

Ethnography at an Intersection: Law, Anti-Trafficking NGOs, and Prostitution in India

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For a legal anthropologist interested in how different agents and forms of governance shape projects of sexual humanitarianism, the strategies that US-funded non-governmental organizations (NGOs) use in their attempts to reframe an Indian anti-prostitution law as an anti-trafficking instrument generate broader conceptual questions. How do Indian NGOs articulate donor-driven concerns with the postcolonial socio-legal framework within which they work? What impact do they seek to have on the law, legal system, and legal actors? What, in turn, happens to formal law, which is already shaped by a complex history of legal concerns, moral panics, and NGO intervention (itself authorized by law) in this context? How do law and NGOs shape each other across anti-prostitution and anti-trafficking projects in the overlapping contexts of postcoloniality, globalization, neoliberalism, and sexual humanitarianism in India? How might one explore these intersections and relationships methodologically? I show how ethnography at the intersection of anti-prostitution law and anti-trafficking NGOs illuminates: (1) law's imbrication in a broader, long-standing, and ever-expanding field of governmental action on prostitution; (2) how NGOs and legal actors act, in tension and in collaboration, upon the perceived "problem" of prostitution; and (3) how anti-trafficking NGOs and anti-prostitution law co-constitute each other as they shape contested meanings around prostitution.

At a meeting between US embassy officials and a Delhi-based non-governmental organization (NGO) being funded by the US State Department, the conversation centered on the progress of an ongoing project on training Indian police and judges on how to use Indian law as an anti-trafficking instrument. At these training sessions, Indian NGO representatives alternated between providing technical details of what provisions and precedents from Indian law could be used to prosecute traffickers and urging judges and police officers to "change their mindset" toward women in prostitution through affective and moralistic frameworks.

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Two ethnographic excerpts taken from my field notes, and recounted later in this article, reflect the strategies that US-funded NGOs use in their attempts to reframe an Indian anti-prostitution law as an anti-trafficking instrument and to train Indian legal actors to treat prostitution as sex trafficking. Substantively, these ethnographic moments have helped me explore how postcolonial Indian law and US-funded anti-trafficking NGOs act, both in tandem and in tension, to shape contested meanings around prostitution in the Indian socio-legal context. As a legal anthropologist interested in how different agents and forms of governance collaborate (often awkwardly or reluctantly) on projects of sexual humanitarianism (Andrijasevic and Mai 2016), my observation of the strategies and interactions reflected in the two vignettes has also generated broader conceptual questions.¹ How do Indian NGOs articulate donor-driven concerns with the postcolonial socio-legal framework within which they work? What impact do they seek to have on the law, legal system, and legal actors with which they work? What, in turn, happens to formal law, already shaped by a complex history of legal concerns, moral panics, and NGO intervention (itself authorized by law) in this context? In other words, how do law and NGOs shape each other across anti-prostitution and anti-trafficking projects in the overlapping contexts of postcoloniality and neoliberalism in India? And how might one explore these intersections and relationships methodologically?

New approaches to legal anthropology retain the discipline's long-standing focus on local legal institutions and procedures, while expanding its scale to increasingly global sites and investigations of transnational legal processes (Wilson 2001; Clarke 2006; Merry 2006, 2016; Goodale 2009). They propose the adoption of a more expansive and global perspective in law and society research to move beyond state-centric or state-framed interpretations of law (Darian-Smith 2013; Massoud 2015). These new directions in the subfield call for an attentiveness to both global and local scales, while remaining committed to the minutiae of legal practices and spaces. Given ethnography's long-standing approach in focusing meticulous and sustained attention on one place, globalization has posed a particular challenge, calling for not only multi-sited, but also deterritorialized, ethnographies attentive to information flows, interactions, and networks (Merry 2000, 127–31).

In pursuit of these new directions, I have been interested in exploring: (1) how ethnography can help us understand law's imbrication in a broader, long-standing, and ever-expanding field of governmental action on prostitution; (2) how NGOs and legal actors act, in tension and in collaboration, upon the perceived "problem" of prostitution; and (3) how anti-trafficking NGOs and postcolonial anti-prostitution law shape each other in their overlapping, yet separate, projects.

Anti-trafficking interventions and Indian anti-prostitution law form the structuring context of my research, around which meanings are made, deployed, reframed, and resisted. Here, I mobilize ethnographic insights from this structuring context to discuss broader conceptual and methodological questions around the insights that

1. Drawing upon Rutvica Andrijasevic and Nicola Mai's (2016, 2) use of the term "sexual humanitarianism" as "the process through which groups of migrants are represented as vulnerable to trafficking in relation to their involvement in sex work and intervened upon by local, national and international institutions and NGOs."

ethnography at the intersections of law and NGO intervention can offer. In brief, I argue that such an ethnography illuminates law's imbrication in a growing field of non-state expertise, affect, and morality that has expanded in scope from the late colonial period to the current global context of neoliberal governmentality. The first section explains the background and context to establish the relevance of the questions I have laid out. In the next section, I provide further context on anti-trafficking NGOs in the Indian socio-legal landscape and conceptual insights from across interdisciplinary scholarship on the contexts of sex trafficking, postcoloniality, and neoliberal governmentality, in which law and mainstream NGOs shape each other. The last section draws upon my ethnographic research to explore encounters with Indian legal actors through which US-funded NGOs seek to reframe Indian anti-prostitution law as an anti-trafficking instrument.² These two ethnographic vignettes reflect how NGOs deploy Indian law, global imperatives of sexual humanitarianism, and gendered moral ideologies as well as how the Indian legal actors that are being "trained" by the NGOs respond.

Legal anthropologist Sally Merry's (2006) work on how human rights activists (NGOs among them) "translate" global human rights discourse into local terms is a generative point of entry to a study of how anti-trafficking NGOs not only work within the parameters set out by Indian law but also treat it as malleable. Merry's ethnography of human rights and gender justice across global contexts shows how NGOs adapt ideas, priorities, and modes of intervention devised in the global North to global South contexts, each with a "distinctive set of government and private services, laws, court and police systems, and political institutions that affect how the prototype is translated" (136). Merry and others note that translation is a transforming and generative practice that changes what is taken up into something new (Gal, Kowalski, and Moore 2015).

The two ethnographic vignettes that I provide later in this article illustrate how anti-trafficking NGOs mobilize resources, expertise, and affect to not only conceptually translate, but also problematically conflate, prostitution as sex trafficking in training legal actors. The interpretive labor that NGOs perform and expect of Indian legal actors is a selective reinterpretation and reframing of India's anti-prostitution law through a global agenda of sexual humanitarianism. However, I am primarily interested, beyond these translations and conflations, in how NGO efforts to reframe the law and train Indian legal actors illuminate the ongoing co-constitutive relationship between postcolonial anti-prostitution law and anti-trafficking NGOs and how the law authorizes a certain kind of NGO intervention within a larger, contested field of meanings around prostitution that includes sex worker rights activists' efforts to oppose the law. Ethnographic research situated in the encounters between anti-trafficking NGOs and Indian legal actors also reveals the interdependencies, collaborations, and tensions marking these encounters.

2. The anti-trafficking efforts of US-funded non-governmental organizations (NGOs) in India extend beyond these training sessions to include rescuing sex workers from brothels, assisting in the prosecution of alleged traffickers in courts, encouraging sex workers to testify against alleged traffickers, and urging sex workers to take up alternative livelihoods. In this article, I draw upon training sessions as illustrative examples of a wider range of interventions.

CONTEXT: THE US-LED ANTI-TRAFFICKING CAMPAIGN AND INDIAN LAW

The US-led Anti-Trafficking Campaign

Since 2002, India has ranked poorly in the US State Department's (2000–21) annual *Trafficking in Persons (TIP) Report* (mandated by US anti-trafficking law), which ranks countries based on the United States' assessment of their anti-trafficking efforts, with repercussions on the flow of aid dollars.³ Socio-legal scholars have critiqued the United States for playing “global sheriff” (Chuang 2005) in response to moral anxieties rather than factual accuracy (Weitzer 2007). Current US-led concerns around sex trafficking stem from an amalgam of anxieties during the Bush administration around organized crime and immigration, conservative Christian values around sexuality, and the proximity to power of “abolitionist” feminists who see all prostitution as violence against women (Bernstein 2007, 2010). Spearheading concerns about sex trafficking, the United States has taken it upon itself to strengthen legal responses to this issue, especially in global South contexts.⁴

Feminist scholars shaping the growing field of “critical trafficking studies” have challenged the narrow definition, ill-conceived conceptual framing, and “ideological capture” of anti-trafficking discourses and policies (Musto 2016, 169–70). Many have questioned: (1) the US government's conflation of sex trafficking with prostitution and (2) the US-driven anti-trafficking campaign's focus on law enforcement and criminal justice rather than addressing sex trafficking as a structural problem rooted in poverty, gender inequality and discrimination, migration gone wrong, and its connection to other forms of labor exploitation (Chapkis 2003; Chacon 2006; Bernstein 2007, 2010; Global Alliance against Trafficking in Women 2007; Chuang 2010).

Two aspects of how India features in the US-led anti-trafficking campaign bear discussion in the context of my broader questions. First, the State Department's assumptions, as reflected in the *TIP Report*, reprise a colonial-era legal orientalism that assumes and bemoans the inferiority of non-Western legal systems (Hussain 2003; Chimni 2006; Rajagopal 2008; Darian-Smith 2013; Ruskola 2013). The problems that it identifies with the Indian legal system include both a lack of resources and a lack of commitment. The report notes (citing NGOs as sources) that the police are overburdened, underfunded, and lack necessary resources (US Department of State 2018, 223). Similarly, it notes (again citing NGOs) that judges and courts did not have the resources, including adequate support staff, to “properly prosecute cases” (US Department of State 2016, 201). The report also criticizes the Indian legal system for its “overburdened” courts, “a weak understanding of the laws, and lack of commitment and awareness by some local authorities” (US Department of State 2011, 189). It expresses concern about corrupt police who protect traffickers and expect victims to provide them sexual services (US Department of State 2016, 199). Though recent reports have

3. Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386, October 28, 2000.

4. In 2004, the Bush administration gave funding priority to Brazil, Cambodia, India, Indonesia, Mexico, Moldova, Sierra Leone, and Tanzania” (US Department of State 2005, 27).

recognized increased efforts to combat human trafficking in India, they continue to highlight low levels of law enforcement action and a low rate of conviction of traffickers, relative to the scale of human trafficking in India (200).

These concerns indicate both how the US-led anti-trafficking campaign perceives the Indian legal system's limitations and how heavily it leans on NGOs as sources of information and agents of change. It is through the NGOs that it funds that the US-led anti-trafficking campaign seeks to "fix" the Indian legal system, which has long had its own anti-prostitution law and intense regulation of prostitution by state and non-state actors. US-funded NGOs engage in a range of anti-trafficking interventions in India, including rescuing sex workers from brothels, assisting in the prosecution of alleged traffickers in courts, encouraging sex workers to testify against alleged traffickers, and urging sex workers to take up alternative livelihoods.

In this article, I use the way in which NGOs train Indian legal actors as one set of illustrative examples of a wider range of interventions through which Indian anti-trafficking NGOs engage with Indian law in multiple ways. The ethnographic examples that I draw upon here illustrate the ongoing mutual imbrication of the law and the NGO intervention that it both authorizes and depends upon. They also show that NGO-driven efforts to reframe Indian law to fit an anti-trafficking agenda are often fraught and incomplete as interactions between NGOs and Indian legal actors are marked by both tensions and collaborations.

India also features in the US-led anti-trafficking campaign through images and narratives that recycle colonial-era assumptions about vulnerable, victimized Third World women (Mohanty 1984; Spivak 1988; Kapur 2005). It is often the setting for images and accounts, constructed and circulating in media reports and policy and donor networks, that have fed US-funded anti-trafficking interventions in the global South.⁵ From the *TIP Reports* to Nicholas Kristof's *New York Times* columns, CNN's *Freedom Project*, and a slew of well-publicized documentary films on the topic, Indian sex workers are depicted as helpless victims forced into the sex trade, from which they must be rescued by outside intervention.

Several feminist scholars and sex worker rights activists have taken issue with global anti-trafficking discourse's portrayal of rescued sex workers from the global South as passive victims (Doezema 2001; Soderlund 2005; Agustin 2007; Chuang 2010). Dominated by an abolitionist agenda that claims all prostitution is inherently exploitative, the US-led anti-trafficking campaign fails to consider the possibility of consent or other nuances and complexities. Pro-sex work feminist scholars and activists in India have long called for the need to recognize the legitimacy of sex work for those who wish to work in the sex industry (Ghosh 2008; Kotiswaran 2011; Dasgupta 2014) and have drawn attention to the efforts of local sex workers' collectives to prevent trafficking in the sex industry, critiquing the indiscriminate, misguided interventions of foreign-funded NGOs that have been known to target voluntary sex workers in the name of curbing sex trafficking (Ahmed and Seshu 2012; Dasgupta 2014).

5. For trenchant critiques of such representations and their reductive assumptions about the sex trade, sex workers, and "saviors," see, for example, Lindquist 2010; Galusca 2012; Baker 2013; Shah 2013; Plambech 2016.

Researching anti-trafficking interventions in India, I have observed that the narratives that rescued women have presented to NGOs and legal actors ranged from being trafficked (that is, forced, threatened, abducted, or deceived) to varied combinations of choice and compulsion. Their accounts resonate with insights from feminist ethnographies of sex work: that sex work involves diverse work conditions and that sex workers make complex agentic choices under structural constraints, choosing to sell sex from among limited employment choices, income-generating activities and migration strategies (Kempadoo 1998; Brennan 2005; Agustin 2007; Cheng 2010; Parrenas 2011). Recent ethnographic work in India has illuminated the diverse conditions and modes of organization of the sex trade (Kotiswaran 2011), including the sexual subjectivity of sex workers and their transformative relationships and potential pleasures and dangers (Walters 2016), the imbrications of sex work with the strategies of migrant labor (Shah 2014), caste and kinship ties (Agrawal 2008), and reproductive labor (Vijayakumar 2022).

This rich body of anthropological and feminist scholarship thus illuminates the flawed assumptions of anti-trafficking campaigns, especially how sex workers cannot be simplistically reduced to “trafficked victims.” My understanding of the flawed assumptions of NGO-led anti-trafficking interventions has been shaped by insights from critical trafficking studies and feminist scholars from South Asia and across global contexts. However, my main interest here is not to discuss legal developments around prostitution in India, the politics between anti-trafficking NGOs and sex worker rights groups, or the harmful impact of anti-trafficking interventions on sex work, about which much has already been written. I am interested in a broader conceptual question: in the overlapping contexts of postcoloniality, globalization, neoliberalism, and sexual humanitarianism, how do anti-trafficking NGOs and anti-prostitution law shape each other in the process of shaping meanings around prostitution?

The Indian Anti-Prostitution Law

India’s Immoral Traffic (Prevention) Act 1956 (ITPA) defines neither trafficking nor even “immoral traffic” (the term used in its title).⁶ It defines “prostitution” as sexual exploitation, but it also reflects concerns about the threat that “prostitutes” pose to “public order, decency, and morality.”⁷ The legal imagination of prostitution in India is thus as much about unease at the social malaise and public nuisance that sex workers are perceived to cause as it is about their perceived victimhood.⁸ The ITPA, as it currently stands, criminalizes those who solicit sex as well as those who exploit women in prostitution, thus blurring the line between victim and criminal

6. Immoral Traffic (Prevention) Act 1956, No. 104, December 30, 1956 (ITPA).

7. I use the term “prostitutes” when referring to the terminology in Indian law, not as my own preferred category to reference sex workers.

8. The acts that the ITPA criminalizes include keeping a brothel, “living on the earnings of prostitution,” “procuring, inducing or taking persons for the purpose of prostitution,” detaining a person in premises where prostitution is carried on, prostitution in or in the vicinity of a public place, and seducing or soliciting for the purpose of prostitution. Many of these acts are potentially (but not necessarily) exploitative toward those in the sex trade. However, as the Law Commission of India (1975, 7) points out, the statute is centrally concerned with “immoral” conduct in public spaces.

and failing to recognize voluntary sex work outside of the framework of “immorality.” Its ultimate objective is to curb prostitution (Law Commission of India 1975, 6).

The current US-driven anti-trafficking campaign brings a new set of motivations for rescues as well as a new dimension of prosecuting alleged traffickers to an already complex history of anxieties around prostitution in India. India has had a long history of legal reform and social welfare measures devised to deal with the “problem” of prostitution.⁹ British feminists, Indian nationalists, and Indian women’s groups have opposed the colonial state’s tolerance of prostitution. The late colonial period saw a shift from the segregation of brothels—tolerated to cater to the British military and regulated by colonial-era Contagious Diseases Acts—to legislation aimed at the “suppression” of prostitution. Various provincial Suppression of Immoral Traffic Acts were enacted during this time, influenced by transnational anxieties about a sexual traffic in white women, concerns about vice and venereal disease articulated by elite women’s groups in India and Britain, and middle-class nationalist public opinion about “fallen” women in India (Walkowitz 1980; Levine 2003; Tambe 2009; Legg 2014).

The 1949 United Nations Convention against Trafficking conceptualized the “traffic” in persons and the “exploitation of prostitution” as intrinsically linked.¹⁰ Having ratified this convention, India enacted the Suppression of Immoral Traffic in Women and Girls Act (SITA) in 1956, soon after its independence from Britain, to demonstrate its compliance with the terms of the Convention against Trafficking. The SITA’s definition of “prostitution” as the sexual exploitation or abuse of persons for commercial purposes echoed the Convention against Trafficking and was thus the postcolonial Indian lawmakers’ response to the global anti-trafficking agenda during that period. However, the legislative debates around the SITA in 1956 illuminate how sex trafficking was one of several concerns around prostitution voiced by lawmakers in the newly independent nation-state. Prostitution’s very existence was seen as an impediment to India’s ability to establish itself as a “modern” nation if it allowed women to become “fallen” and “destitute.” (Lok Sabha Secretariat 1956, 1494–96). In 1986, the SITA was amended and renamed the Immoral Traffic (Prevention) Act or ITPA. The ITPA retains the SITA’s moral ambivalence around prostitution. Gopika Solanki and Geetanjali Gangoli (1996) observe this ambivalence in the legislative debates of 1986, in the judicial interpretations of the law and perceptions of prostitution, and in their interviews with police implementing the law.

Conducting ethnographic research on anti-trafficking interventions, I have observed NGOs seeking to eclipse this ambivalence in a law primarily aimed at curbing prostitution by reframing it as an anti-trafficking instrument. Their efforts have centered on bringing an anti-trafficking campaign’s focus on victimization more firmly within Indian law’s anti-prostitution agenda. Significantly, I have observed how the moral ambivalence in the law—engaging concerns around both immorality and victimhood, shaped by the complex legal history I have outlined—has created the space and

9. See note 7 above.

10. Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of Others, December 2, 1949, 96 UNTS 271. Unlike its successor, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, November 15, 2000, 2237 UNTS 319, which addresses the exploitative aspects of sex trafficking and does not repeat the explicit condemnation of prostitution (Dottridge 2007).

possibility for NGOs' efforts to reframe it. My argument is not that anti-trafficking NGOs have succeeded in smoothly replacing an anti-prostitution legal framework with an anti-trafficking one. Indian legal actors, who are expected to reinterpret the law and change their moral frameworks according to this reframing, have resisted and contested these efforts. Rather, my point is that anti-trafficking NGOs draw upon the role carved out, and the legitimacy afforded to them, by the ITPA; the space opened up by its moral ambivalence toward prostitution; and their participation in a donor-driven anti-trafficking agenda to bring a focus on victimization more firmly within the possible interventions India's anti-prostitution law can make. They are simultaneously expanding the possibilities of the law and the scope of intervention beyond prostitution (constructed in the ITPA as an issue of both immorality and exploitation) to sex trafficking (constructed as a humanitarian issue) and claiming that this possibility already exists within the law.

A few further points deserve mention in terms of the contexts that frame anti-trafficking interventions, Indian anti-prostitution law, and new developments in India around anti-trafficking legislation. First, the United States is not the only voice or player in contemporary global anti-trafficking discourse and policy. The NGOs whose work I have observed were primarily US funded, as indicated in the two excerpts provided later in this article. However, another globally powerful legal framework that has found currency in Indian anti-trafficking NGOs' law reform efforts, including an unsuccessful effort to amend the ITPA, is the Swedish model, which also conflates prostitution and trafficking and criminalizes clients of sex workers while decriminalizing the sale of sex by sex workers.¹¹ Second, foreign-funded anti-trafficking NGOs are not the only driving force shaping the discourse around sex work in the Indian socio-legal context. A strong sex worker rights movement in India calls for the need to decriminalize and recognize the legitimacy of consensual sex work, while opposing trafficking into prostitution. Sex worker rights activists and scholars in solidarity with them have critiqued forced and indiscriminate raid-and-rescue operations by anti-trafficking NGOs and police teams that target voluntary sex workers rather than trafficked women and that negatively impact HIV/AIDS intervention programs (Kapur 2007; Ghosh 2008; Kotiswaran 2011; Ahmed and Seshu 2012; Shah 2014; Walters 2018; Dasgupta 2019).

I mention the Swedish model and sex worker rights groups here to indicate that beyond US-driven and NGO-led intervention, there are other global influences, and a richly contested local political field, shaping the Indian anti-prostitution law and socio-legal context. However, anti-trafficking NGOs have been able to occupy and mobilize a space in their influence on the law and its implementation that has been denied to sex worker rights groups. As I will show in the next section, the ITPA recognizes and depends upon NGOs that meet its description of "respectable social welfare organizations." Since it does not recognize or legitimize sex worker rights, sex worker rights groups have instead engaged with the ITPA from an oppositional stance, calling for amendments and repeals (Kotiswaran 2013b).¹² Finally, though the ITPA still stands

11. For a discussion of this model and how the movement of Indian sex workers played a significant role in preventing an amendment to the ITPA from being passed, see Kotiswaran 2014.

12. This gendered politics of respectability has shaped the Indian socio-legal context as well as global human rights advocacy, where groups that focus on sexual harm are more likely to be invited to inform policy than those that call for the recognition of sexual agency, regardless of their rights advocacy (Miller 2004).

as an anti-prostitution law, a criminal law amendment has been passed and a series of new draft bills have been proposed in recent years addressing trafficking (including not just sex trafficking but also several forms of human trafficking), which is not defined or comprehensively addressed by the ITPA.¹³ I mention these developments, which took place after my fieldwork, in order to highlight the expanding legal efforts of anti-trafficking NGOs beyond prostitution.

CONCEPTUAL EXPLORATIONS: NGOS, LAW, AND GOVERNMENTALITY

The growth of NGOs in a global neoliberal context is traced to the 1980s, when state social welfare programs were cut to meet structural adjustment goals, leading to a shift from welfarist states spearheading development to neoliberal arrangements marking “leaner” and more efficient operations (Edelman and Haugerud 2004). The past two decades have seen a rise in neoliberal governance in the fields of social welfare and development through a multiplication of governmental bodies. Anthropologists leading the field of critical NGO studies have examined how NGOs have become central to neoliberal government, mediating between marginalized populations, state institutions, and transnational and multilateral agencies in the global South (Fisher 1997; Alvarez 1999; Leve and Karim 2001; Kamat 2004; Sharma and Gupta 2006; Schuller 2007; Sharma 2008; Mertz and Timmer 2010; Karim 2011; Bernal and Grewal 2014).

In India, “non-state bodies . . . have always played an important role as partners in postcolonial governmental projects of development and humanitarian welfare” (Bornstein and Sharma 2016, 78). NGO interventions in law and policy are linked both to the growth of more recent neoliberal “good governance” and development policies and to a longer postcolonial history of legal and moral civil society activism (77). The development sector has seen an immense growth of NGOs all over South Asia, with generous funding from foreign governments and aid agencies. Neoliberalism in this context has translated into greater involvement of NGOs in activities formerly carried out by state agencies. Western aid organizations prefer to work through NGOs, whom they perceive to be more accountable, and to bypass the perceived bureaucracy and corruption of state agencies (Bernal and Grewal 2014). Though critical NGO studies have mainly examined development-focused NGOs, NGO interventions are also growing across gender justice contexts in neoliberal India.¹⁴

13. For discussions and critiques of these new legal developments—how they have been heavily shaped by anti-trafficking NGOs and excluded sex worker rights organizations, how they extend a criminal law, raid-rescue-rehabilitation model beyond sex work to other labor sectors, and how pro-sex work activists see them as targeting consensual sex workers, including trans sex workers, and conflating trafficking and migration, see Kotiswaran 2013a, 2016, 2018a, 2018b, 2019; Lawyers Collective 2018; Saikia 2018; Tandon 2018.

14. For instance, NGOs are increasingly taking on aspects of police work in the context of domestic violence cases in India. This is partly mandated by law (as with the ITPA), but NGOs often help survivors in ways beyond what the law ordains. The police, in turn, expect survivors to pursue their cases with their own resources, including NGO assistance (Roychowdhury 2015).

From colonial to contemporary times, non-state actors have played a significant role in the regulation of prostitution. Though the current form, sources of funding, modes of operation, and discursive framework of anti-trafficking NGOs in India are new, the involvement of non-state actors intervening against prostitution from a combination of moralistic and social welfare perspectives is not. Non-state social workers committed to an anti-prostitution approach have long been an extended entity of governance, which the Indian state has entrusted with removing women from the sex trade and reforming them. The late colonial state in India actively sought the assistance of an embryonic and “ruthlessly reformatory” colonial civil society to rescue women from brothels and manage rescue homes (Legg 2014). Contemporary Indian anti-trafficking NGOs, as Prabha Kotiswaran (2018a) points out, continue to be persuaded by a combination of cultural nationalist and conservative politics and radical feminism. However, the law and order and criminal justice focus of contemporary anti-trafficking NGOs, driven by donor priorities, is new, as is their professionalization and capacity to attract foreign funding. They also bring a new framework of global sexual humanitarianism to existing moralistic and social welfare perspectives and legal provisions against prostitution.

Anti-trafficking NGOs have smoothly stepped into the space that the ITPA has carved out for “respectable” and “experienced” women social workers “in the field of suppression of immoral traffic in persons.”¹⁵ Indeed, in the decade after India’s independence, women social workers and middle-class women’s organizations contributed to drafting the ITPA and actively pushed for the law to be passed, even as sex workers challenged it for violating their fundamental right to practice any profession under the then newly enacted postcolonial Indian Constitution (De 2018). Lawmakers and women’s organizations alike emphasized the role of women social workers in implementing the ITPA through a special social welfare bureaucracy (De 2018; Lok Sabha Secretariat 1956). The ITPA specifically requires “respectable” women social workers from “social welfare organizations” to assist the state in removing women from brothels as well as in subsequent procedures such as inquiries and protective custody.¹⁶ Thus, those deemed “respectable” non-state actors committed to the “suppression of immoral traffic” have long shaped postcolonial law on prostitution, which in turn has legitimized their intervention. In the past two decades, the role of anti-trafficking NGOs is expanding with US funding, with the law continuing to be at the center of their interventions. Sex worker rights groups, whom the law denies the same legitimacy that it provides anti-trafficking NGOs, have engaged with the law through an oppositional stance, pushing for amendments and repeals alongside a larger repertoire of social movement strategies as subaltern citizens (Kotiswaran 2013b).

Most NGOs whom I encountered started working on the issue of sex trafficking in the 1990s. Their work began to expand around the year 2000 when global activism, funding, and legal instruments around sex trafficking were developed, established, and circulated. Though the US State Department was the largest donor for many of these NGOs, their backgrounds, motivations, and other sources of funding were

15. Specified in ITPA, s. 17(5).

16. For an ethnographic description and critique of this provision in the ITPA that results in the carceral detention of rescued sex workers in the name of their protection, see Ramachandran 2015.

complex and often diverse. Some, including the one whose work I will discuss in the next section, worked not only on sex trafficking but also on a broader set of human rights, child rights, and gender justice issues.

Significantly, anti-trafficking NGOs have continued to shape law and policy and maintain proximity to state agencies and policy makers, even in a context where the Hindu right wing government of India, reflecting the global trends of authoritarian regimes, has started to crack down on civil society organizations more generally, through increased regulation of NGOs receiving foreign funding. NGOs exposing government misconduct and abuses have, in the name of suspicions around “anti-national” or “anti-development” activities, lost their licenses and funding (Bornstein and Sharma 2016; Ismail and Kamat 2018; Bornstein 2019).¹⁷ However, this targeting of NGOs does not seem to have affected the functioning of anti-trafficking NGOs in India, despite their foreign funding rendering them possible targets of state suspicion and regulation. My sense is that this is precisely because, in the context of prostitution, the Indian law itself carves out a significant space and role for this type of NGO, and state agencies have long depended on them to manage the “problem” of prostitution.

Conceptually, to map out how anti-trafficking NGOs and the anti-prostitution law shape each other, I have found it useful to bring multiple interdisciplinary lenses into the conversation. The NGO-law relationship reminds me of anthropologist Sally Falk Moore’s (1973, 720) prescient comments about law as a “semi-autonomous social field” that is “set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance.” On the one hand, anti-trafficking NGOs work within the parameters set out by Indian law. On the other hand, they also “invade” it (to quote Moore) and treat it as malleable in their efforts to reframe it. For anti-trafficking NGOs, the malleability of Indian anti-prostitution law lies both in the space it carves out for a certain type of non-state actor and in its moral ambivalence toward prostitution.

The lens of governmentality is useful to situate that “larger social matrix” in which law exists semi-autonomously with this scope for “invasion.” Anthropologists have drawn upon Michel Foucault’s (1991) concept of governmentality, an analytic that he used to describe schemes, tactics, and apparatuses aimed to improve the condition of a given population and to study a range of projects of “improvement” by state and non-state actors.¹⁸ Applying it to law, socio-legal scholars Nicholas Rose and Mariana Valverde (1998) recognize that law operates among a wider set of governmental actors and is pervaded with forms of knowledge and expertise that are not strictly legal. They urge socio-legal scholars to examine law from the perspective of government: as a legal complex, an assemblage of regulatory agents, apparatuses, and so on, acting upon a particular “problem”—in this case, prostitution. Explaining how and why law matters in the regulation of sex work in neoliberal contexts, Jane Scouler (2010, 38) calls for socio-legal scholars to theorize it through the lens of governmentality—that is,

17. To quote from Erica Bornstein and Aradhana Sharma (2016, 86), “[n]onstate actors in India have always had a dynamic and contested relationship with the postcolonial state. They have been courted and contracted by state institutions as partners in national development, albeit on statist terms. They have also opposed state agencies, forced policy reform, and been deemed antinational forces.”

18. Tania Murray Li (2005), for instance, applies it to forms of expertise beyond the state, including NGOs—their simplistic technical assumptions, constitutive exclusions, and messy consequences.

to examine how law is embedded in an extended group of regulatory agents that it authorizes and empowers to construct spaces and subjects. Foucauldian scholars who situate law within governmentality argue that this does not mean “expelling” or diluting law’s role (Golder and Fitzpatrick 2009). Indeed, law gains, rather than loses, its potency as it “increasingly operates alongside other normative ordering practices to shape subjects, identities, practices, and spaces (Scoular 2010, 38).

In the context of anti-trafficking interventions, this discussion connects to a question being debated in the emergent field of critical NGO studies (led by anthropologists, feminist scholars, and international development scholars): whether there is an “NGO-ization” or “NGO-ification” of feminism and development in the global South (Bernal and Grewal 2014). “NGO-ification” characterizes the “highly professionalized environment informed by policy and funder demands” in which the US-driven anti-trafficking movement operates (Musto 2008, 16). In India, the professional, technical/managerial approach to social issues required by a new donor-driven culture associated with NGOs has been critiqued for depoliticizing social movements (Kamat 2003). The Indian autonomous women’s movement has expressed concern at an “NGO-ization” dependent on external donors that has co-opted, transnationalized, professionalized, and therefore depoliticized many feminist and radical agendas (Roy 2015).

Apropos of my discussion so far, does situating the law within a governmentalized legal complex mean framing one’s analysis instead as an “NGO-ization” of the Indian legal system? While I agree with the critiques and concerns above, NGO-ization implies situations where NGOs have greater power and influence than whichever agency (usually the state) or set of actors previously occupied that realm or where NGOs have taken the place of other civil society actors, like social movements. In the context of prostitution, anti-trafficking NGOs have certainly taken significant space away from pro-sex work rights activists in their influence on the law and its implementation. As I have explained, this is partly rooted in the way in which the ITPA, as an anti-prostitution law, itself authorizes those groups that it sees as “respectable social welfare” NGOs rather than sex worker rights organizations. However, anti-trafficking NGOs have not suddenly taken over the work or influence of state agencies, which have in fact long depended on them and their predecessors to curb prostitution. India’s socio-legal history and my ethnographic research both demonstrate how law and NGOs together constitute a broader assemblage of entities and projects acting together (in tension and in collaboration) upon what they perceive as the “problem” of prostitution. I therefore prefer the Foucauldian “legal complex” framework as a conceptual apparatus that accommodates how anti-prostitution intervention in India has always already been “NGO-ized,” and how law’s reliance on and legitimation of NGOs, and NGOs’ reliance on and deployment of law, have been expanded and intensified through neoliberal anti-trafficking campaigns.

Several feminist scholars, in what Jennifer Musto (2016) terms a “critical trafficking studies” tradition, have examined the unlikely alliance between anti-trafficking campaigns’ NGO proponents and preferred mechanisms of law enforcement and criminal justice (Halley et al. 2006; Bernstein 2018). While they focus on the connections, collaborations, and coalitions between state agencies and NGOs in anti-trafficking campaigns, my ethnographic research at the intersections constituting

a “governmentalized legal complex” reveals both the interdependencies and tensions marking the encounters between NGOs and legal actors. These tensions and conflicts, as I will show, center on the meanings of prostitution and victimhood. Thus, my argument is not that anti-trafficking NGOs succeed in smoothly replacing an anti-prostitution legal framework with an anti-trafficking one. As Indian feminist scholar Srila Roy (2017, 886) has pointed out, the concurrence of multiple ideologies, techniques, and forms of governmental power can be unstable, complex, and contradictory. The two ethnographic examples that I will use show how Indian legal actors, when expected to reinterpret the ITPA and change their moral frameworks toward prostitution by treating sex workers as victims of trafficking, often resist and contest NGO-led efforts.

Finally, anthropological studies of NGOs help to explain the role that NGOs play as part of a governmentalized legal complex, demonstrating how they deploy not just knowledge and expertise but also affective appeals and moral assertions. Erica Bornstein and Aradhana Sharma (2016), for instance, point out that NGOs interweave the technocratic language and proceduralism of law with moral concerns and pronouncements to assert themselves as virtuous agents. As I will demonstrate, anti-trafficking NGOs combine technical explanations of Indian legal provisions with extralegal invocations of affect and morality in their efforts to reframe the ITPA.

ETHNOGRAPHIC EXPLORATIONS: ANTI-TRAFFICKING NGOS TRAINING INDIAN LEGAL ACTORS

For the past two decades, US-funded NGOs have sought to create a conceptual shift in the interpretation and implementation of India’s ITPA law by training Indian legal actors (police, prosecutors, and judges). They mobilize legal expertise, affect, and morality to conflate prostitution as sex trafficking and reframe the anti-prostitution ITPA as an anti-trafficking instrument. At these training sessions, NGOs also invoke other laws, such as relevant sections of the Indian Penal Code 1860¹⁹ (recently amended to include a section criminalizing trafficking) and Criminal Procedure Code 1973.²⁰ However, I focus on the ITPA here both because, given its ambivalence toward prostitution, reframing it was a central focus for NGOs and because the provisions within it for a certain kind of NGO intervention have provided space for current anti-trafficking NGO efforts. I will outline five significant features of what NGOs and legal experts associated with them do at these sessions and then elaborate on them through two ethnographic vignettes:

1. They encourage Indian legal actors to interpret the ITPA as an anti-trafficking law. As part of this approach, NGOs urge Indian legal actors to treat women in the sex trade as victims of trafficking and to use those sections of the ITPA that prescribe the rescue of victims and punitive action against traffickers and other perpetrators. The ITPA’s criminalization of solicitation for prostitution has been roundly criticized across the board by the US *TIP Report*, anti-trafficking NGOs, and sex worker rights groups for criminalizing women in the sex trade. In training Indian legal actors, NGOs thus emphasize not implementing

19. Act no. 45, October 6, 1860.

20. Act no. 2, January 25, 1974.

the ITPA's solicitation clause. Indeed, they code the implementation of this clause as a "misuse" of the law. Thus, NGOs intervene in the conceptual space provided by the ITPA's ambivalence toward prostitution to push for a very specific reinterpretation of the statute.

2. They exhort Indian legal actors to do their jobs not only as prescribed by Indian law but also as a moral responsibility toward victimized women. Efforts to counter the "misuse" of the law center on the cultivation of sensitive and responsible policing and adjudication. Anti-trafficking NGOs and senior law enforcement experts, working closely with them to train Indian legal actors, describe their efforts to "change the mindset" of the police toward women in prostitution along these lines: "I tell them to think of these women as their mothers and sisters. Then I ask, shouldn't you protect them?"
3. They combine technical and affective articulations of the issue by explaining Indian laws and precedents against traffickers, screening documentary films, and bringing in survivors to describe their experiences.
4. They discount alternative narratives to victimization that sex workers might provide and insisting that "counseling" can reveal the underlying truth about sex trafficking behind what are assumed to be "lies" women may tell about voluntary sex work due to traumatic experiences and threat perceptions.
5. They highlight not just the plight of victims and the need to save them and punish traffickers but also the role and legitimacy of NGOs as entities who best represent the voices of victims and as indispensable partners in the pursuit of gender justice in India.

The following two vignettes draw upon ethnographic fieldwork that I conducted in New Delhi from 2012 to 2013, with two follow-up visits thereafter. NGO-led training sessions for Indian legal actors were one among several sites at which I examined anti-trafficking interventions through interactions between NGOs, Indian legal actors, and sex workers. I attended four judicial training sessions (of which my second vignette discusses one) and interviewed NGO staff, judges, police, and prosecutors, during which they also referenced training by NGOs (like the one in my first vignette) that I did not attend myself. To access these sessions and meet these respondents, I made the methodological decision to not embed myself with one NGO for the entirety of my research. In New Delhi, I volunteered with one NGO, and through this experience was able to visit Meerut, which is the context of the first vignette. I also observed the work of a government agency that organized the training session in the second vignette, where NGOs and legal experts addressed judicial officers. Situating my research across NGOs and legal actors helped me observe and analyze where and how they intersect as well as the collaborations and tensions structuring those intersections.

Training the Police in Meerut

In 2012, a massive rescue operation was conducted in Kabadi Bazaar, the red light district in Meerut, a town two hours away from New Delhi. It was led by two NGOs (one of whom I was shadowing) in search of girls believed to have been trafficked there. None of the girls they were looking for were found. Instead, a different set of young women (who vehemently resisted rescue, saying they had entered the sex trade out of choice) was rescued, and a case was sought to be made against the alleged traffickers.

Meerut is a small town where both the police and the NGO representatives described the anti-trafficking police unit, recently sanctioned by the federal government, as being rather skeletal. Unlike in New Delhi, Meerut was a place where the local police did not have experience dealing with sex trafficking and where they were, by their own admission, not well versed in the provisions of the ITPA. Meerut's proximity to the capital city meant that the local police faced considerable pressure from the federal government to demonstrate that the anti-trafficking unit was doing its job. It also meant that Delhi-based NGOs wielded considerable influence in monitoring the rescue operation and post-rescue legal procedures. The police depended heavily on the NGOs' guidance about how to proceed. Given that the police in India have "provisional authority" in a shifting field of resource exchanges and subjectivizing forces (Jauregui 2016), in the context of anti-trafficking training sessions, they leverage connections with NGOs to save face and evade censure from the federal government.

I learned just how closely the NGO had trained the police when I asked about the specifics of the first information report (FIR).²¹ Among other charges, the FIR made out a solicitation case against the brothel managers under the ITPA. Curious to know more, I scheduled an interview with the local police chief in Meerut. An overworked official in a town with a high crime rate, he admitted that he had not had the time to study the ITPA in detail: "Madam, why don't you ask the NGO people about this? They gave us a format on how to frame this FIR, and we copied it." He connected me with the police officer investigating the case, who obligingly looked through my copy of the ITPA. Pondering for a minute, she said that the NGO representatives had explained to her that the solicitation clause was a "revictimization" of victims and that, to prevent its misuse, it should be used against the brothel managers and not the victims. The NGO had thus literally explained to the police how to document the case and how to reinterpret the Indian law toward an anti-trafficking agenda.

However, the police's reconstructions of the raid also illuminated tensions between the police and NGOs in constructing victimhood. The police chief explained his initial reluctance to take on the case, as the sex workers had resisted being rescued. The investigating officer tasked with managing the reluctant victims (who had explained the "NGO version" of the ITPA to me) voiced a perspective closer to the concerns about immorality couched in the ITPA than to a complete endorsement of the NGO's efforts to construct them as victims of trafficking. "Oh yes, those girls created a big commotion," she told me. "They indulged in vulgar behavior, misbehaving and taking off their clothes. It took me hours to 'calm them down.'" Thus, while she followed the NGO's lead in reinterpreting the law in order to investigate and document the case, she had not shifted her moralistic assumptions about women in the sex trade—assumptions that are also reflected in the ITPA—to align with an anti-trafficking agenda.

The NGO contended that the sex workers' assertions of voluntary sex work and resistance to rescue were "lies" told due to the trauma of victimhood. The NGO workers I accompanied to meet with the rescued sex workers some weeks after the raid briefed me that the sex workers had been "tutored and threatened by the brothel managers" not to tell the truth. However, the police did not buy into the NGO's dismissal of

21. A written complaint lodged with the police about the commission of a crime; the first step in the initiation of criminal proceedings in India.

alternative narratives to sex trafficking. Instead, they recognized (albeit in the moralistic and derogatory manner described above rather than in support of the legitimacy of sex work) the possibility that not all women are forced into prostitution. The police's response demonstrates how the reframing of the law is enmeshed in a complex dynamic between NGOs and legal actors marked by both tension and collaboration. The law's ambivalence toward prostitution, paired with the legal actors' moral frameworks, renders efforts to reframe Indian law to fit an anti-trafficking agenda fraught and incomplete.

Given the NGO's connections to government officials in New Delhi who oversaw the police's anti-trafficking unit, the Meerut police, following the NGO's lead for pragmatic reasons, rescued the sex workers who had been deemed "victims" and applied the law against the alleged perpetrators. However, in addition to taking a different moral stance on prostitution than the NGO, the police also emphasized the limits of law enforcement in solving the "problem." They articulated a perspective that placed the management of prostitution largely within the domain of NGO intervention. Interestingly, this echoes the way lawmakers and women's organizations had imagined the law being implemented in 1956: through active and engaged non-state actors rather than law enforcement alone.

The police chief emphasized during our interview that law enforcement, with limited time and personnel, had to focus on crime. These "women children issues" (in his words) were more of a "social service." Rescues could only be part of the response, and the rest was the work of NGOs and other state agencies: "The girls were adamant that we should have let them be. I could not disagree; I cannot say we are giving them a good life." He implied that the task called for a social and moral responsibility (through efforts such as counseling and rehabilitation), which was beyond the mandate or capacity of the police. Undeniably, this construal of responsibility stems partly from a lack of time, resources, and interest in "women children issues." However, the police's refusal to take further responsibility also gestures back to the postcolonial law's heavy dependence on NGOs to deal with the prostitution "problem."

Training Judicial Officers in New Delhi

At an NGO-led training session for judges organized by the Delhi government, NGO presentations used a combination of legal expertise and emotional appeals. While addressing the judges, NGO representatives drew upon Indian law (including the ITPA and other statutes) to provide details of provisions and precedents that could be used to prosecute traffickers. Mr. Rai,²² a representative from the NGO from my first vignette, was both a pedagogue (educating the judges about new developments in Indian law) and a rights advocate (providing them with what he presented as the victims' perspective) at this session. In their presentations, NGO representatives like Ms. Kumar, a lawyer for a prominent NGO, also encouraged judges to interpret the ITPA in a particular way— that is, to perceive women in the sex trade as victims

22. All names changed to protect the anonymity and confidentiality of my respondents.

and not criminals, notwithstanding the ambivalence in its provisions and regardless of their claims of consent.

In urging the judges to bring justice to the victims, NGOs balanced this legal expertise with emotional appeals through documentary films, news clips about rescue operations, and survivors' accounts. Mr. Rai's NGO brought in a guest speaker to the training session. Kiran was a survivor that the NGO had rescued from a brothel. She now worked with the NGO to rescue and counsel other women and girls. Mr. Rai explained with pride how Kiran had identified her own trafficker while participating in another rescue intervention. He told the audience that the NGO had assisted the prosecution in the case, resulting in a conviction. Kiran then told the judges how she was trafficked to a Delhi brothel and managed to escape, highlighting the plight of those forced into the sex trade by traffickers taking advantage of their poverty with promises of money, jobs, and marriage. She explained how difficult it was for victims to escape, describing threats and violence from pimps and brothel madams who forced them into prostitution and threatened to harm their children. Kiran urged the participating judges to pay heed to her and help victims. She ended with a deeply emotional appeal: "There is not just one Kiran there. There are many girls who are being kept there against their will. Many girls want to get out of there. But who will listen to us?"

Kiran's account had a profound impact on the attending judges. Many appeared visibly shocked. They engaged in hushed conversations about their visceral reactions to her story. However, not all of the judges were convinced about the victimhood of sex workers, especially in cases where they were perceived to be earning a good living. During the interactive session after the training, there was a heated discussion on the question of "call girls" or escort services operating out of farmhouses in southwestern Delhi. Some attending judges pointed out that many of these "call girls" were "foreigners" (often women from former Soviet countries) and that some of them had been arrested by the police under the ITPA's solicitation clause. In response, Ms. Kumar (the NGO lawyer) and a High Court judge (who had worked closely with NGOs in past cases and was conducting the training along with NGOs) urged the attending judges to change their mindset and treat "call girls" as victims. "But some of these so-called "victims" are earning in lakhs!"²³ commented one magistrate. "She can still be a victim," was the response. "But what if she is a high-profile call girl and makes a statement (about being complicit in the racket)? Shouldn't we prosecute her?" he persisted, supported by some colleagues providing an affirmative hum. "You should not be prosecuting her at all! Treat her like a victim!" admonished the High Court judge. The "call girl" discussion thus illustrates how NGOs and legal experts working closely with them push against judicial interpretations of the ITPA that reflect its moral ambivalence toward prostitution.

Also in response, Ms. Kumar from the NGO urged the judges to "look beneath the surface." She said she had learned from her experience working with trafficked women that they had become so accustomed to deception from everyone around them that they might deceive the court by saying that they had chosen this trade. In making this claim, she not only discounted alternative possibilities to the anti-trafficking narrative but also framed NGOs as experts with the knowledge and experience to reveal the "real" truth of

23. One lakh Indian rupees are roughly equivalent to \$1,600.

victimhood that many sex workers might deny. Similarly, Mr. Rai, the other NGO representative, framed the survivor's narrative by emphasizing the NGO's role in facilitating rescues and convictions.

CONCLUSION

What role does India's anti-prostitution law envisage for a certain type of NGO intervention? What do US-funded anti-trafficking NGOs do with Indian law? For the anthropologist of law, approaching law as part of a broader field of government facilitates several interrelated analytical conclusions and methodological insights. First, ethnography can be situated at an intersection of law and NGO intervention, revealing how the projects of postcolonial anti-prostitution law and a US-led anti-trafficking campaign act, both in tandem and in tension, to shape contested meanings around prostitution in the Indian socio-legal context. Second, ethnography and legal history are brought together, demonstrating that the law has always been imagined with, and "invaded by," the intervention of NGOs committed to curbing prostitution. The postcolonial anti-prostitution law is shaped by the work of a certain type of NGO intervention, which it in turn depends upon and legitimizes. Third, the legal complex around prostitution has expanded in scope from the late colonial period to the current context of neoliberal governmentality due to NGOs' donor funding and increased global media and policy attention to the issue. Fourth, formal law is as important as ever at the center of this expanding legal complex, shaped by the overlapping contexts of postcoloniality, neoliberalism, globalization, and sexual humanitarianism and contested by sex worker rights activism. Situating ethnography at the intersection of anti-prostitution law and anti-trafficking NGOs illuminates how they co-constitute each other in the process of shaping contested meanings around prostitution. Fifth, though NGOs seek to reframe rather than merely cite the law when they frequently invoke it, this reframing is never easily or completely compliant with an anti-trafficking agenda. Ethnography shows that, while NGOs mobilize legal expertise, affect, and morality toward their efforts to reframe Indian law, Indian legal actors respond with their own interpretations and moral frameworks, which are often in tension with an anti-trafficking agenda rooted in sexual humanitarianism.

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