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Post-Colonial Economies of Desire: Legal Representations of the Sexual Subaltern

POST-COLONIAL ECONOMIES OF DESIRE: LEGAL REPRESENTATIONS OF THE SEXUAL SUBALTERN

RATNA KAPUR*

INTRODUCTION

In 1986 Mira Nair produced a rather provocative film called *INDIA CABARET*.¹ The film depicted the professional and personal life experiences of female strippers in a Bombay bar and the contradictory lifestyles of their clients, who came from traditional "Indian" family values backgrounds. Nair foregrounds the bar space, which contains the dressing room where the strippers talk of their emotional lives and involvement with their children, lovers, and friends, as well as the dance space, where they perform voluptuous, pelvic thrusting, hip-gyrating dance sequences from the chartbuster songs of popular Indian commercial cinema. Throughout the performance, these women negotiate commercial transactions, continuing their sexual performances to bring in better bids, before disappearing with a client, for what is a brief, but paid sexual interlude. The bar becomes, in Homi Bhaba's words, the "Third space," where the dualisms are challenged and worked out, where the real and the imagined converge. Throughout the film, we are made conscious of the economic, social, and cultural disparities that these strippers experience, but also the resistance they display to traditional Indian cultural values and familial and sexual normativity. They negotiate sex, culture, the market, and family partly through the politics of desire—a desire to make money, a desire to perform, a desire to challenge the artificial chasm that separates wives from whores and clients from respectable family men.

INDIA CABARET provides me with a trajectory into the contemporary debates around the legal regulation of the sex worker in a post-colonial context. This post-colonial sexual subaltern subject has the possibility of exercising a choice, negotiating commercial transactions, or even articulating a politics of desire, countering the dominant representation of the post-colonial sexual subject. Speaking from the location of the sex worker in the post-colonial world invariably conjures up a subject who

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1. *INDIA CABARET* (Mira Nair, dir. 1985).

increasingly services the market, a human cash crop to be exported for national development and international trade. It is this construction of the sex worker, as a prostitute or sexual slave, that has come to dominate policy and legal responses at both the international and domestic level. Yet there is also a counter to this image, which contests the abject representation of the sexual subaltern subject, especially in the Third World, as illiterate, economically exploited, abused, and victimized, emerging from within post-colonial India, which is the voice of the sex worker.

I use the term sexual subaltern for two reasons: the term subaltern has historically been associated with post-colonial theory and is relevant to the location of the subject with whom I am engaged, quite specifically one category of the Indian sex worker. Secondly, the term *sexual* subaltern draws attention to the subjects' location of marginality when addressed with reference to normative sexuality.²

In this article, I analyze the ubiquitous journey of the sex worker in the context of India in the contemporary moment. How has the casting of this subject in the domestic and the international arena intensified the moral surveillance of women's lives and reinforced stereotyped representations of Third World women? I focus on three issues. In the first section, I unpack the assumptions about the "sex worker" that have come to inform feminist legal strategies in post-colonial India, and how these, in turn, have informed State policy. I examine how the casting of the sex worker as a victim-subject and a cultural contaminant invites repressive legal and non-legal responses at the domestic level and how these responses are symptomatic of post-coloniality in the current moment. In the second section, I discuss how the representation of the exploited sex worker in the Third World has been taken up by feminist legal politics in the international human rights arena and has reinforced an imperialist gaze toward the "native" subject. I also look at how this representation has informed imperialist interventions and justified conservative policies, as highlighted in the recent spurt of anti-trafficking legislation at the regional and international levels. I discuss, in particular, the anti-trafficking legislation currently pending before the United States Senate.

In the final section, I examine how the post-colonial sexual subaltern in India challenges the intersection of contemporary imperialism, exemplified through anti-trafficking discourse and the historical effects of colonialism, where the integrity of the nation is based on the purity of its women. I discuss how the sex worker in post-colonial India contests assumptions about the sexual subaltern subject that inform legal strategies in the domestic and the international contexts as well as representations of the Third World sexual subject as an abject, exploited, and thoroughly

2. See generally Ratna Kapur, *Post-colonial Erotic Disruptions: Legal Narratives on Culture, Sex and Nation in India*, 10 COLUM. J. GENDER & L. 333 (2000).

disempowered victim. I emphasize the marginal location of the sexual subaltern and how she is not just a repressed subject. She is also a resistive and desiring subject.

I attempt to demonstrate, through the dance of the Indian Cabaret performer, that the location of the sex worker cannot be constructed purely in terms of economic disempowerment, victimization, and abuse. Rather, we witness the dynamic interplay between repression and resistance from this location. Through the marginal location of the sex worker in a post-colonial context, I seek to disrupt the "boxed in" essentialist mold in which the sexual subject, sexuality, and culture in the developing world are cast by a multiple range of actors in the domestic and international arena.

I. PRESENTING THE POST-COLONIAL SEXUAL SUBJECT

In using the term "sex worker," I refer to a category which is neither fixed nor static, neither clearly defined nor hermetically sealed. Indeed, the term "sex worker" conjures up representations in our respective imaginations that are as diverse as the celluloid images of commercial sex workers, ranging from Julia Robert's portrayal of Vivian Ward, in *PRETTY WOMAN*,³ or the more exoticised representation of Umrao Jaan by Rekha in Muzaffar Ali's *STORY OF A LUCKNOW COURTESAN*.⁴

Nevertheless, when it comes to legal strategies within the context of India, as well as in the international human rights arena, a more homogeneous, victimized, and linear subject appears to override our imaginations and has embedded itself in legal discourse. Although, in the context of sex work, this image of the abject victim subject is common to both the First World and the Third World, the image of the starving, exploited sex worker in the Third World has come to represent the more authentic victim-subject.

How has this victim-subject come to inform legal strategies within post-colonial India? Some kinds of feminist politics in India contribute to the creation of the sex worker exclusively as a victim. This perspective treats the sex worker as a woman who is victimized and forced into sex

3. *PRETTY WOMAN* (Touchstone Pictures 1990). *Pretty Woman* is the story of a corporate raider, played by actor Richard Gere, who hires a hooker, Julia Roberts, to pose as his girlfriend for a week, and pays her. During the course of the week he falls in love with her. She wonders if the life with him might turn out to be a dream come true.

4. *STORY OF A LUCKNOW COURTESAN* (Muzaffar Ali, dir.). Umrao Jaan, played by Rekha, the darling of Indian movie going audiences, tells the story of a woman who performs as a dancer and singer at the "Kota" of Khanum Jan, the madam, and develops a number of liaisons with the nobles of Lucknow, a major city in Northern India. Her exquisite singing and dancing skills, as well as her talent in composing Urdu poetry, attracts the attention of the Royal Court of Avadh. She develops a relationship with one nobleman, and the story of their affair is set against the backdrop of the 1857 "Indian Mutiny."

work primarily because of economic need. In other words, she has no other option open to her, and her desperate circumstances lead her into this occupation. At the same time, the economic needs argument is cast in cultural terms in order to distinguish the situation of the Indian sex workers from the situation of women in the so-called West, in particular, from the very articulate and organized sex workers rights movement in this part of the world.

The specific ways in which the economic needs argument plays out in cultural terms in the context of sex work has been represented in the work of some feminists in India. Jean D' Cunha states that even assuming that, in the North, prostitution should be a woman's occupational choice,

it cannot be considered so in the socio-cultural milieu of Asia where it is at best a "survival strategy" for the large majority of women. Choice can exist only when a certain amount of freedom or option is available in decision making. This conspicuously is absent in most cases at least in India where either physical force or socio-economic coercion lead women to a life in prostitution.⁵

This position is supported by a large number of women's groups in India and South Asia. Donna Fernandes argues that legalization would "legitimize man's utter contempt for women" and accept as normal the worst form of gender discrimination.⁶ She states that in the West, the individual constructs social relations, the market determines morality, and caring is institutionalized. In contrast, in Asia, the community is the main reference point despite liberalization and the establishment of a consumer society. "Hence, for Western women who may opt for prostitution as an occupational choice, legalization is a plausible policy option. On the other hand, most Asian women are compelled into prostitution by poverty and deception (in the form of marriage or promises of finding her employment)."⁷

Fernandes' critique is located on an East/West binary. First, the critique assumes that although choice is possible in the West, economic oppression in Asia is so all-encompassing that the very possibility of choice or agency is negated. Secondly, the critique is also based on certain false assumptions about culture. The culture of Asia is said to be

5. N.R. MADHAVA MENON, REVISITED DRAFT BILLS WITH EXPLANATORY NOTES ON THE IMMORAL TRAFFIC (Prevention) ACT 42 (1956) (on file with author). Prepared by National Law School of India University in Association with Students, Faculty and Task Force Experts from Calcutta, Lucknow, Bangalore, Bombay and Madras, December, 1993. Sponsored by The Department of Women and Child Development, Government of India, New Delhi.

6. Donna Fernandes, Prostitution: Beyond Legal Solutions (Apr. 1992) (unpublished manuscript, on file with author) (extracts from a paper presented at Conference on the Trafficking in Asian Women, Manila).

7. *Id.*

more communitarian, as opposed to the culture of the West, which is more individualistic. Additionally, Asian women are set up in opposition to Western women; the Asian woman is cast as chaste and vulnerable to exploitation, in contrast to the promiscuous Western woman who is ruled by the (im)morality of the market. The discourse of these feminists in the context of the legal regulation of sex work is embedded in a tension over culture and the construction of the sex worker as either a victim of the Western male and market or a cultural contaminant.⁸

These arguments, which emphasize the victim status of the sex worker and spin them in cultural terms, are broader symptoms of post-coloniality in two ways. The first argument is that Indian feminists have felt discomfort with being cast as foreign, western, and hence, anti-national. The struggle for women's rights in India emerged simultaneously with the struggle for nationalism. This feminism has had a tenuous relationship with nationalism and has, at times, been cast as western and imperialist at different historical moments. For this very reason, feminists have often had to project themselves as nationalists to counter this attack. Indian feminism has operated, within the discourse of nationalism, as anti-western and has had to position itself as anti-western to establish its legitimacy. It has adamantly denied allegations of being western and sought to establish a distinctively Indian feminism that is the authentic Indian feminist subject. This distinct subject has been constructed on essentialist notions of "the West" and "Western feminism."⁹

The second argument is the colonial backdrop against which the contemporary debates on sexuality have taken place, which have been taken up and reinforced by the Hindu Right.¹⁰ In the late 19th century, Hindu nationalists and revivalists reconstituted the home as a "pure" space of Indian culture, uncontaminated by the colonial encounter. The idea that Indian women's chastity and sexual purity were to be protected from the incursions of colonial rule constituted part of a broader move to defend Indian culture from colonial corruption and contamination.

8. See Gopika Solanki & Gitanjali Gangoli, *The Official Discourse Around PITA*, 31:51 *ECON. & POL. WKLY.* 3298, 3299 (1996).

9. See Uma Narayan, *Essence of Culture and a Sense of History: A Feminist Critique of Cultural Essentialism*, 13:2 *HYPATIA* 87 (1998).

10. See BRENDA COSSMAN & RATNA KAPUR, *SECULARISM'S LAST SIGH? HINDUTVA AND THE (MIS)RULE OF LAW* 7 (1999). The Hindu Right is a contemporary political movement in India informed by the ideology of Hindutva, which seeks to establish a Hindu State. It currently consists of the Bharatiya Janata Party (BJP), which currently leads the coalition in power at the Centre, The Rashtra Swayamsevak Sangh (RSS), the main ideological component of the Hindu Right, and the Vishva Hindu Parishad, (VHP), the religious and cultural wing of the Hindu Right. Collectively this triumvirate is known as the Sangh Parivar. The more militant associates of the Sangh include the virulently anti-Muslim Shiv Sena Party and the Bajarang Dal. For a discussion of the discursive strategies of the Hindu Right and how it is effectively pursuing its agenda through liberal rights discourse, see *id.*

The fear of contagion or threat of impurity is a common theme of the Empire, which was constructed on the edifice of Victorian morality, in particular, Victorian sexual morality. The sexual mores of the Victorian period came to inform the legal framework of the colonies, encasing the chaotic and exotic "other" in a tomb of conservative and disciplinary morality. At the same time, the nationalists used this rhetoric to defend the home from the incursions of a contaminating Imperial enterprise, which sought to recast the image of the colonial subject within its own mold or to expel the native from the privilege of universality for his backwardness and civilizational underdevelopment.¹¹

Partha Chatterjee has argued that, as there were no public spaces or institutions available to nationalists for constructing a national culture, the modern nation was fashioned in the autonomous private domain of culture.¹² The "official" culture of Indian middle-class nationalism was elaborated in the private domain, the home, which had important implications for the role of sexuality in nationalist discourse. The home as the repository of national identity had to be protected from colonial intrusions by women, through their virtues of "chastity, self-sacrifice, submission, devotion, kindness, patience, and the labors of love."¹³ But a nation entrenched in a respectable sexuality was not just the product of official Indian nationalism. As Tanika Sarkar has argued, the reconstitution of the norms of elite sexuality in India was also a product of the dynamics of orthodox and traditional social forces in the consolidation of

11. See UDAY SINGH MEHTA, *LIBERALISM AND EMPIRE* 46 (1999). Mehta examines the relationship between eighteenth and nineteenth century liberal theory and liberal practice, and how this theory operated in relation to colonialism, or rather how it could justify colonialism – what he calls the "inclusionary pretensions of liberal theory and the exclusionary effects of liberal practices." *Id.* at 46. He discusses the work of nineteenth century British liberal thinkers, including J.S. Mill and James Mill whose works make clear that political institutions such as representative democracy depended on a society having a certain state of development or maturation. The mechanism of Empire operating through colonialism was one way in which to rectify the deficiencies of the past – what has frequently been described as the civilizing mission of Empire, in societies that have been stunted by history. Civilizational achievement was a necessary pre-condition for realizing progress, and the stage of civilization was the marker for determining if progressive possibilities are in reach of a given community at any point of time. This rationale provided the justification for Empire. "The empire, . . . is an engine that tows societies stalled in their past into contemporary time and history." *Id.* at 82.

12. See Partha Chatterjee, *The Nationalist Resolution of the Women's Question*, in *RECASTING WOMEN: ESSAYS IN COLONIAL HISTORY* 233, 239 (Kumkum Sangari & Sudesh Vaid eds., 1989).

13. *Id.* at 247. Chatterjee links this transformation of the woman through nationalist ideology with the disappearance of social reform in the late nineteenth century. The nationalists of that period were completely opposed to social reform, as it would open the door to the colonial power to act in the domain where the nationalists regarded themselves as sovereign. He argues that the issue of female emancipation disappeared in the late nineteenth century precisely because of the refusal on the part of nationalists to allow any political negotiation of the women's question with the colonial power. The lives of women during this period had already changed rapidly, but in a manner that was consistent with the terms of nationalist ideology. *Id.* at 249-50.

of orthodox and traditional social forces in the consolidation of elite hegemony in India.¹⁴

Women's sexual purity, confined to and safeguarded within the home, representing in turn the purity of Indian culture, was a constituting moment in the emergence of the Indian nation. Yet, paradoxically, just as the emerging Indian nationalist bore the mark of Western conceptions of nationalism, so too did the reconstituted space of Indian sexuality bear more than a slight resemblance to Victorian sexuality. The idea of sex and sexuality as a dangerous corrupting force, to be carefully contained at all costs within the family and marriage was as Victorian as it was Indian. Indeed one of the critiques of Chatterjee's work, in particular, is that he is referring to a very small and elite section of people, namely male writers in Bengal, who resisted the idea that the home had already been exposed to the colonial encounter. The effort of these reformers may have in part been resistant to women's sexual agency, in particular, that was being exposed to an emerging modernity.¹⁵

The home was not an "uncontaminated" space. It was as much a product of the colonial encounter as the public sphere. But, within the emerging fantasy of the nation, the chastity, passivity, and purity of Indian women, wherein this dangerous and contaminating force was controlled, came to represent not only the purity of Indian culture but also its superiority to the culture of the Empire. The underpinnings of these assumptions about Indian women's sexuality are as Victorian as they are Indian. They are absorbed through the colonial encounter into a litany of laws regulating sexual conduct,¹⁶ and refracted through the gaze of the colonial subject, in particular, the Indian nationalist, to construct a puritanical image of Indian women's sexuality.

The suturing of sexuality and culture, combined with the impulse of Indian feminists to articulate a distinct Indian subject, have inadvertently served to reinforce the contemporary agenda of the Hindu Right.¹⁷ The Hindu Right has been all too willing to intensify the regulation of sex workers and, more generally, sexuality.¹⁸ The State's current interest in

14. See Tanika Sarkar, *Colonial Lawmaking and Lives/Deaths of India Women: Different Readings of Law and Community*, in *FEMINIST TERRAINS IN LEGAL DOMAINS: INTERDISCIPLINARY ESSAYS ON WOMAN AND LAW* 210 (Ratna Kapur ed., 1996). Sarkar argues in contrast to Chatterjee, that the home was a highly contested space, and women were not simply the preservers of cultural identity. The age of consent controversies gave rise to a plethora of medical and administrative literature, which revealed the extent of violence experienced, in particular, by girls married off at the age of puberty.

15. Inderpal Grewal, *Home and Harem: Domesticity, Gender and Nationalism*, in *HOME AND HAREM* 23, 54 (1996).

16. See Janaki Nair, *Nationalist Patriarchy and the Regulation of Sexuality*, in *WOMEN AND LAW IN COLONIAL INDIA: A SOCIAL HISTORY* 145 (1996).

17. See Ratna Kapur & Brenda Cossman, *Women, The Hindu Right and Legal Discourse*, in *SUBVERSIVE SITES: FEMINIST ENGAGEMENTS WITH LAW IN INDIA* 232, 247-261 (1996).

18. See generally Kapur, *supra* note 2.

the sex worker and issues of prostitution resides not in facilitating the rights of the sex worker, but once again in the fear of contagion, as well as in protecting the moral and cultural purity of "Indian" values.¹⁹ This interest is evident from its initial legislative response to the AIDS pandemic. In 1989, the proposed bill provided health authorities with invasive policing powers in the form of forcible testing and isolation of so-called high-risk groups without any accountability. The Bill reflected the State's interest in finding ways to solicit more sex workers into the open and subject them to HIV testing. It was a way of controlling the western contaminant, isolating the purveyors of this contaminant, and saving Indian civilization from further threat of erosion,²⁰ according to the cultural affairs minister, to repel the attack on Indian culture by sexual permissiveness.²¹ The Bill was withdrawn when it was pointed out that the provisions explicitly discriminated against large sections of society, in particular, prostitutes and gay men, and was patently unconstitutional.

Recent legislative proposals indicate that there is little interest in addressing the human rights of sex workers, and the government is proposing even more repressive measures to deal with the issue. These measures continue to be concerned with the metastasizing of HIV and also with the "weakening of the family structure, [and the] changing social and family scenario."²² These changes are in part linked to the "structural adjustment policies in developing countries which have, in many cases, led to [sic] growing number of female headed households and the feminization of poverty."²³ The recommendations are largely punitive and also directed at strengthening the surveillance powers of the police, immigration officers, and border authorities.²⁴ They recommend a strengthening of the existing laws governing sex work, and encourage

19. See MENON, *supra* note 5, at 43 ("The control of HIV/AIDS infection which is sexually transmitted in prostitution is also possible if criminality in the activity is removed and more openness is provided on organizational matters.").

20. For a detailed critique of the draft bill, see BHEDBHAV VIRODHI ANDOLAN, *WOMEN AND AIDS* (1990).

21. Sabina Gurdev & Andrea D'Souza, *Pramod Navalkar: Hopping Mad*, SAVVY, Sept. 1995, at 137.

22. REPORT OF THE COMMITTEE ON PROSTITUTION, CHILD PROSTITUTES AND CHILDREN OF PROSTITUTES & PLAN OF ACTION TO COMBAT TRAFFICKING AND COMMERCIAL SEXUAL EXPLOITATION OF WOMEN AND CHILDREN 1 (Department of Women and Child Development, Ministry of Human Resource Development, Government of India, 1998) (on file with author).

23. *Id.*

24. The following excerpts are illustrative. "Strict instructions would be issued to immigration officers, border police authorities and local police in the transit areas for the purpose of keeping a vigil on the entry of young girls under suspicious or unexplained circumstances into the country from neighbouring countries." *Id.* at 16. To check internal trafficking, the committee proposes that "[p]olice, railway police and transport authorities would ensure surprise checking and inspection of persons taking young girls and women under suspicious circumstances for the purposes of trafficking in buses and trains and in bus and railway stations." *Id.*

raids on “red light areas,” cabaret shows and live band performances as an effective method for deterring “exploiters” of women and children.²⁵

The AIDS crisis, and its rupturing of the cultural script of the purity of Indian sexuality, has led to a heightened concern and surveillance of so-called “at risk populations,” including sex workers. The language of this surveillance is deeply imbued with assumptions about AIDS as a Western disease that has been imported into India through promiscuous Western lifestyles. The State’s interest in sex work is impelled by international concern over the spread of the AIDS virus through the sub-continent. At the same time, the more conservative ideological component of the Hindu Right seeks to counter the impression that India is a nation of “rampant promiscuity,” perpetuating the myth that AIDS is associated with promiscuous lifestyles. A recent report in *The Organizer*, the mouth piece of the Hindu Right, states that “[m]any foreign based companies along with a number of NGOs have in the name of social service literally turned on an AIDS scare to earn thousands of dollars. Huge grants allotted for AIDS and the lure for this money has spawned many a [sic] aficionado of the anti-AIDS campaign.”²⁶ In addition,

certain NGOs, foreign development agencies, syringe and condom manufacturers wants [sic] to paint India as a country of promiscuous sinners, while just the opposite is true. This is done by independent NGOs with dollar aid by various means including conducting spurious surveys that ‘show’ increased sexual activity among unmarried women in India.²⁷

Although the State is motivated by public health concerns to promote an AIDS awareness campaign, it simultaneously places sex workers under strict surveillance and reinforces their status as communicators of the virus. The State protects the nation’s image of “cultural purity” by casting the virus as a western contaminant and a capitalist ploy.

Government interventions and assertions of cultural purity are producing contradictory results for women. While sex workers are blamed for the spread of the disease, the stigma against them is reinforced, and in legal terms, nothing has been done to endow them with rights to help in fighting the disease and securing access to health services that are responsive to their needs. At the same time, AIDS intervention strategies have intensified mobilization among sex workers to lobby for their basic human rights, as well as to articulate their concerns in related areas, such

25. *Id.* at 23-24.

26. Bal Thackeray, *The AIDS Scare: Whose Interest Does it serve? Extracts*, THE ORGANIZER, August 20, 2000, at 49- 50. Bal Thackeray is the leader of the Shiv Sena. See Cossman & Kapur, *supra* note 10.

27. *Id.* at 52.

as the rights of their children, support in their old age, and better working conditions.²⁸

Ironically, some women's groups in India are accusing the government of promoting prostitution through its commitment to address the problem of AIDS in the country.²⁹ In a letter to Prime Minister Atal Bihari Vajpayee, over fifty women's groups alleged that the government had violated constitutional and legal norms by directing World Bank money and other bilateral aid to intervene in the behavior of "high risk groups" and promote condom use. The letter states that

[w]e write to communicate our anguish and horror at recent State-led developments. Instead of strong measures to remedy age-old malpractices and curb trends derogatory to the dignity of women, we are witnessing in this, the 51st year of our Independence—State acquiescence to the gross violation of the Constitution and the laws of the land aimed at prevention of Immoral Traffic. . . . There is now the beginning of State co-operation for a permissive environment within which there is acceptance of the woman's body as a commodity for sale together with abdication of State responsibility to *rescue and rehabilitate* the poor women caught in a vicious vice trap as non-feasible/not-cost effective! This will perpetuate sexual abuse and exploitation; and, constitutes degradation of the dignity and human rights of Indian womanhood itself.³⁰ [emphasis added]

The victim status conferred on the sex worker is essential to the survival and the purity of the nation and the preservation of Indian womanhood. This statement is at some level even more restricting of the rights of sex workers as it seeks to deny them information on how to practice safe sex. The signatories seek "culturally sound" and "legally correct efforts" to address the problem, including a stringent application of existing laws.

The existing legislation treats the sex worker both as a victim in need of rescue and rehabilitation, as well as a sexually assertive women who must be penalized for such conduct, removed from the public arena, and incarcerated so she no longer threatens the public interest, the Indian

28. See SOCIETAL VIOLENCE ON WOMEN AND CHILDREN IN PROSTITUTION: A REPORT BY THE NATIONAL COMMISSION FOR WOMEN, 1995-96, at 30. Sex workers have spoken about the discrimination that they have experienced at government run hospitals when it comes to HIV testing. The National Commission for Women has documented how some doctors have refused to treat sex workers out of fear that the women maybe HIV infected and pose a risk to the doctors and staff. "In many centers doctors make the peons and attendants do physical examination [sic] and treat us." *Id.*

29. The REPORT OF THE COMMITTEE ON PROSTITUTION, CHILD PROSTITUTES AND CHILDREN OF PROSTITUTES recommends the provision of health care services and counseling near red light areas. REPORT OF THE COMMITTEE ON PROSTITUTION, *supra* note 22, at 18-19. However, the report does not make any recommendations to doctors and staff of government hospitals who reinforce the discrimination and stigma that women in sex work experience when trying to access their rights to health care.

30. Letter from the Joint Action Forum to the Prime Minister of India (Nov. 11, 2000) (on file with author).

family, or Indian culture.³¹ The first part of the text penalizes solicitation and streetwalking in certain public places, while the second half of the text sets out rescue and rehabilitation provisions for “reforming” the sex worker.³² Neither construction assists women in sex work to counter the violence and exploitation they may experience in the course of their work, to challenge the denial of parental rights, or to counter the harassment they experience in their everyday lives, where stigma justifies abuse.

I question the emancipatory potential of the victim-subject in the law, more specifically, the victim-sex worker. The law reinforces a patronizing and protectionist position of the State towards women, as well as a punitive response to the sex worker in particular, who is regarded as a cultural contaminant. This punitive response takes the form of either incarcerating women under morality laws or criminalizing the external manifestations of her work, such as soliciting. The feminist demand for better enforcement of the existing laws harms the most important participant in the sex work debates—the sex worker. If they cannot be reformed through rehabilitation, then they must be removed through incarceration. These strategies echo nineteenth century notions about the purity of the nation being contingent on the purity of its women and intersect with contemporary imperialist representations of the Third World woman.

II. EVALUATING LEGAL INTERVENTIONS

In this section, I critique some of the regional and international legal proposals and responses towards sex work. I argue that such initiatives not only place in the foreground women’s victimization, they inhibit rather than facilitate women’s movement and increase their vulnerability to violence. These initiatives are informed by an array of concerns that have little to do with women’s rights. Some interventions proposed by feminists and other non-state actors are highly protectionist and, at times, reminiscent of imperialist assumptions about the native subject’s inability to exercise agency or to consent, reinforcing the notion of rescuing her from a “backward” culture. The regional responses in South Asia evoke concerns about cultural contamination and the purity of the nation.

31. The REPORT OF THE COMMITTEE ON PROSTITUTION, CHILD PROSTITUTES AND THE CHILDREN OF PROSTITUTES has recommended that even coercive methods can be deployed to remove children above the age of six from their mothers and placed in institutional care. See D’Souza, *supra* note 21.

32. These provisions are primarily directed against the sex worker, in particular, the provisions dealing with solicitation, living off the earnings of prostitution (which could include any family member of the sex worker who depends on her income), and the seizure of her children as there is an assumption that children found present in the home of a woman engaged in prostitution are also being peddled into prostitution. *Suppression of Immoral Traffic in Woman and Girls Act, 1956* §§ 4, 6, 15-16.. Any demonstration of agency is effectively penalized through the provision against solicitation, which is the most frequently applied provision in the Indian law. *Id.* at §§ 7-8.

And some initiatives on the part of industrialized states are partly informed by the fear of the specter of the other—that is, the immigrant.

A. *Feminist Interventions and Rescuing the Native*

The focus of the international women's rights movement has been on violence against women and their victimization.³³ Although violence against women is extremely important to address, it is a focus that reinforces the victim position of the subject. The focus on violence against women is indeed extremely important. But my concern is that the victim-subject position does not sum up "the female subject." It is not that the articulation of the victim-subject position is not important, only that the focus on this position seems to displace other articulations.

There are at least two consequences of focusing on the victim subject. First, it has set up the "Third World" woman in some kinds of feminist legal politics in the West as perpetually *underprivileged* and *marginalised*.³⁴ The image we are left with is that of a truncated Third World woman, who is sexually constrained, tradition bound, incarcerated in the home, illiterate, and poor. It is an image that is strikingly reminiscent of the colonial construction of the "Eastern" woman. Kathleen Barry's work on trafficking, which has been extremely influential, recreates this colonial imagery.³⁵ Barry argues that prostitution is violence against women and that it reduces all women to sex. There can

33. The international movement for the recognition of women's human rights culminated at the Vienna World Conference on Human Rights, 1993, where States acknowledged that women, too, were entitled to enjoy their fundamental rights. These included the recognition that it should be a priority of governments to ensure that women were provided the full and equal participation in political, civil, economic, social, and cultural life at the national, regional, and international level. The enjoyment of the full range of internationally recognized human rights were to be accorded to women. In addition, the movement brought about a significant change in human rights law by extracting recognition of women's human rights in the private sphere. Since Vienna, however, the women's human rights movement at the international and regional level, as well as official recognition of women's human rights, have focused primarily on the issue of violence against women. In 1993, the General Assembly adopted the Declaration on Violence Against Women. It recognized that states were obliged to fight violence against women and exercise diligence to prevent, investigate, and punish acts of violence against women. Thereafter, in 1994, the U.N. appointed a Special Rapporteur on Violence against Women whose task it was to focus on gender-based aspects of violence against women. The very fine reports of this Rapporteur have highlighted abuses of women that have hitherto not received state recognition or attention. Even recommendation 19 of the Convention on the Elimination of All forms of Discrimination Against Women, which deals with violence against women, has been given a visibility that it had not received prior to the Human Rights World Conference, and which the commitments to equality under the Convention as a whole have not received. Although the focus on violence against women is indeed extremely important and valuable, one concern is that the women's human rights movement may end up being nothing more than about violence against women. See HUMAN RIGHTS WATCH, 1995 GLOBAL REPORT ON WOMEN'S HUMAN RIGHTS (1995).

34. See Narayan, *supra* note 9, at 90.

35. See KATHLEEN BARRY, *FEMALE SEXUAL SLAVERY* 3 (1979). Barry is one of the co-founders of the Coalition Against Trafficking in Women (CATW) which exerts considerable influence on the strategies against trafficking being developed at the international level. However, a number of groups have emerged to counter the position on prostitution of CATW, one of the most

and that it reduces all women to sex. There can be no such thing as “voluntary” prostitution given that prostitution is an act of violence against women and part of the sexual exploitation of women. She argues that prostitution is a violation of women’s human rights per se. And any woman who migrates for prostitution, or to work in the sex trade, is also purely and simply a victim of human rights violations.

Barry situates the trafficking of women in pre-industrial and feudal societies where women are excluded from the public sphere on one end of the scale, while at the other end of the scale are the post-industrial, developed societies, where women have become economically independent and prostitution is normalized.³⁶ The consequence of this kind of hierarchy is that women in the Third World and non-western world are represented as ignorant, poor, uneducated, tradition bound, domestic, and victimized. As Kempadoo sums up in her analysis of Barry’s position, the Third World woman is represented as “not yet a ‘whole or developed’ person, but instead resembles a minor needing guidance, assistance and help.”³⁷ In contrast, the western woman comes across as having “control over her income, [her] body, and [her] sexuality: [she is the] emancipated, independent, post-modern woman.”³⁸

Barry’s analysis is structured along the contours of colonial thinking, the assumption being that women in the Third World are infantile, civilizationally backward, and incapable of self-representation or autonomy. These assumptions justified colonial incursions into the lives of the “native” and the colony, operating with the logic that the vehicle of Empire would assist in the development of the civilization until it reached a point capable of self-determination.³⁹ Infantilizing women in the Third World reproduces the colonialist rationale for intervening in the lives of the “native” subject. John Locke was able to provide the logic for the exclusion of the colonial subject from the enjoyment of rights, on the grounds that they were incapable of consent. Consent entailed the capacity to reason, and if the subject lacked the capacity to reason, she lacked the capacity for consent. Therefore, she could be excluded from the political constituency. A similar result is produced by the contemporary movement that infantilizes women in sex work in the Third World, and thus provides

significant being the Global Alliance Against the Trafficking in Women. See MARJAN WIJERS & LIN LAP-CHEW, *TRAFFICKING IN WOMEN, FORCED LABOUR AND SLAVERY-LIKE PRACTICES IN MARRIAGE, DOMESTIC LABOUR AND PROSTITUTION* (1996). For a review of the literature that constructs “prostitution” per se as a violation of women’s human rights see Laura Reanda, *Prostitution as a Human Rights Question: Problems and Prospects of United Nations Action*, 13 HUM. RTS. Q. 202 (1991).

36. Kamala Kempadoo, *Introduction: Globalizing Sex Worker’s Rights*, in *GLOBAL SEX WORKERS: RIGHTS, RESISTANCE, AND REDEFINITION* 11-12 (Kamala Kempadoo & Jo Doezema eds., 1998).

37. *Id.* at 11.

38. *Id.*

39. See MEHTA, *supra* note 11, at 82.

the justification for acting on their behalf and without their consent. And this exclusion also justifies the *rescue and rehabilitation* strategies advocated by Barry and others of her ilk as a strategy for saving those incapable of self-determination.

Even pro-sex work groups in the First World at times perpetuate this representation of the Third World sex worker as dependent and incapable of making choices. The debate on voluntary prostitution and coerced prostitution is frequently displaced on to a First World and Third World divide, where the sex workers in the latter are deemed to be the primary targets of coercion while those in the First World are deemed to have some rights as well as choices. This dichotomy denies women in the Third World the right to self-determination.

As Kamala Kempadoo argues, the struggle for sex workers rights in the post-colonial world is not essentially western. Sex workers have historically struggled for rights and against discrimination in the post-colonial world, and they have been involved in insurgent activities outside of their own needs and demands. Veena Oldenburg's work on the Lucknow Courtesans provides an important example of how they occupied multiple spaces of resistance and power simultaneously.⁴⁰ In 1976, Oldenburg was examining the civic tax ledgers of 1857-77 and related records in the Municipal Corporation office in Lucknow, a large city in Northern India. Much to her surprise, she discovered in these ledgers the presence of the Lucknow Courtesan, the famous dancing and singing girls of the city who also performed sexual services. She was not only surprised to find them present in the tax records, but they were in the highest tax bracket, with the largest individual incomes of any in the city. Their names were also on lists of property confiscated by the British from these women for their involvement with the rebellion against the British in 1857. Apparently, they were penalized for instigating, as well as providing, pecuniary assistance to the rebels. Their struggle was anti-colonial as much as it was pro-courtesans' rights. As Kempadoo states, "[s]ex workers [sic] struggles are thus neither a creation of a western prostitutes' rights movement or [sic] the privilege of the past three decades."⁴¹

The discourse of women in the Third World as being in a state of perpetual victimization partly informs the artificial divide and assumption that the struggle for rights and self-determination is a First World phenomenon. This divide and the assumptions on which it is based are in part due to the fact that anti-trafficking has operated along a forced ver-

40. See Veena Oldenburg, *Lifestyle as Resistance: The Case of the Courtesans of Lucknow, India*, 16:2 FEMINIST STUDIES 259, 259-87 (1990).

41. Kempadoo, *supra* note 36, at 21.

sus voluntary nexus.⁴² And one way in which force is understood is through its association with poverty. The idea that women in the Third World, who have no options available to them given their grinding experience of poverty, are “forced” to go into prostitution is a pervasive one. By equating choice with wealth, and coercion with poverty, no space remains to recognize and validate the choices that women make when confronted with limited economic opportunities.

The consequence of this approach has been that international actors and state and non-state actors condemn forced prostitution in the name of promoting women’s human rights. Simultaneously, these actors do nothing about promoting the human rights of sex workers. The focus on forced prostitution as a violation of human rights leaves voluntary prostitution, or the rights of those who exist and continue to exist in prostitution, unaddressed. There is a greater possibility of securing support for the victims of trafficking than for influencing structures to respond to the human rights of sex workers.⁴³ This dichotomy has reinforced the representations of sex work in the Third World as purely exploitative and of the women as abused and victimized. As Doezema states, the “concern for rights loses out to hysteria over victims.”⁴⁴

42. See Jo Doezema, *Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy*, in *GLOBAL SEX WORKERS: RIGHTS, RESISTANCE, AND REDEFINITION* 34 (Kamala Kempadoo & Jo Doezema eds. 1998). The recognition of the human rights of sex workers would entail the recognition of voluntary prostitution, and there is a discomfort in taking a position on voluntary prostitution which neither governments nor many feminists are prepared to accept. Once again as Doezema observes, “It is not only governments who prefer saving innocent women to giving rights to guilty ones. Most feminist discourse on trafficking limits itself to the fight against ‘forced prostitution,’ the ‘voluntary’ prostitute is condemned – she is ignored.” *Id.* at 45. The abuse that sex workers experience at the hands of law enforcement authorities or even in the context of rehabilitation homes or in protective care, remains unaddressed. Those who are already in prostitution, regardless of how they got there, are endowed with an agency and choice that remains stigmatized. If she continues to choose to remain in prostitution, then she deserves what she gets. It is frighteningly reminiscent of the requirement in rape laws, where the victim must prove her chaste history in order to retain her credibility. The division created between forced and voluntary prostitution is further displaced onto the representation of women in the First World and Third World.

43. See *id.* at 42. I argue that the distinction between forced and voluntary prostitution should be replaced with a paradigm shift. We need to examine how women move into sex work, their living and working conditions during the time they are in sex work or actors in the sex industry, and their exit from or relinquishment of such work from a human rights perspective. The rights denied or violated at each of these different locations will require distinct legal and non-legal responses. The situation of women who engage in sex work, regardless of how they entered into this work, remains completely unaddressed by a politics that simply states that they should not be there, or that they should not do such work and if they do choose to remain, regardless of the reasons, they deserve to be abused and violated and denied their basic human rights. Endowing the sex worker with rights provides her with the tools to fight the abuse, exploitation, violence, and stigma. For a more elaborate discussion, see Memorandum from the Centre for Feminist Legal Research, Reform of Laws Relating to Prostitution in India (Jan. 1999) (on file with author).

44. Doezema, *supra* note 42, at 42.

Contemporary international feminist politics has reproduced the victimized subject of colonial discourse in its articulation of the exploited sex worker in the Third World. The victimized subject is based on the assumptions of the "other" as incapable of self-determination, justifying rescue and rehabilitation operations, which are strikingly reminiscent of the British justification for colonization and the establishment of Empire. The victimized subject completely ignores the lived reality of the lives of sex workers in these other parts of the world. As Kempadoo points out, African and Caribbean countries "where one can speak of a continuum of sexual relations from monogamy to multiple sexual partners, and where sex may be considered as a valuable asset for woman to trade," are completely ignored in this analysis "in favor of specific western ideologies and moralities regarding sexual relations."⁴⁵ And the victimized subject has consequences on the legal strategies being formulated in the international arena and First World countries that have little to do with the rights of "victims."

B. *Unpacking Anti-Trafficking Initiatives at the Regional and International Level*

The consequence of a victim focused analysis affects legal strategies profoundly. Victim focused analysis produces a subject enthusiastically embraced by nation-states. These nation-states justify their legislative interventions against trafficking in the name of the victim-subject, in particular the exploited and abused victim-subject of the Third World. A significant development is taking place in the international arena, as well as in First World countries, to draft anti-trafficking legislation as a response to the "problem" of trafficking in women and children from the developing world.

Trafficking is being articulated as a criminal act and a human rights violation for which strict penalties are being proposed.⁴⁶ Trafficking simultaneously justifies the moves on the part of European and other First World countries to strengthen their immigration laws (which of course has implications beyond controlling the trafficking in women), and South Asian governments to increase border controls and intensify surveillance of women's lives.

45. Kempadoo, *supra* note 36, at 12.

46. See G.A. Res. 111, U.N. GAOR, 53rd Sess., Supp. No. 10, U.N. Doc. A/RES/53/111 (1999). By resolution 53/111, of December 9, 1998, the General Assembly established an Ad Hoc Committee for the purpose of elaborating a new comprehensive international convention against transnational organized crime, as well as elaborating three additional international legal instruments or protocols which included the illegal transport and trafficking in migrants and the trafficking in women and children. The first session of the Ad Hoc Committee took place in Vienna, Austria, between January 19-29, 1999. See also Carol H. Hauge, *Prostitution of Women and International Human Rights Law: Transforming Exploitation into Equality*, 8 N.Y. INT'L L. REV. 23, 26-7 (1995) (summarizing a general overview of the international legal regulation of trafficking).

Assumptions about women's lack of agency and prostitution as violence per se have been reinforced at the regional and international levels in and through anti-trafficking initiatives. Recently, the South Asian Association for Regional Co-operation (SAARC) proposed a draft Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, which aims at criminalizing the activities of persons engaged in the sale and procurement of women *for the purposes of prostitution*.⁴⁷ The Convention focuses on the purpose for which women are sold or procured, rather than on the use of force, fraud, violence, or deception. Where the purpose does not qualify as illegal, such as in the case of domestic labor, then the way in which the procurement occurs, no matter how violent, would not fall under these provisions. The underlying assumption of the SAARC document is that "prostitution" is an immoral practice, in which women and children are exclusively victims, forced into prostitution by "traffickers" and others. The SAARC governments' solution to this problem is to curtail, restrict, or deny the rights of the women involved, including their rights to mobility, consensual migration, and freedom of association, equality, and life.

The Convention does not improve upon the already ineffective domestic laws that exist in most of the countries in South Asia. The Convention does not account for the demands of sex workers who have become increasingly visible and vocal. The Convention ignores the issue of consent, or at least considers consent legally irrelevant.⁴⁸ Excluding the relevance of consent in the definition of the offence of trafficking reinforces the construction of women who enter into sex work as victims. She is denied any recognition of her agency.

The Council of Europe also recently adopted a resolution urging member states to take action against trafficking in human beings for the purpose of sexual exploitation. The Council emphasizes the role of criminal law, the strategy of rescue, rehabilitation and reintegration of the victim-subject, and the strengthening of penal and legal sanctions against those who engage in trafficking.⁴⁹ Absolute priority is given to

47. SAARC Convention on Preventing and Combating Trafficking in Woman and Children for Prostitution, 1998, South Asian Association for Regional Co-operation.

48. Article 1(3) of the draft Convention defines trafficking to include the "moving, selling or buying of women and children [for prostitution] within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking."

49. See *Recommendation No. R (2000) 11 of the Committee of Ministers to Member States on Action Against Trafficking in Human Beings for the Purpose of Sexual Exploitation*, Eur. Consult. Ass., 710th Sess., (2000). The issue is linked to organized crime, encouraging a punitive approach to human trafficking for sexual exploitation and ensuring that Europe adopts a uniform response to the problem.

Bearing in mind that Europe has recently experienced a considerable growth of activities connected with trafficking in human beings for the purpose of sexual exploitation, which is often linked to organised crime in as much as such lucrative practices are used by organised criminal groups as a basis for

assisting the victims of trafficking through rehabilitation programs and to protecting them from traffickers. Rehabilitation has become an accepted and unexamined "treatment" strategy for those who are the victims of trafficking. Yet, the term itself is used primarily to communicate the need to reform those who are deviant, or undesirable, as in the context of the drug addicts. When used in connection with women who have been associated with the commercial sex industry, through trafficking or any other means, rehabilitation acquires a moralistic undertone. Rehabilitation also denies a woman agency and her right to actively direct and participate in the process of leaving sex work.

The Council has also recommended that sex tourism be stopped and that trafficking in human beings for the purposes of sexual exploitation be treated as falling within the scope of international organized crime. The Council emphasizes setting up mechanisms for victims to return to their countries of origin and establishing a system of financing their return and contributing towards their reintegration through bilateral agreements.

In the United States, the Trafficking Victims Protection Act of 2000⁵⁰ was passed by the United States House of Representatives to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims."⁵¹ I examine the provisions of this resolution in some detail to reveal some of the assumptions about sex work, the Third World woman, and the "outsider" on which it is based.

The main text of the resolution focuses on "trafficking" generally as a major problem in the contemporary context. The resolution states that trafficking in persons is a "growing transnational crime" and a "migration, economics, labor, public health, and human rights problem" that is significant on most continents.⁵² This provision links the concern of trafficking to much broader issues of migration, health, and labor. The term "trafficking" is not defined in the resolution. The only definitions that appear in the resolution relate to "sex trafficking" and "severe forms of

financing and expanding their other activities, such as drugs and arms trafficking and money laundering; considering that trafficking in human beings for the purpose of sexual exploitation extends well beyond national borders, and that it is therefore necessary to establish a pan-European strategy to combat this phenomenon and protect its victims, while ensuring that the relevant legislation of the Council of Europe's member states is harmonised and uniformly and effectively applied.

Id.

50. TRAFFICKING VICTIMS PROTECTION ACT, H.R. 3244, 106th Cong. § 101-13 (2000) (enacted).

51. H.R. 3244 § 102(a).

52. H.R. 3244 § 102(b)(3).

trafficking in persons.”⁵³ Most of the provisions deal with combating severe forms of trafficking in persons, especially into the sex trade, slavery, and slavery-like conditions. The resolution is replete with the language of “luring” victims and “false promises” ostensibly made by traffickers to “innocent” victims for a better, more prosperous life elsewhere. This language reinforces the division between those who deliberately transgress sexual norms and those “duped” into it.⁵⁴ As Jo Doezema argues, such a dichotomy obscures the reactionary and often moralistic assumptions that underlie these concerns, and results in “advocating a rigid sexual morality under the guise of protecting women.”⁵⁵

The resolution further establishes a task force, which includes among others, the Administrator of the United States Agency for International Development and the Director of the Central Intelligence Agency. The resolution authorizes the task force to develop measures to combat the “sex tourism” industry, facilitate strengthening of the local and regional capacities to prevent trafficking, prosecute traffickers, and assist trafficking victims partly by reintegrating them into their place of origin.⁵⁶ The resolution also provides assistance to victims of “severe” trafficking who have not attained the age of 15 or who are willing to provide reasonable assistance with the prosecution of traffickers and investigation into trafficking.⁵⁷

Victims are entitled to a temporary visa or “T” visa, but there is an annual cap of 5,000 such visas, even though the resolution itself states that over 50,000 women and children are trafficked into the U.S. each year.⁵⁸ And such visas are granted only if the victim can credibly estab-

53. See H.R. 3244 § 103(9) (defining sex trafficking as “the recruitment, harboring, transportation, transfer or receipt of a person for the purpose of a commercial sex act.”); Further, H.R. 3244 § 103(2) defines “severe forms of trafficking in persons” as:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained the age of 18 years of age; or

(B) the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt, bondage, or slavery.

54. See H.R. 3244 § 102(4) (stating that “Traffickers lure women and girls into their networks through false promises of good working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models.”)

55. Doezema, *supra* note 42, at 45.

56. See H.R. 3244 § 105(d).

57. H.R. 3244 § 107. Such benefits include the provision of shelter, medical care, food, legal, and other assistance, including protection if the victim is at risk of harm or danger from the trafficker.

58. See H.R. 3244 § 102(b)(1). The source of these statistics remains unclear and unreliable. The Global Alliance Against the Trafficking in Women, which undertook a study on behalf of the U.N. Special Rapporteur on Violence Against Women, stated that it was extremely difficult to find reliable statistics on the extent of trafficking that was taking place because there had been no systematic research on this subject. It was also not possible to determine such statistics because of the imprecise nature of the definition of the term “trafficking in women” and, finally, because so much of this activity had been pushed underground because of the illegal or criminal nature of

lish "victim" credentials. Such proof includes the person being a victim of a severe form of trafficking, not having attained the age of 15, or being induced to participate in the sex trade or slavery-like practices by force, coercion, fraud, or deception. No evidence should exist of voluntary agreement to any arrangement, including participation in the sex trade, and the victim should agree to provide reasonable assistance in the investigation or prosecution of trafficking acts. In addition, the "victim" must prove that she has a well-founded fear of retribution involving the infliction of "severe" harm, or suffer extreme hardship in connection with the trafficking, if she is removed from the U.S.

Thus, eligibility for a "T" visa is extremely strict. A woman who consents to being transported across borders for the purpose of engaging in commercial sex, is not entitled to the "T" visa, regardless of the abuse or violence she may have suffered during the course of the transport or while participating in a commercial sex act. Those entitled to a "T" visa primarily cover persons who have been literally dragged or forced into crossing borders, deceived into crossing borders and forced to engage in a commercial sex act, or subjected to involuntary servitude or slavery-like practices through force, coercion, fraud, or deception. If a woman has been subjected to all of these conditions, but has been exposed as a sex worker, she is not entitled to a "T" visa. Any demonstration of agency or choice, such as the payment or receipt of money, at any point of her journey could render the subject ineligible for a "T" visa. The Attorney General is authorized to convert the "T" visa into a permanent resident status provided the victim has resided in the U.S. for three years, has been a person of good moral character during that period, has continued to assist in the investigation or prosecution of trafficking acts, and would be harmed if she were to be sent home. The overriding assumption of these provisions is that the victim must be able to demonstrate that she is not responsible for her condition. The resolution entitles the victim to benefits and limited rights if she is not a "willing" sex worker.

prostitution and trafficking. See WJERS & LAP-CHEW, *supra* note 35, at 15. Statistics are sometimes arbitrarily cited without any back up research to substantiate these findings. IMADR recently prepared a report for the UN Working group on Contemporary Forms of Slavery stating that over two million women and children were trafficked each year, without citing any research or source of their statistics. The Human Rights Watch Report on Trafficking between Nepal and India states that, "At least hundreds of thousands, and probably more than a million women and children are employed in Indian brothels." Similarly, their report on trafficking between Burma and Thailand states that there are an estimated 800,000 to 2,000,000 prostitutes currently working in Thailand, yet the source of these statistics is not provided. See *id.* at 1. Kamala Kempadoo has stated that there are often extreme variations in the estimates of the number of women prostitutes in Asia, and that even within Bombay, figures cited range from between "100,000 to 600,000." See Kempadoo, *supra* note 36, at 15. She goes on to question the veracity of such figures stating that, "[t]o any conscientious social scientist, such discrepancies should be a cause for extreme suspicion of the reliability of the research, yet when it comes to sex work and prostitution, few eyebrows are raised and the figures are easily bandied about without question," *Id.*

Countries must demonstrate that they have fulfilled certain minimum standards for eliminating trafficking otherwise they will be subjected to sanctions.⁵⁹ These include enacting laws that deal seriously with trafficking and provide harsh punishment for such crimes.⁶⁰ The U.S. is to provide assistance to foreign countries to meet the minimum criteria, such as drafting legislation to prohibit and punish acts of trafficking, investigating and prosecuting traffickers, and creating facilities, programs, and activities for the protection of victims. Specific criteria for determining if a country has tried to eliminate trafficking are also laid down in the resolution, including official monitoring of emigration and immigration patterns for evidence of severe forms of trafficking.⁶¹

These provisions leave little space for addressing the issue of sex work from the perspective of human rights. The entire effort is primarily directed towards restricting the movement of people across U.S. borders. Trafficking becomes a guise for not only keeping people out, but also casting suspicion on those who go to the U.S. to work as nannies, domestic labor, dancers, factory workers or restaurant workers.⁶² The resolution places an onus on countries of origin to undertake effective measures to deal with the problem of trafficking, that is, to contain people within their own borders.

If a government does not comply with the minimum standards for eliminating trafficking, it will be subjected to punitive sanctions, such as withholding or denying non-humanitarian assistance.⁶³ If the country accused of failing to comply with the dictates of the new legislation does not receive non-humanitarian assistance from the U.S., the U.S. can deny funding for educational and cultural exchanges between the two countries. The President of the U.S. will also instruct the directors of multilateral banks and the International Monetary Fund to vote against any loan or other funds to the erring government until it complies with the minimum standards.

The extra-territorial reach of this legislation through the threat of sanctions is directed primarily at countries that receive economic assistance and other forms of non-humanitarian aid from the U.S. The resolution is not concerned with the rights of sex workers, who may also be subjected to slavery-like conditions or debt-bondage, but it is concerned with the considerable increase in the traffic across borders, especially from developing countries into the U.S. that needs to be stopped. The paranoid approach to this "problem" is demonstrated by the extreme measures to be imposed on those countries that fail to curtail the stream

59. See H.R. 3244, §§ 108, 110.

60. See H.R. 3244 § 108(a).

61. H.R. 3244 § 108(b).

62. See H.R. 3244 § 102(4).

63. H.R. 3244 § 110(a)(1).

of migration and exit from their countries. Little distinction is being drawn between migration and trafficking. And the fact that every border crossing can be rendered suspect, given the broad assumption that a whole host of actors are characterized as being victims of trafficking, will render the crossing of borders more difficult.

Although the resolution ostensibly prioritizes concern for the victims, women who cross borders to work in the sex industry and are harmed or experience violence during their travels, or are exploited in the course of their work, are not a concern. Access to benefits thus becomes partly conditional on a woman's chastity, purity, and innocence. The Global Alliance Against the Trafficking in Women (GAATW) and the Dutch Foundation Against Trafficking in Women (STV) conducted a research project based on questionnaires circulated to groups working directly with "victims" of trafficking.⁶⁴ Their research reveals that a large majority of the trafficking cases involve women who are in or know that they will be going into the sex industry, but are not accurately informed about the conditions of work or the amount of money they will receive.

The resolution demonstrates how trafficking is being used to justify highly restrictive and punitive policies. There is an implicit assumption that traffickers exist in the rest of the world and that the U.S. will cleanse the world through punitive economic responses and the denial of non-humanitarian aid. Economic punishments have been proven to harm more people than they help and do almost nothing to curtail the practice. Instead, such punishments push trafficking further underground and invariably render the subjects of trafficking even more vulnerable and dependent on non-state agents.

The response of governments at the regional and international levels is at best paternalistic and at worst reactionary. As Doezema argues, a number of the measures that ostensibly deal with the issue of sex work are morality measures dressed up under the guise of protecting women. The result is to perpetuate both racist and classist imagery of the sex worker in the post-colonial world. As Doezema states:

This is particularly the case when campaigners actually succeed in getting governments to do something about "trafficking" for then the focus shifts from women's rights to a hysterical and paranoid reaction to women's increasing sexual autonomy, the 'breakdown of the family' and migration. Often, 'trafficking' is used by states to initiate and justify restrictive policies. There are still many governments with moral objections to prostitution. At the international level, however most are politically savvy enough to cloak moral indignation in terms of "victimization of women."⁶⁵

64. See WIJERS & LAP-CHEW, *supra* note 35.

65. Doezema, *supra* note 42, at 45.

Even the Special Rapporteur on Violence Against Women in her very recent report has been critical of the way in which most governments have responded to the issues of trafficking in women. She states that while governments have sought ways and means to combat trafficking, they (particularly governments of northern countries) simultaneously have fortified their external borders against the perceived threat of unfettered immigration.⁶⁶

These punitive responses to trafficking are not limited to State actors. Some human rights groups are also responsible for reinforcing these divisions and feeding into the moralistic and patronizing responses of governments to the issue of sex work. Human Rights Watch has recommended that the South Asian Association for Regional Cooperation should cooperate with Interpol to stem the increase in trafficking in women between India and Nepal.⁶⁷ Many of the recommendations in the report are directed towards the curtailment and restriction of rights rather than their facilitation. For example, the report criticizes the open border policy, which permits people to pass freely between the two countries without a passport, visa, or residential permit. Instead of contextualizing the strengths and limits of an open border policy in a region closed and

66. See RADHIKA COOMARASWAMY, U.N. COMMISSION ON HUMAN RIGHTS, REPORT OF THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, U.N. Doc. E/CN.4/2000/68 (2000); see also Ali Miller & Alison Steward, *Report from the Roundtable on the Meaning of "Trafficking in Persons": A Human Rights Perspective*, 20 WOMEN'S RTS. L. REP. 11, 18 (1998) (highlighting some of the root factors for trafficking and trafficking abuses that include "[P]rotective and restrictive economic and migration policies which allow exploiters to prey on others' illegal or invisible or underground status . . . and the rise in anti-foreigner and anti-immigrant sentiment in many countries leading to increasing restrictions on legal entry and residency coupled with reduction of public services, including legal services which prevent aliens from pursuing their fundamental rights and freedoms in courts of law.").

67. See HUMAN RIGHTS WATCH ASIA, RAPE FOR PROFIT: TRAFFICKING OF NEPALI GIRLS AND WOMEN TO INDIA'S BROTHELS 90 (1995). Although Human Rights Watch claims not to take a stand on prostitution in the report, it favors the criminalization and punishment of owners of brothels, pimps, and traffickers. *Id.* at 86. This position is advocated by anti-sex work groups in India and opposed by those who support sex work, as well as the rights of sex workers. The latter argue that a sex worker will not provide testimony against those who sustain her and her work and that the most effective way for her to resist the violence and exploitation she may experience in her work is to grant her the same basic human rights, which are granted to all other women regardless of the nature of their work. In a subsequent compilation, Human Rights Watch once again states that it takes no position on prostitution per se. Human Rights Watch Women's Rights Project, *Trafficking in Women and Girls*, in THE HUMAN RIGHTS WATCH GLOBAL REPORT ON WOMEN'S HUMAN RIGHTS 196 (1995). "However, we strongly condemn laws and official policies and practices that fail to distinguish between prostitutes and victims of forced trafficking, treating the latter as criminals rather than as person who deserve 'temporary care and maintenance' in accordance with international human rights standards. We also oppose laws and policies that punish women who engage in prostitution but not the men who operate and profit from prostitution rings and who patronize prostitutes: such policies are discriminatory on the basis of sex." *Id.* at 198. This statement once again demonstrates a concern for the human rights of victims of forced trafficking, and refuses to advocate in favor of the human rights of those engaged in prostitution. In making a distinction between the two categories of women, Human Rights Watch is taking a stand. The statement by Human Rights Watch makes human rights contingent on the subject's victim status.

isolated from its neighbors, Human Rights Watch states that the policy "makes it extremely difficult for border police to check illegal activity. Traffickers and their victims move easily across the border and the onus is on individual police officers to stop and question suspicious-looking travelers."⁶⁸ The report thus recommends that Nepal and India should establish a system for strictly monitoring the border to "guard against the trafficking in women and girls, including the inspection of vehicles." The suggestion to tighten borders as a way to control trafficking has been enthusiastically adopted by many governments around the world, especially First World governments that fear the specter of the immigrant.⁶⁹

In a similar report on cross-border trafficking between Burma and Thailand, Human Rights Watch requests donors to ensure that loans for the construction of roads and other infrastructure projects near the border take into consideration the effect of such a project on the trafficking in women.⁷⁰ The extraordinary assumption implicit in this recommendation is that withholding assistance for the construction of basic infrastructure will help stop cross-border traffic. Indeed, it will curtail, if not entirely stop, border crossings, both legal and illegal.

The intersections between imperialist interventions constructed along a representation of the Third World victim-subject and nationalist articulations about the purity of the nation are brought into sharp relief through an analysis of the anti-trafficking strategies proposed at the regional and international level. These strategies combine with the rhetoric and recommendations of interventions by some international feminist politics, which serve to re-present and re-produce the sex worker in the Third World as incapable of choice or decision making, whether crossing borders or choosing her work. These strategies ignore a key player in contemporary concerns about commercial sex work and the movement of the post-colonial sexual subaltern subject, which I address in the next section.

III. THE POST-COLONIAL SEXUAL SUBALTERN SUBJECT CAN SPEAK

The construction of the sex worker in legal discourse at the national and international levels has continued to operate along very clear binaries, including the First World/Third World divide, the victim/agent di-

68. HUMAN RIGHTS WATCH ASIA, *supra* note 67, at 12.

69. See MARIJAN WEIJERS, KEEP YOUR WOMEN HOME: EUROPEAN UNION POLICIES ON TRAFFICKING IN WOMEN IN GENDER POLICIES IN THE EUROPEAN UNION (Mario Garcia Rossilli ed., 1999); see also Tayyab Mahmud, *Migration, Identity, & the Colonial Encounter*, 76 OR. L. REV. 633 (1997). See generally IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES (Juan F. Perea ed., 1997).

70. WOMEN'S RIGHTS PROJECT, DIVISION OF HUMAN RIGHTS WATCH ASIA, A MODERN FORM OF SLAVERY: TRAFFICKING OF BURMESE WOMEN AND GIRLS INTO BROTHELS IN THAILAND 159 (1993).

chotomy, choice and coercion, and the poverty versus promiscuity divide. The image of the innocent native woman being lured into the sex trade by evil traffickers under circumstances that are violent and brutal from which escape is impossible informs the rhetoric and conversations at the national and international levels. The sex worker in post-colonial India disrupts some of these binaries, as well as the economic, sexual and cultural assumptions on which they are based. The sex worker in post-colonial India has inserted herself into this script, challenging these comfortable binaries and creating the possibility of revisioning the sex worker as a complex subject who is simultaneously exploited by normative arrangements and is disruptive of these arrangements.

In 1995, a national committee consisting of sex workers was formed in India to represent their interests and launch a rights campaign. The committee organized the First National Conference of Sex Workers in 1995, which issued a statement asserting that sex is primarily for pleasure and intimacy. The statement also challenged dominant sexual ideology, which allows "for sexual expression only between men and women within the strict boundaries of marital relations within the institution of family."⁷¹ One of the groups represented in the national committee issued a similar statement asserting that

[w]e believe that a woman's sexuality is an integral part of her as a woman, as varied as her mothering, domestic and such other skills. We do not believe that sex has a sacred space and women who have sex for reasons other than its reproductive importance are violating this space. Or if they chose to make money from the transaction they are immoral or debauched.⁷²

More recently, a National Forum for Advocacy and Support of Sex Workers was established.⁷³ Sex workers, among others, called for the decriminalization of sex work as well as the establishment of self-regulatory systems which would address issues of rights, their working conditions, and health concerns.

These emergent voices pose significant challenges and make significant claims. First, the sexual subaltern in a post-colonial context challenges the focus on the victim-subject, which has come to dominate the strategies and features of sex work in the international human rights arena and domestic agendas. Second, she claims the right to move between the First World and the Third World. Third, she claims the right to

71. Sex Worker's Manifesto, Presented to the First National Conference of Sex Workers at Yuba Bharati Kriangan (Salt Lake Stadium), Calcutta, India (Nov. 14-16, 1997) (available on file with the author).

72. A Statement of Women in Prostitution from Veshya AIDS Muquabla Parishad (VAMP) and SANGRAM, Sangli at 2 (available on file with author).

73. Report on National Workshop on Sex Work (April 28-30, 2000) (unpublished, on file with author).

be a market actor through her assertion of sex work as labor. Finally, she challenges what has become over the years a naturalized and universalized set of ideas about sex.

The sex worker challenges imperialist constructions of the sexual subject in the Third World as an abject subject, impoverished and victimized. The emergence of the sex worker as an articulate subject laying claim to her rights challenges the international and certain feminist representations of the Third World female subject, as perpetually impoverished, victimized by a brutal culture and thoroughly disempowered. She disrupts the script representing her as the perpetual victim in need of rescue and rehabilitation or the vilified criminal who destroys families and needs to be constrained and incarcerated.⁷⁴ She challenges a feminist agenda which represents the sex worker as a subject who is a reflex of male sexual need or a victim of economic need. She situates herself as a resistive subject, challenging "patriarchal" control within the family and marriage as well as a subject who exercises economic choices and social mobility.⁷⁵ She is claiming her human rights by organizing and demanding that her interests be accommodated on her terms.⁷⁶

This "speaking" and "animated" subject also creates space for recognizing that the sex worker can and does make choices for economic empowerment, which includes migration. As Doezema's study reveals, sex workers do chose to cross borders.⁷⁷ Thus, the sex worker challenges the anti-trafficking regime being advocated as the new international regulatory mechanism for ostensibly protecting the human rights of women. My discussion reveals that the effect of this new regime curtails mobility and economic opportunities for women and other migrants, and intensify the moral surveillance of women's sexual conduct. The anti-trafficking legal regime being established at the international and national level is not necessarily restricting the number of women who are moving or mi-

74. Chandra Mohanty, *Introduction: Cartographies of Struggle, Third World Women and the Politics of Feminism*, in *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* 1, 56 (Chandra Talpade Mohanty et al. eds., 1991).

75. ANNE MCCLINTOCK, *IMPERIAL LEATHER: RACE, GENDER AND SEXUALITY IN THE COLONIAL CONTEST* 288 (1995).

76. Chandra Mohanty highlights the problem of a "victim" oriented analysis in relation to the studies of the exploitation of third world women working in multinational corporations.

While there are a number of studies which provide information on the mobilization of racist and (hetero) sexist stereotypes in recruiting third world women into this labour force, relatively few studies address questions of the social agency of women who are subjected to a number of levels of capitalist discipline. In other words, few studies have focused on women workers as *subjects*—as agents who make choices, have a critical perspective on their own situations, and think and organize collectively against their oppressors.

Mohanty, *supra* note 74, at 29.

77. See Doezema, *supra* note 43.

grating.⁷⁸ It is simply making it more dangerous for women to cross borders. It is not directed towards protecting the human rights of women who are in the sex industry or who migrate, albeit illegally, for purposes other than sex work.

The Third World sex worker, as a traveling subject who can move from the Third World to the First World, challenges the static and stationery assumptions about this subject and the assumption that cosmopolitans are the only traveling subjects. The sex worker as a traveling subject brings about several disruptions. First of all, migrating to cities or abroad produces an unbounded subject who exists outside the supervision of the family. This intensifies concerns about the threat to the family as well as to the purity of the nation. As Doezema states, "The perceived sexual threat to women traveling abroad is linked to women's roles as bearers of their families', and the nation's, honour."⁷⁹ The movement of the sex worker outside national boundaries, where moral panics have been erupting with increasing frequency during the ascendancy of the Hindu Right,⁸⁰ is leading to repressive measures that contain women within national boundaries, as highlighted in the discussion about the SAARC convention.⁸¹

She also disrupts notions of travel based on clear imperialist distinctions between points of return and departure, between "the idealized upper-class traveler and the proper native," with the native being assumedly stationery and immobile.⁸² Women are migrating, including for sex work, in search of increased autonomy and economic independence.⁸³ Yet the current discourse represents women from the Third World as fleeing from intolerable conditions, a representation that denies the subject any agency or ability to make affirmative choices. It simultaneously

78. "Nearly half of the migrants world-wide are women." Kempadoo,*supra* note 36, at 44. This trend is also discussed by the International Organization for Migration in its report on trafficking to the European Union. "One factor is the changing nature of female labour migration. Traditionally female migrants have tended to emigrate with their families or after the male head of the family has emigrated. Today, however, given the rise in single parent families, women increasingly have the sole responsibility for their families and have a stronger incentive to emigrate in order to send back remittances to their children." INTERNATIONAL ORGANIZATION FOR MIGRATION, *TRAFFICKING OF WOMEN TO COUNTRIES OF THE EUROPEAN UNION: CHARACTERISTICS, TRENDS AND POLICY ISSUES* 6 (1996).

79. Jo Doezema, *Loose Women or Lost Women? The Re-emergence of the Myth of "White Slavery"* in *Contemporary Discourses of "Trafficking in Women"* 22 (February 17-21, 1999) (unpublished manuscript, available online at <http://www.walnet.org/csis/papers/doezema-loose.html>) (visited Feb. 18, 2001).

80. Ratna Kapur, *Who Draws the Line? Feminist Reflections on Speech and Censorship*, 33 *ECON. & POL. WKLY.* WS-15 (April 20-27, 1996).

81. See proposed legislation on trafficking and sex work discussed above.
82. Inderpal Grewal, *HOME AND HAREM: NATION, GENDER, EMPIRE, AND THE CULTURES OF TRAVEL* 6 (1996).

83. Kempadoo, *supra* note 36 at 43-44.

represents the “fear of the racial/cultural ‘other’” expressed through anti-trafficking laws and policies.⁸⁴

Today, in Western Europe and in the United States, there is a growing feeling that “the community” is under threat by the importation of new cultural norms through immigration. The worsening economic situation for many countries, and the growing polarity between rich and poor countries, has led inhabitants of rich countries to feel that they are under threat from hordes of “economic migrants” out to grab what they can.⁸⁵

The fear of the “native” on the move, who is not a cosmopolitan subject, has led to repressive measures to stop this movement through anti-trafficking legislation, such as limiting the number of visas issued to “victims,” as demonstrated in the U.S. resolution and the intensified policing of borders.⁸⁶

The idea that the post-colonial sexual subaltern subject can consent to sex work, and that she may consent to move or enter into a consensual arrangement with someone who trafficks or arranges her transport from one port to another, free from coercion or violence, is also challenging at a normative level. Women from the Third World can and do consent to commercial sex, and thus challenge sexual and cultural normativity, as well as the imperialist representations of women in the Third World that have come to inform the international women’s rights agenda as well as the policies of First World governments. Women from the Third World move to the First World to engage in sex work and other practices, such as domestic labor, thus challenging the dominant assumptions that inform both the contemporary international legal regime as well as feminist legal politics which assumes that she is dragged, beaten, forced, kidnapped, or abducted into this work. Women can and do choose to move and work in the sex industry, and even find illegal means by which to enter into another country searching for economic opportunities if legal ones are not open to them.

This subject is capable of consenting to commercial sex work and earning a living through sex. She is a market actor who understands the economic and other opportunities available to her in other parts of the world. As a market actor, she challenges the over simplistic and patronizing assumption that women in the Third World enter the sex trade because of conditions of poverty, which belies the question why all poor women do not opt for prostitution. They can choose to cross borders in search of better economic opportunities as do, for example, educated

84. Doezeema, *supra* note 79, at 25.

85. *Id.* at 24.

86. *Id.* at 22.

middle class graduates from the Third World.⁸⁷ As Jamie Chuang has argued, the focus on the normative question:

[O]f whether a woman should be able to consent to trafficking and prostitution overlooks the empirical fact that women actually do consent to these practices, and moreover, risks neglecting important descriptive facts regarding the quality of a woman's consent to these practices. . . . [I]n the case of a woman forced into prostitution who was deceived by a trafficker's lure of an attractive waitressing job abroad, or a woman who intended to engage in self-regulated prostitution and found herself in a debt-bondage situation, the source of exploitation might be misinformation or debt-bondage, respectively. Deeming consent irrelevant to the women's victimization also risks portraying women as perennial victims of false consciousness, incapable of making autonomous choices regarding their means of migration and employment.⁸⁸

The fact that women cross borders, and ought to be able to cross borders, has been conflated with the purpose of their journey, rather than with the conditions under which they cross borders. Recent literature in the area of international human rights continues to invoke the trope of poor, Third World, women's bodies, that is, the body of the Third World subject exclusively as a victim, reinforcing arguments against prostitution or sex work per se as inherently exploitative, rather than supporting the right of these women to move. Little attention is being given to the coercive and abusive practices that women may be subjected to in the course of movement, including a lack of interrogation of the racist, sexist, and "neo-colonial" anti-trafficking laws being advocated by first world governments, (and reproduced in some feminist literature). These initiatives that harm more women than they help and reinforce stereotypes of the Third World as barbaric in the treatment of its women.⁸⁹

87. The Global Alliance Against the Trafficking in Women has not included "economic need" in its definition of coercion. See WIJERS & LAP-CHEW, *supra* note 35.

88. Jamie Chuang, *Redirecting the Debate Over Trafficking in Women: Directions, Paradigms, and Context*, 11 HARV. HUM. RTS. J. 65, 84-85 (1998).

89. See Susan Feanne Toepfer & Bryan Stuart Wells, *Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regulating Trafficking in Women*, 2 MICH. J. GENDER & L. 83 (1994). The article asserts that there is little difference between coerced and "voluntary" prostitution, and that in any case, very few women choose to go into prostitution. The authors constantly draw on examples of exploitation in "Asian" countries, oblivious to the racist and cultural stereotypes they are simultaneously perpetuating as well as the complete erasure of the Third World subject as anything other than a spectacle or a completely disempowered subject to be rescued by their proposed strategies. For example, the authors state that "[i]n many Asian countries, pimps prefer young girls, especially virgins, because customers fear that older women carry HIV. Because of the fear of AIDS, girls are often prostituted once and then, if they are lucky, discarded-- penniless, often addicted to drugs, and too humiliated to return to their families." The reference they supply is to a Panel Presentation at the Michigan Journal of Gender & Law Symposium, *Prostitution: From Academia to Activism* (Oct. 31, 1992), without any further citation to substantiate such a deterministic, stereotyped, and culturally homogenizing representation.

The post-colonial sexual subaltern subject provides a mechanism for understanding that a distinction must be made between taking a normative position against consensual sex work and addressing the question of whether a woman has consented to the conditions under which she engages in sex work. It also refocuses attention on the abusive and exploitative working conditions of those engaged or transported for non-sexual labor as well as sexual labor. This subject is displacing dominant sexual norms, not only by consenting to commercial sex work, but also by articulating sexual labor as labor, and advocating for rights with which to challenge the exploitative and abusive conditions of her work.

The sex worker emerging from the post-colonial world is a complex subject, whose identity and politics is being transformed through the market, either in terms of the different class hierarchies that are now being established within (and, of course, outside) the sex industry, as well as creating a vessel for mass movement across borders. In accessing new markets, the sex worker is now a transnational phenomenon who cannot be treated exclusively as a victim forced to move and work in exploitative conditions.

Perhaps the most radical aspect of the sex workers rights movement emerging from post-colonial India (and other Third World contexts) is in creating space for a politics of desire, a politics that contests at an ideological level sexual negativity, which perpetually addresses sex and sexuality, especially in the Third World in the language of pain, anguish, abuse and exploitation. And this politics is being articulated through a range of spaces, including the strip performance in the bar space, the song and dance sequences of the modern heroine in Indian commercial cinema, as well as through the increasingly visible and vocal presence of the sex worker in the Indian cultural context. These spaces pose an explicit challenge to the idea that sex is a negative, contaminating, and corrupting force that is alien to Indian cultural values.

The sex worker emerging from a post-colonial condition creates the space for the politics of desire, rather than exclusively of pain and victimization. The recuperation of desire as a political strategy can create the possibility of a more liberatory and emancipatory politics within the Third World. This reframing of the sexual subaltern subject brings a more complicated politics to bear on feminist legal strategies at home and away, as well as to force us to locate her within a transnational politics.

CONCLUDING REMARKS

The post-colonial sexual subaltern brings to us a challenge - a challenge that forces us to think about sex work as both a location of repression and resistance, choice and agency. Her emergence exposes the limi-

tations of a victim focused analysis and how this focus reinforces the idea of women as the pure, unstained upholders of Indian culture and national virtue. Such an analysis also recreates the “native” subject of colonialism and invites imperialist interventions in the form of anti-trafficking legislation and intensified moral surveillance. These strategies aim to keep the “native” at home, the West separate from the Rest, and sustain dominant sexual and cultural ideologies.

The post-colonial sexual subaltern is challenging the hegemonic constructions of the Third World sexual subject currently informing some kinds of feminist and State and non-State proposals at home and in the metropolis. She creates space for the possibility of negotiating a sexual subaltern identity within the complex power relations that come to bear upon that identity. Through her choice and her agency, she can speak about the abuse, violence, and exploitation she may experience through her work, and also demolish the racist “native” mannequins erected in the domestic and international legal arena around which imperialist interventions have been formulated.

The sexual subaltern subject creates the possibility of crossing sexual, cultural, and geographical boundaries. But her agency is not free and unfettered. She is constantly negotiating the experiences of violence, racism, and marginality, negotiating hegemonic feminist constructions of sisterhood and the imperialist maneuvers that deny her subjectivity. Yet, by focusing on the marginal location of the post-colonial sex worker, the third space, we come to understand the disruptive potential of this subject, through her agency, her mobility and the pursuit of her desires.

