and *selami* if convicted. This means paying a much higher *selami* and rent upon reentry to Sonagachi’s real estate market, making the costs of prosecution prohibitive.

### Enforced Partial Decriminalization and Sonagachi’s Sex Industry

I now assess the impact of enforced partial decriminalization on Sonagachi’s sex industry as a whole and, in the process, on the third relational dynamic of brothel-based sex work: the service relationship. Enforced partial decriminalization would initially result in the reduction of the number of sex workers in Sonagachi. In the absence of brothels and their *chhukri* and *adhiya* sex workers, independent sex work would become the norm. Whether and how much independent sex workers make under enforced partial decriminalization would depend on levels of supply and demand.

With enforced partial decriminalization, the influence of *goondas* in Sonagachi’s sex industry would reduce dramatically. As it is, with the advent of DMSC, sex workers reported a reduction in the levels of harassment and violence in Sonagachi. For the independent self-employed sex worker, reduced harassment translates into a more secure tenancy interest. Reduced *goonda* harassment has a lesser impact on independent sex workers on contract since their mobility is more a function of the availability of rental properties on contract. Reduced *goonda* harassment and increased safety creates an incentive for independent flying sex workers to work in Sonagachi rather

than on Kolkata's streets. Enforced partial decriminalization also means that there are likely to be less payoffs to the police. Reduced *goonda* harassment and fewer payoffs to the police ultimately result in lower costs of doing sex work and better working conditions for independent sex workers. Lower costs and increased safety are likely to trigger an increase in the number of sex workers entering Sonagachi's sex industry, although one might argue that the reputational costs of entering sex work are prohibitive and would have zero impact on the supply of sex workers. Assuming, however, that there is at the very least some increase in supply, it could result in a drop in the price per shot for sex workers working in Sonagachi.

If, however, the police enforce the amended ITPA against all customers rigorously, there would be a sharp drop in the demand for sex work in Sonagachi, displacing sex work to parts of Kolkata where the ITPA is enforced less rigorously. There would be much less demand for sex work in Sonagachi; a much lower quantity of sex work would be performed and the price per shot would be less than prior to the enforcement of the amended ITPA. Independent sex workers in Sonagachi and those contemplating entering sex work in light of the reduced costs of sex work may then reconcile to staying in marriages or work in the formal or informal economies on weaker bargaining terms than before. However, due to poor institutional capacity, the total enforcement of partial decriminalization against all customers all the time is highly unlikely. This means that while demand would drop sharply initially, it would eventually stabilize at a lower level than prior to enforced partial decriminalization but would not be eradicated.

Under these circumstances, if the supply of independent sex workers exceeds customer demand, the price per sex work transaction would be lower than prior to enforced partial decriminalization. Let us, however, assume the best case scenario where the supply of sex workers is less than customer demand. After all, due to enforced partial decriminalization, the threshold to independent residential sex work in Sonagachi is now much higher than before. Moreover, supply may not be as high as anticipated due to the prohibitive social costs for some women of entering sex work despite the improved conditions within the sex industry. It is more likely, therefore, that when the price equilibrium for sex work transactions is reached in Sonagachi, independent sex workers remaining there would in fact earn more than before the amended ITPA was enforced, but this is not without cost. As illustrated earlier, prior to the change in law, residential sex workers found safety in the red-light area due to the concentration of brothels. With the eradication of brothels, stakeholders like *dalals* and brothel keepers, who screened abusive customers, would be eliminated from Sonagachi. Some landlords and brothel keepers may have countered harassment from the police and hooligans. At least sex workers were confident of their ability to counter such abuse given their sheer numbers in the red-light area. The elimination of these stakeholders translates into marginal savings for sex workers but also into

less secure working and living conditions. After all, there has also been a qualitative change in the customer pool. Customers who are likely to visit Sonagachi despite enforced partial decriminalization are far more likely to be less risk averse and potentially more violent than before. Moreover, as the tenant profile of Sonagachi changes, householders may object to the presence of existing sex workers and incite increased police action against them to expedite their departure. Sex work in Sonagachi would become less attractive, and some sex workers may in fact leave sex work altogether. Meanwhile, customers would be worse off due to higher prices and a relatively limited pool of sexual labor, so they would turn to their wives more, who would now have enhanced bargaining power in the marriage, although it is perfectly plausible that men could turn to other nonmarital economies of sex or abstain from sex altogether.

To conclude, even if a policy of partial decriminalization were to be fully enforced, the positive implications for sex workers, if any, of criminalizing the sex industry are far from clear. There is a clear and desirable upside for *chhukri* sex workers. The loss of *selami* payments by independent sex workers operating as brothel keepers and possibly lessees could be viewed as transitional costs, although the reduced prospects of becoming a brothel keeper would not deter a woman from entering sex work. However, the displacement of independent sex workers to less regulated zones for sex work comes at a cost. Independent sex workers who stay on or work in Sonagachi would experience worse working and living conditions. The net effect of enforced partial decriminalization is essentially that there would be fewer sex workers in Sonagachi but that sex workers as a group would be worse off.

So far I have assumed that the amended ITPA would in fact be enforced. From my description of the current role of the police in Sonagachi as external stakeholders, however, it is far more likely that when the amended ITPA comes into force, it would be either unenforced or enforced with a tolerated residuum of abuse, larger or smaller, as the case may be. Since the threat of enforcement of the ITPA is directly correlated to a payoff in Sonagachi, increasing the costs of sex work through criminalization would mean that every relational dynamic in Sonagachi's sex industry, including the labor, tenancy, and service relationships, would bear the burden of increased payoffs to the police. In other words, the increased costs of criminalization would be borne by sex workers who would now also have poorer bargaining power vis-à-vis internal stakeholders across the three relational dynamics.

## CONCLUSION

In this article I present a sociology and legal ethnography of one of India's most notorious red-light areas, Sonagachi, which, in journalistic, academic, and governmental accounts, produces a monolithic stereotypical

image of the enslaved third-world sex worker (Kristoff 2006; Kapur 2005). Instead of flattening all that lies within Sonagachi's boundaries into the single monochromatic thread of violence and exploitation, I draw out the complex web of power relations that sustain the red-light area and the varied positions that sex workers occupy within it. I do this by producing an institutional account of brothel-based sex work and identifying the modes and submodes of organization of sex work ranging from bonded sex work to own-account sex work. I disaggregate the various categories of stakeholders that form the three major relational dynamics of the institution of the brothel: the labor, the tenancy, and the service relations. Drawing on the insights of legal realism, I problematize the role of criminal law in Sonagachi by focusing less on points of its enforcement within the sex industry and more as a set of background rules against which stakeholders in the sex industry fashion their living and working arrangements. Based on sociolegal scholarship, I map the highly plural rule network in Sonagachi that consists of formal legal rules, including criminal law and civil laws, informal social norms, and market structures, and I examine the interactions between them. I suggest that the rule network variously endows the bargaining potentials of sex workers and other internal stakeholders in Sonagachi. Further, I show that these stakeholders are constantly entering into bargains with each other, the outcomes of which cannot be determined a priori, although they do form equilibriums that, while often quite stable, are fluid and open to destabilization. In exploring the redistributive prospects of law in this highly internally differentiated sex industry, I highlight the need to estimate the elasticity of such equilibriums, their threshold for change and their ability to reconsolidate or reconfigure, and how stakeholders might reorient their bargaining positions in response. I conclude by assessing the potential outcomes of enforced partial decriminalization on Sonagachi's sex industry as far down the chain of distributional analysis as is possible.

My approach draws on the structural bias thesis and the illegality literature but goes beyond them by demonstrating that, irrespective of our political positions on sex work, it is not possible to sustain a corresponding preference for regulation without acknowledging that legal rules are perpetually ensnared in complex rule networks and without studying the disparate effects of the most well-meaning legislative proposals at the most minute level of negotiations between sex workers and other stakeholders in the sex industry. Analytical gains include an ability to ask altogether different questions about the nature of the law in sex industries. For instance, can we say anything meaningful about sex work without comprehending sex markets whether we find their existence repulsive or not? Do we as a society want more sex work or less? What kinds of sex do we want to permit for sale in society and under what conditions? Do we prefer fewer independent sex workers doing sex work under the precarious and violent conditions produced by enforced partial decriminalization? Do we want more or fewer *adhiya* sex

workers to work in Sonagachi or outside it? In realizing our goals, is criminal law the proper site for contemplating law reform? What accompanying changes in the regulation of the informal economy and marriage will we need to make? These questions already form the springboard for de-exceptionalizing the status of sex work under current conditions of moral panic and problematizing the relevance of concepts rampant in the feminist vocabulary on sex work, such as “agency” and “decriminalization,” and in the sex-worker vocabulary such as “workers’ rights.” My hope is that a materialist analysis of sex work crafted painstakingly from the sociology of sex markets and minute-level interactions between stakeholders could be one step toward a more refined feminist vocabulary on the strength of which we can articulate a normative theory of sex, work, female labor, and ultimately a theory of sex work that recognizes sex work as a form of work. Therein lie prospects for a politics of redistribution around sex work.

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