

Law, NGOs, and the Governance of Prostitution in India

CONTEXTUAL FRAMEWORK

The US-Led Anti-Trafficking Regime

Since the early 2000s, India has been a prominent focus of concerns about sex trafficking in the Global South. From the US State Department's annual *Trafficking in Persons (TIP) Reports* to a slew of well-publicized media reports and documentary films on the topic, Indian sex workers are depicted as helpless, virginal girls abducted from remote villages, and forced or duped into prostitution. Since 2002, India has ranked poorly on the State Department's *TIP Report* (an annual report mandated by US anti-trafficking law: The Victims of Trafficking and Violence Protection Act of 2000), which ranks countries based on the US' assessment of their anti-trafficking efforts, with repercussions on the flow of aid dollars.

Spearheading global concerns about sex trafficking, and using the *TIP Report* as an instrument of global governance, the US State Department has taken it upon itself to strengthen legal responses to the issue, especially in Global South countries.¹ Sociolegal scholars studying the impact of the *TIP Reports* have described them as an instance of the US playing "global sheriff" (Chuang 2005) and as a "seductive form of knowledge" that functions as an instrument of global governance (Merry 2016), in response to moral anxieties rather than factual accuracy (Weitzer 2007).² 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 2018).

Beyond the US wielding its geopolitical stick through the *TIP Reports*, the politics of representation through which India features in the *Reports* bear discussion.

¹ In 2004, the Bush administration gave funding priority to Brazil, Cambodia, India, Indonesia, Mexico, Moldova, Sierra Leone, and Tanzania (*TIP Report* 2005: 27).

² See also Blanchette et al. (2013) for a similar analysis of moral panics in Brazil.

Indian girls and women are frequently the faces and narratives of sex trafficking in the *Reports*, which recycle colonial-era assumptions, bereft of context and nuance,³ about vulnerable, victimized Third World women.⁴ The *Reports* also reprise a colonial-era legal orientalism that assumes and bemoans the inferiority, corruption, and inefficiency of non-Western legal systems.⁵ They echo the assumptions about corruption and a lack of transparency and accountability that have become a morality-laden, colonially derived explanatory trope for Global South states in global development-speak (Mathur 2017: 1801).⁶ The reason the *TIP Reports* provided for placing India on a Watch List in the early to mid-2000s is its status as a country that has a significant number of victims of human trafficking but has “failed to provide evidence” of increasing efforts to combat it.⁷

The problems the *TIP Reports* identify with the Indian legal system include both a lack of resources and a lack of commitment. Citing NGOs as sources, the *Reports* note that the Indian police are overburdened, underfunded, and lack necessary resources (2018: 223). Similarly, they note (again citing NGOs) that Indian judges and courts do not have the resources to “properly prosecute cases” (2016: 201). The *Reports* criticize the Indian legal system for its “overburdened” courts, “a weak understanding of the laws, and lack of commitment and awareness (of human trafficking) by some local authorities” (2011: 189). Though recent *Reports* have 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 (2016: 200).

In critiquing the US *TIP* discourse here, my aim is to shift attention away from India’s depiction in global media and policy circles as a hotbed of trafficking where the state cannot keep up with anti-trafficking priorities set up in the Global North. The book focuses, instead, on the ways in which the Indian state, NGOs, and the anti-trafficking donor regime converge, in collaboration and in contradiction, to act upon prostitution. As I explained in the Introduction, the book challenges the prevalent assumptions and preferred solutions of the global anti-trafficking regime by revealing an *excess* rather than lack of legality in these intersecting interventions. As the book

³ As discussed by several postcolonial feminist scholars, such as Kapur 2005; Mani 1998; Mohanty 1984; Sinha 2006; and Spivak 1988.

⁴ For a trenchant critique of such representations in the *TIP Reports* and their reductive assumptions about the sex trade, sex workers, and “saviors,” see Baker (2013).

⁵ For critiques of such forms of legal orientalism, see, for example, Chimni 2006; Darian-Smith 2013; Hussain 2003; Rajagopal 2008; and Ruskola 2013.

⁶ Nayanika Mathur discusses how an “excessive focus on corruption detracts from the core issues of how the Indian state actually functions, what it does, when, how, and why” (2017: 1801). In a similar vein, I treat such explanatory tropes as the geopolitically driven, colonially derived forms of power/knowledge that they are.

⁷ In 2012, the *TIP Report* moved India off the Watch List to Tier Two, on account of India having ratified the United Nations (UN) Convention against Transnational Organized Crime, and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons in 2011.

will show, their convergence intensifies a procedural bureaucracy across law enforcement, criminal justice, and social welfare as multiple agendas and agencies seek to rescue, protect, “counsel” and rehabilitate women, and prosecute traffickers.

Though the *TIP Reports* evaluate government efforts, they rely on NGOs for information (Merry 2016). The concerns they list indicate how heavily the US leans on NGOs as sources of information and agents of change. It is primarily through NGOs that a US-driven, globally pervasive anti-trafficking campaign seeks to shape the Indian legal system’s responses to prostitution (qua sex trafficking). As I explained in the Preface, the Indian government has expressed its resistance to US interference via the *TIP Reports*. In this context, the State Department thus relies heavily on Indian NGOs to provide information, carry out its agenda, and work with Indian state agencies and legal actors to do so. Along with producing the *TIP Reports*, the US State Department funds anti-trafficking NGOs in India (and other parts of the Global South) to engage in a range of donor-driven interventions, including training Indian legal actors to treat prostitution as sex trafficking, 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. It is through these NGOs that the US-driven anti-trafficking industrial complex seeks to “fix” the Indian legal system, which has, in fact, long had its own anti-prostitution law through which state and nonstate actors intervene in the sex trade.

Law and Prostitution in Postcolonial India

India has had a long history of legal reform and social welfare measures devised, and attendant discourses mobilized, to deal with the “problem” of prostitution. Its postcolonial law and legal history present a complex and morally ambivalent imagination of prostitution. British feminists, Indian nationalists, and Indian women’s groups 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 sexual needs of 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 across India during this time, influenced by a range of motivations: transnational anxieties about a sexual traffic in white women, entwined 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.⁸ This intersection of multiple concerns around prostitution is seen across global contexts.⁹ Owing to an expansive colonial

⁸ As discussed in detail by several historians of colonial Britain and India, including Legg 2014; Levine 2003; Tambe 2009; Walkowitz 1980; and Whitehead 1995.

⁹ For example, in English Canada, where moral reform projects intended to curb sexual exploitation eventually became primarily centered on the morals of young working-class women (Valverde 2008: 168, 176).

definition of prostitution, myriad historical and sociopolitical currents have shaped the Indian legal framework on prostitution.¹⁰ Indeed, the term “prostitute” had an excessive archival presence in colonial India, where the concept was deployed to govern, explain, and describe social life and define new modes of inquiry (Mitra 2020: 18). It was applied with definitional fluidity to a wide range of women stigmatized as sexual deviants, marked as aberrant, sexually unchaste, outside of respectable society, socially ill, criminally dangerous, or sexually unbound (6).

Beyond prostitution, India’s colonial history of Western intervention to construct and save vulnerable female subjects, and its postcolonial assumption of paternalism and protectionism toward marginalized women, make it a productive site from which to explore how the global furor about sex trafficking in the past two decades maps on to historical constructions of gendered victimization. Feminist scholars have discussed the colonial zeal to “save” Indian women from what were construed as the victimizing customs of their native culture, and negotiations of these concerns by late nineteenth-century social reform efforts by both colonizers and Indian nationalists.¹¹ At a later historical juncture, scholars consider the Partition of the subcontinent in 1947–1948 at the time of India’s independence a significant moment in the emergence of the figure of the abducted woman whose displacement and sexual violation ruptured families and kin networks and rendered her a victim in need of legal remedies and welfare from the state.¹² This complex legacy of concerns shapes the laws, institutions, and practices of the postcolonial Indian state, preceding the current wave of anti-trafficking efforts and partly incorporating them into a broader paternalism and protectionism toward marginalized women. Such paternalism remains integral to the identity of the postcolonial nation-state (Sharma 2008; Sunder Rajan 2003), now reinforced and intensified by NGO-mediated humanitarianism (Walters 2020).

The UN Convention against Trafficking in 1949 conceptualized a “traffic” in persons and the “exploitation of prostitution” as intrinsically linked.¹³ Having ratified this UN 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 UN Convention.¹⁴ The SITA’s definition

¹⁰ Indian reformers and nationalists in the late colonial and early post-colonial periods also launched moral campaigns and legislative reform that often aligned with colonial and missionary civilizing logics to oppose practices categorized as “traditional” forms of prostitution (such as *devadasi* and *tawaif* performances), targeting them as “barbaric” customs that victimized Indian women. See, for example, Arondekar 2012; Joshi 2001; Kannabiran and Kannabiran 2003; Oldenberg 1990; Soneji 2011; Srinivasan 1985.

¹¹ Mani 1998; Sinha 2006; Spivak 1988.

¹² Butalia 2000; Das 2007; Kapur 2010.

¹³ Unlike its successor, the UN Protocol against Trafficking of 2000, which addresses the exploitative aspects of prostitution, and does not repeat the explicit condemnation of prostitution (Dottridge 2007).

¹⁴ This acronym interestingly also spells the name of Sita, a mythical figure from the Hindu epic, the *Ramayana*, who was married to Lord Rama, abducted by the demon king Ravana, and rescued by Lord Rama and his army. In the *Ramayana*, and in the political and public discourse that often

of “prostitution” as the sexual exploitation or abuse of persons for commercial purposes echoed the 1949 UN Convention. As a legislation, it built upon late colonial anti-prostitution laws, and also served as postcolonial Indian lawmakers’ response to the global anti-trafficking agenda of the time.

Legislative debates around the SITA in 1956 illuminate how sex trafficking was only one of several concerns around prostitution voiced by lawmakers in the newly independent nation. Prostitution’s very existence, in allowing women to become “fallen” and “destitute,” was seen to impede India’s ability to establish itself as a “modern” nation (Lok Sabha Proceedings 1956: 1494–1496). In 1986, the SITA was amended and renamed the Immoral Traffic (Prevention) Act (ITPA), reprised in this book’s title. It retains the SITA’s moral ambivalence around prostitution, observed in the legislative debates of 1986, judicial interpretations of the law and perceptions of prostitution, and the views of the police implementing it (Solanki and Gangoli 1996).

The ITPA, as postcolonial India’s federal anti-prostitution legislation, defines neither trafficking nor even “immoral traffic” (the term used in its title). It defines “prostitution” as sexual exploitation, while simultaneously recognizing concerns about the threat “prostitutes” pose to “public order, decency, and morality.”¹⁵ As it currently stands, the ITPA criminalizes those who solicit sex and those who facilitate the sale of sex, as well as those who exploit women in prostitution, thus blurring the line between victim and criminal. It treats sex workers as both criminals to be arrested and penalized for soliciting customers for sex and victims to be rescued and provided care and assistance (Walters 2020: 314). Its ultimate objective is to curb prostitution (Law Commission Report 1975: 6).¹⁶ In equating prostitution with sexual exploitation from which women must be removed, protected, and

deploys it in everyday contexts, Sita is characterized as a virtuous, victimized, abducted woman who stands for purity and chastity and whose rescue and return to her husband and kingdom becomes the primary motivation for his war against the demon king. The legislative debates around the SITA and subsequent amendments are rife with Indian legislators recognizing this chance similarity between the acronym and the figure of Sita as emblematic of the ideal, respectable, but vulnerable Indian woman whose virtue is besmirched by abduction and must be restored by her rescue (Legg 2014; Solanki and Gangoli 1996).

¹⁵ I use the term “prostitute” to reference the term used in Indian law, not as my own preferred category to reference sex workers.

¹⁶ The Law Commission of India’s 1975 Report reflects how centrally the ITPA is concerned with criminalizing solicitation and “immoral” conduct in public spaces:

The Act, thus, stops short of banning prostitution absolutely, and deals only with certain specified and concrete forms of immoral conduct. The ultimate object is, no doubt, to check prostitution ... The philosophy reflected in the Act is that the law should stop only where the vice either assumes a commercialized form, so that public policy requires its suppression, or appears in a public place, so that it constitutes a public nuisance. (1975: 6)

The Act is, therefore, concerned not with prostitution itself but with the manner in which the activities of prostitutes and of those associated with them which offend against public order and decency, expose the ordinary citizen to what is offensive or injurious, or involves the exploitation of others. (Law Commission Report 1975: 7)

reformed, the ITPA neither recognizes nor denies the possibility of consensual sex work outside of the framework of “immorality.” Its legal imagination of prostitution in India is as much about middle-class unease at the social malaise and public nuisance that women selling sex are seen to cause, as it is about their perceived victimhood. Drawing upon ethnography, this book will demonstrate how this moral ambivalence, echoed in the ways state agents, legal actors, and NGOs interact with sex workers, continues to shape the current Indian sociolegal context, even as it is heavily impacted by transnational anti-trafficking campaigns.

The acts 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 near a public place, and seducing or soliciting for the purpose of prostitution. Many of these acts are potentially (but not necessarily) exploitative toward sex workers (e.g. if they were forced into prostitution, if someone is living on their earnings forcefully or with duress, and if they are detained in a brothel).¹⁷ However, as the Law Commission of India points out, the statute is centrally concerned with “immoral” conduct in public spaces (1975: 7). It primarily deals with prostitution rather than trafficking.

The moral ambivalence toward prostitution that frames the ITPA and its implementation became especially evident in an order of the Indian Supreme Court in a public interest litigation,¹⁸ to address the “problem of sex workers in the country.”¹⁹ Some opinions articulated by the Justices authoring the order are worth quoting, to illustrate how the morally ambiguous image of the fallen woman and the victim deserving sympathy and assistance are conjured within the Indian legal framework:

A woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body. (pp. 2–3)

¹⁷ Reading the ITPA along with critical commentaries on it clarifies the following points. Prostitution itself is not illegal, but several activities around it which enable the sale of sex are. Technically, an individual sex worker selling sex consensually to earn only for herself, in a private and not public place, is not criminalized. However, agents or intermediaries are still penalized for benefiting from her prostitution. The intent or mere act of sexual intercourse for commercial gain is not criminalized. However, causing someone’s entry to the sex trade or detaining them in a brothel, outward manifestations of the sex trade such as “seducing or soliciting,” and all commercial aspects of it, such as running a brothel – are penalized (Kotiswaran 2001; Law Commission 1975; Sarode 2008; Thorat 2002). Clauses penalizing those who “live on the earnings” of a sex worker also have a punitive effect on sex workers by punishing not only pimps, agents, intermediaries, or traffickers, but also sex workers’ husbands, lovers, partners, adult children, and other kin with whom they have intimate attachments (Thorat 2002).

¹⁸ For an explanation of public interest litigation in India, see Chapter 6.

¹⁹ The Supreme Court of India’s order in the case of *Budhadev Karmaskar vs State of West Bengal*, Criminal Appeal No. 135 of 2010, dated August 2, 2011.

Our effort in this exercise is to educate the public and inform them that sex workers are not bad persons, but they are unfortunate girls who have been forced to go into this flesh trade due to terrible poverty. Hence society should not look down upon the sex workers but should have sympathy with them. (p. 6)

The higher judiciary in India thus articulates prostitution as a “problem” caused by “terrible poverty,” to be addressed by social welfare and rehabilitation measures to help “unfortunate” women who have fallen to the extent of selling their bodies. On the other hand, anti-trafficking NGO efforts funded by the US State Department often focus on a prosecutorial approach, where the blame for trafficking is placed on the criminality of individual offenders. These represent two different frameworks to address prostitution – one focusing on the state’s responsibility for social welfare (to help “unfortunate girls”) and the other on the criminal justice system. Both frameworks come together in the sites and processes where this book will take its readers. The book shows how, along with their relatively recent donor-driven efforts to work with the police and prosecution (Chapters 2–4), anti-trafficking NGOs support Indian state agents and legal actors at sites and processes where the ITPA’s intent to reform “immoral” women is manifested (Chapters 5 and 6).

The ITPA lays out the following procedures to both reform and assist prostitutes,²⁰ in which NGOs have long participated. It empowers the police to “remove” women from brothels – a provision which anti-trafficking NGOs reframe as a provision for rescue (Chapter 2). It also mandates judicial inquiries with women thus removed from brothels to evaluate their “character,” “antecedents,” and “genuineness,” and the “suitability” of their families to take charge of them (Chapter 5). These inquiries lead to decisions about whether to send the women home to their families or remand them to state protective custody (Chapter 6).²¹

Anti-trafficking NGOs in India

India has a long history of nonstate actors and elite women’s groups being heavily involved in curbing prostitution from a deeply moralistic, gendered, and paternalist social welfare perspective. From colonial to contemporary times, nonstate social workers have been an extended entity of governance whom the Indian state relies upon for assistance in curbing prostitution. The late colonial state in India actively sought the assistance of an embryonic and “ruthlessly reformatory” colonial civil society (including Indian women’s reform groups as well as imperialist feminists) to remove women from brothels, reform them, and manage rescue homes (Legg 2014).

These nonstate actors were also actively involved in shaping the colonial-era predecessors of the ITPA. The efforts of privileged Indian women to save and reform

²⁰ See footnote 15.

²¹ As I elaborate in Chapter 6, the statute prescribes protective custody even in the case of rescued adult women, regardless of their consent.

women in the sex trade have long been entwined with the need to define their own respectability vis-à-vis poor unfortunate “fallen” women needing guidance toward a more dignified life (Dell 1999). In the decade after India’s independence, women social workers and elite women’s organizations played a key role in drafting the SITA and actively pushed for its enactment, 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 women social workers’ role in implementing the SITA through a special social welfare bureaucracy (De 2018; Lok Sabha Proceedings 1956). Contemporary Indian anti-trafficking NGOs, as Prabha Kotiswaran points out, continue to be persuaded by a combination of cultural nationalist and conservative politics and radical feminism (2018a).

India’s anti-prostitution law thus carves out space for nonstate actors committed to curbing prostitution, into which contemporary anti-trafficking NGOs have smoothly stepped. The ITPA requires “respectable” members of “social welfare organizations” to assist the state in removing women from the sex trade, and in subsequent procedures to process, question, detain, protect, and reform them. In my ethnographic research, the role of anti-trafficking NGOs was shaped only in part by their participation in a globally pervasive donor-driven anti-trafficking agenda. It was shaped, equally, by the ITPA’s dependence upon and legitimization of a certain kind of nonstate intervention committed to curbing prostitution within a larger, contested field of meanings and politics around prostitution that includes sex worker rights activists’ efforts to oppose the law. The book will show how both state actors and anti-trafficking NGOs have found ways to draw upon the ITPA’s specific provision for “respectable” and “experienced” women social workers “in the field of suppression of immoral traffic in persons,”²² to assist state agencies in governing prostitution.

The governance of prostitution has expanded in scope from the late colonial period to the current context of neoliberal governmentality, owing to NGOs’ donor funding and increased global media and policy attention on the issue in the past two decades. Across different global contexts, there has been a multiplication of governmental bodies in the fields of social welfare and development. The growth of contemporary NGOs 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). Since the 1980s, international development agencies such as the World Bank began to contract aid out to NGOs in Global South countries. In this climate, NGOs became central to the global “aid industry” in the fields of international development and humanitarian work (Schuller and Lewis 2017).

²² Specified in Section 17(5) of the ITPA.

In South Asia, as in other Global South contexts, the development sector has seen an immense growth of NGOs funded by foreign governments and aid agencies. Western aid organizations prefer to work through NGOs, whom they see as more accountable, to bypass the perceived bureaucracy and corruption of state agencies (Bernal and Grewal 2014; Schuller 2007). Neoliberalism in this context has meant a greater involvement of NGOs in activities formerly carried out by state agencies.

Anti-trafficking NGOs bring a new framework of global sexual humanitarianism to existing moralistic, gendered, and paternalist social welfare perspectives and legal provisions against prostitution in India. The law and order and criminal justice focus of contemporary anti-trafficking NGOs, driven by US donor priorities, is new, as is their professionalization and capacity to attract foreign funding.

Most anti-trafficking NGOs I encountered in New Delhi and Mumbai started working on sex trafficking in the late 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 G/TIP office of the US State Department was the largest current or past donor for many of these NGOs, their backgrounds, motivations, and other sources of funding were complex and diverse.²³ Though the anti-prostitution positions of most of these NGOs align with those of abolitionist or radical feminists who conflate prostitution with sex trafficking and do not support voluntary sex work, most NGOs I encountered did not refer to themselves as feminist organizations or make explicitly feminist claims. Some NGOs, including the New Delhi-based NGO whose work I discuss in Chapters 2 and 3, work not only on sex trafficking, but also on a broader set of human rights, child rights, gender violence, and gender justice issues, and a broader range of trafficking issues beyond sex trafficking to labor trafficking in other sectors, such as domestic work.

Among the large anti-trafficking NGOs I encountered in Mumbai (discussed in Chapters 4–6), two were Christian organizations, staffed by Indian Christians (who form a significant minority in Mumbai) and well funded by faith-based organizations based in the US. Though these faith-based anti-trafficking NGOs were somewhat newly established, in the early to mid-2000s, there were also two large nonfaith anti-trafficking NGOs active in Mumbai, which had received funding from the US as well as other Indian and foreign sources. Unlike the New Delhi NGO whose work I track in Chapters 2 and 3, these four anti-trafficking NGOs in Mumbai were focused exclusively on sex trafficking.

Some anti-trafficking NGOs I encountered in both cities had a combination of funding from smaller US donors, church communities, European sources, the Indian government, and the Japanese funding agency I mentioned in the Introduction, which had previously worked in Cambodia and had recently started

²³ G/TIP is the Office to Monitor and Combat Trafficking in Persons, which coordinates the US' global and domestic anti-trafficking efforts.

funding Indian NGOs. This agency was funding two of the NGOs I regularly encountered in Mumbai that worked on facilitating the prosecution of traffickers and the economic rehabilitation of rescued sex workers. It was also funding a startup enterprise providing livelihood skills training and employment to sex workers detained at the Mumbai shelter.

Law, Prostitution, and NGOs in India: A Contested and Evolving Field

To establish the contexts framing Indian anti-prostitution law, anti-trafficking interventions, and new legal developments in India, a few further points deserve mention. First, though the NGOs whose work I observed were primarily US-funded, the US is not the only voice or player in contemporary global anti-trafficking discourse and policy. There are other global influences shaping the Indian sociolegal context – connected to the US-driven anti-trafficking campaign, given the global circulation of its discourse and interventions, but also bringing their own experiences and perspectives to the anti-trafficking agenda. The small Japanese funding agency partnered with several NGOs in both Mumbai and Kolkata. They wished to replicate the anti-trafficking work they had done in Cambodia in India, by funding NGOs to support rescued women to testify. As I mentioned in the Preface, another globally powerful legal framework that has shaped Indian NGOs' law reform efforts, including an unsuccessful effort to amend the ITPA in 2006, is the Swedish model that (like the US) conflates prostitution and trafficking. Its main approach has been to criminalize clients while decriminalizing the sale of sex by sex workers.²⁴ This amendment was also reportedly shaped by India's poor ranking in the US *TIP Reports*, and the efforts of Indian anti-trafficking NGOs and government agencies they worked closely with to improve India's ranking on the *Reports* by showing that India was enacting stricter penalties against perpetrators of trafficking.²⁵

Second, foreign-funded anti-trafficking NGOs are not the only driving force shaping the discourse around prostitution in the Indian sociolegal context. Though the ITPA authorizes only what it sees as "respectable" anti-prostitution NGO intervention, there is a larger, contested field of meanings around prostitution. Sex worker rights activists have made strong and concerted efforts in the past two decades to oppose the ITPA's criminalization of many aspects of prostitution. Though the ITPA denies them the legitimacy it provides anti-trafficking NGOs, sex worker rights groups in India have pushed for the law to be repealed and amended, alongside a larger repertoire of social movement strategies as subaltern citizens

²⁴ For a discussion of how the Indian sex worker rights movement played a significant role in preventing an amendment to the ITPA shaped by the Swedish or Nordic model of criminalizing clients from being passed in 2006, and the counterarguments they made about how this proposed amendment would affect their livelihoods and harm HIV/AIDS prevention efforts, see Kotiswaran (2014) and Lakkimsetti (2020).

²⁵ As analyzed by Kapur (2007), Kotiswaran (2011a), and Shah (2013).

(Kotiswaran 2013a). Recent ethnographic work by feminist sociologists in India has explored how sex worker groups' involvement with HIV/AIDS interventions efforts has boosted their collectivization efforts, especially since the mid-2000s, and reconfigured their relationship to the Indian state through increased political mobilization, rights claims, and advocacy for legal reform (Lakkimsetti 2020; Vijayakumar 2021). Sex worker rights groups have called for decriminalizing consensual sex work and recognizing its legitimacy, while launching their own efforts to prevent trafficking in the sex industry. They have also critiqued the often-misguided interventions of foreign-funded NGOs targeting voluntary sex workers in the name of curbing sex trafficking, through forced rescues that do not distinguish between voluntary and trafficked sex workers, adopt a carceral and paternalistic approach, and negatively impact HIV/AIDS intervention programs in India.²⁶

I mention the sex worker rights groups here to indicate that beyond NGO-led interventions, there is a richly contested political field around prostitution shaping the Indian sociolegal context.²⁷ However, anti-trafficking NGOs have had a disproportionate influence on the law and its implementation. In the sites and procedures where I conducted my research, anti-trafficking NGOs, given their ready alignment with the law's description of "respectable social welfare organizations," occupied and mobilized a space that has not been made available to sex worker rights groups. This gendered politics of legitimacy and respectability extends beyond the Indian sociolegal context to 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 rights and agency (Miller 2004).

Third, though at the time I conducted most of my ethnographic fieldwork, Indian law did not address "trafficking in persons" explicitly, an amendment to Indian criminal law in 2013 adopted the UN Protocol's definition of trafficking and made it an offense.²⁸ This was not an amendment to the ITPA, but part of comprehensive law reform efforts,²⁹ prompted at the time by public furor over the widely reported and condemned New Delhi gang-rape and murder incident of 2012.³⁰ Since then, though the ITPA still stands as an anti-prostitution law at the time I write this, a series of new draft legislations have also been proposed and circulated (in 2016,

²⁶ See Ahmed and Seshu 2012; Dasgupta 2014, 2019; Ghosh 2008; Govindan 2013; Kapur 2007; Kotiswaran 2011a; Shah 2014; Walters 2018.

²⁷ A more detailed engagement with the ideological divide between anti-trafficking NGOs and sex worker rights groups – about whether prostitution is inherently exploitative or ought to be recognized as a legitimate form of work for those who do it consensually – is outside the scope of this book, though I have discussed my own position briefly here.

²⁸ See Introduction, footnote 9.

²⁹ The incident involving the gang-rape and eventual death of a young woman on a bus in New Delhi led to nationwide protests and substantial global attention to sexual violence in India, resulting in comprehensive reforms of the criminal law on violence against women.

³⁰ For a lucid discussion of this amendment, the adoption of the UN Protocol's definition, and the inclusions and exclusions involved, see Kotiswaran 2013b.

2018, and 2021) to address human trafficking (including several forms of non-sex sector trafficking), which is not defined or comprehensively addressed by the ITPA. NGOs, which have played such a central role in shaping and implementing the ITPA, have also significantly shaped these new bills. I mention these developments here to highlight anti-trafficking NGOs' expanding legal efforts beyond prostitution to other forms of trafficking, and will return to them in the Conclusion.

CONCEPTUAL FRAMEWORK

Immoral Traffic builds upon cross-disciplinary engagements with NGOs, law, gender, and the state in India and globally. It examines law's significance to the state's governance of sexuality – in particular, its concerns about public order, decency, and morals, and anxieties around nonnormative sexual identities and practices. The book takes as a point of entry insights from feminist historians and sociologists of India about sexuality's "constitutive effect" on the state, and about the state's "pornographic imagination" of those deemed sexually deviant as objects of surveillance.³¹ Jyoti Puri argues, persuasively, that "sexuality's seeming threat to society is used to produce and affirm the role of the state" (2016: 11). Indeed, as Puri also notes, the governance of sexuality perpetuates and reanimates the role of the state despite states' retreat from some aspects of social life in neoliberal contexts (2016: 5).

This book extends the analysis of sexuality and governance beyond the state by placing postcolonial law in a broader field of neoliberal government, including state agencies and foreign-funded NGOs acting upon prostitution. It takes forward legal anthropology's long tradition of exploring the complex ways in which law is embedded in wider social processes (Starr and Goodale 2002). The NGO–law relationship I observed in India resonates with legal anthropologist Sally Falk Moore's 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" (1973: 720). *Immoral Traffic* brings out how, on the one hand, anti-trafficking NGOs work within the parameters set out by Indian law, and on the other hand, they also "invade" it (to quote Moore) and treat it as malleable in their efforts to reframe it. I show how, for anti-trafficking NGOs, the malleability of Indian anti-prostitution law lies both in the space it carves out for a certain type of nonstate actor and in its moral ambivalence toward prostitution.

New directions in legal anthropology retain the subfield's focus on local legal institutions and procedures, while expanding its scale to increasingly global sites and investigations of transnational legal processes.³² Law and society scholars have also called for a more expansive and global perspective beyond state-centric or

³¹ Hinchy 2019; Lakkimsetti 2020; Puri 2016; Tambe 2009.

³² See, for instance, Clarke 2009; Goodale 2009; Merry 2000, 2006, 2016; Mertz and Goodale 2014; Starr and Goodale 2002; Wilson 2001.

state-framed interpretations of law (Darian-Smith 2013; Massoud 2015). *Immoral Traffic* pursues these new directions with an attentiveness to multiple scales of governance and the implementation of law by both state and nonstate actors, while remaining committed to the minutiae of legal practices and spaces. While the global anti-trafficking donor and policy regime often frames my analysis (as it does in my description of the Mumbai Court in the Introduction), I situate the governance of prostitution deeply and broadly within the Indian sociolegal context – the practices, institutions, and moral frameworks of Indian law, and the cultures, political economy, and bureaucracy of law enforcement, criminal justice, and state welfare agencies.

Law and society and critical NGO studies scholars have shown how humanitarian actors and international aid donors seek to intervene in Global South states by building up and even undermining legal institutions. Of particular note are critiques of how the “export” of law has become an integral part of humanitarian efforts in the Global South (Massoud 2014) and how donor-driven NGOs, despite good intentions, are eroding Global South states’ capacities to govern (Schuller 2009). While informed by these critiques, *Immoral Traffic* is not set in a postconflict or aid-dependent state where new legal institutions are being set up, or where NGOs are operating in lieu of state intervention. It is based on ethnographic research in legal institutions in postcolonial India with complex histories, logics, processes, and politics, which both limit the possibilities of donor-driven NGO intervention and are shaped by it.

Finally, the book is in dialogue with interdisciplinary feminist scholars who have critiqued anti-trafficking campaigns and provided nuanced ethnographic insights on the complexities of sex workers’ lives. Unlike these studies, however, this is not an ethnography of sex work. Nor is it an ethnography of sex trafficking, or even of anti-trafficking interventions alone. It explores the convergence, collaboration, and contentions between the agendas, projects, and agents acting upon prostitution, and the ways in which (both trafficked and voluntary) sex workers navigate and resist them.

NGOs, the Indian State, and a “Governmentalized Legal Complex”

Anthropologists leading the field of critical NGO studies have examined the central role NGOs play in neoliberal government, mediating between marginalized populations, state institutions, and transnational and multilateral agencies.³³ They connect the growth of NGOs in the Global South to the impact of globalization and neoliberalism on postcolonial states (Bernal and Grewal 2014; Schuller 2007, 2009). As they note, what makes NGOs anthropologically interesting is that they

³³ See, for example, Alvarez 1999; Bernal and Grewal 2014; Lashaw et al. 2017; Leve and Karim 2001; Fisher 1997; Gupta and Sharma 2006; Kamat 2004; Karim 2011; Mertz and Timmer 2010; Schuller 2007, 2009; Sharma 2008.

are not so much separate from or dependent on states as they are entwined with them (Bernal and Grewal 2014: 425).³⁴ A wealth of feminist scholarship on South Asia has critically examined NGOs focused on development, women's welfare and empowerment, and, more recently, LGBTQ+ issues and HIV/AIDS. Their work has provided important insights on the new governmentalities, claims, and gendered subjectivities emerging in the shifts NGOs have helped to bring about in marginalized women's relationship to the Indian state.³⁵ This book expands these contributions through a law and society lens, examining NGOs' efforts to glue (Schuller 2009) Indian anti-prostitution law and a donor-driven anti-trafficking agenda together.

In examining the role of NGOs in neoliberal India, *Immoral Traffic* also takes careful note of the work of anthropologists who have called into question generalized assumptions about the state, welfare, and neoliberalism (Gupta and Sharma 2006; Sivaramakrishnan and Gupta 2010). Especially generative here is the argument that unlike Western contexts where neoliberal policies have replaced welfare programs, both are propagated simultaneously in India (Gupta 2012), not by a shrunken state that has dismantled welfare, but by a multiplication of governmental bodies (Sharma 2008: 59). Indeed, in India, nonstate 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 history of legal and moral civil society activism (77). However, in a context where the protection of marginalized populations, women in particular, has been integral to the nation's postcolonial identity, the devolution of welfare responsibilities to nonstate actors may be partial at best.³⁶ Anthropological work across the state and NGOs in India thus emphasizes that global neoliberal trends play out differently in postcolonial contexts where electoral victories depend on states' identities as agencies of social welfare (Gupta and Sharma 2006).³⁷

To analyze the dynamic, co-constitutive relationship between NGOs and the law, and their role in governing prostitution in postcolonial India, I have found the work of Foucauldian law and society scholars generative. Especially useful is their emphasis that law operates among a wider set of governmental actors and is

³⁴ Victoria Bernal notes, for instance, the "complex and contradictory power relations at work where it is no longer possible to draw clear boundaries separating governmental and nongovernmental, local and foreign, grassroots initiatives and international agendas" (2017: 55).

³⁵ See, for instance, the contributions on South Asian NGOs to Bernal and Grewal 2014 and Lashaw, Vannier, and Sampson 2017, and full-length monographs by Karim 2011, Lakkimsetti 2020, Roy 2022, and Sharma 2008, among others examining these themes.

³⁶ See, for example, Chatterjee 2004; Sharma 2008; Sunder Rajan 2003.

³⁷ Some scholars have argued that despite neoliberal adjustments, the state in India has not weakened, but the privatization of many state functions has meant that the political leadership is often able to divest itself of responsibility to impoverished citizens by invoking the role of other actors (Randeria 2003).

pervaded with forms of knowledge and expertise that are not strictly legal (Rose and Valverde 1998). For Rose and Valverde, law is therefore worth approaching from the perspective of government³⁸: as a *legal complex*, an assemblage of regulatory agents, apparatuses and so on, acting upon a particular “problem” – which, in this context, is prostitution. Explaining how and why law matters in the regulation of sex work in neoliberal contexts, Jane Scoular calls for sociolegal scholars to theorize it through the lens of governmentality, that is, to examine how law is embedded in an extended group of regulatory agents that it authorizes, empowers, and acts alongside to construct spaces and subjects (2010: 38).

Connecting these multiple conceptual trajectories, *Immoral Traffic* situates the governance of prostitution within this broader “governmentalized legal complex.” It illuminates a growing field of state and nonstate institutions, practices, knowledge, expertise, affect, morality, and anxieties acting upon prostitution. It is attentive to the way this field has expanded in scope from the late colonial period to the current contexts of neoliberal governmentality and sexual humanitarianism.

To explain my use of the “governmentalized legal complex” framework, three clarifications are worth making. One, I found that law, legal procedures, and legal institutions remain central to this broader field of intervention, and that the increasing involvement of NGOs has in fact served to strengthen the role of the law. Foucauldian scholars who situate law within governmentality argue that doing so does not mean “expelling” or diluting law’s role (Golder and Fitzpatrick 1990). 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). Bringing attention to how, for instance, NGOs are increasingly taking on tasks associated with policing, prosecution, and judicial inquiry, and training Indian legal actors to perform the tasks Indian law prescribes for them, this book demonstrates how foreign-funded NGO intervention is bolstering, rather than weakening, postcolonial law and state agencies.

Two, my claim is not that every entity and agenda constituting this governmentalized legal complex is always in agreement, converges smoothly without friction, or necessarily acts in concert with others. In the context of the colonial governance of sexuality, feminist historians make the important point that states themselves are hardly cohesive entities of governance. For instance, discussing efforts to control prostitution in late colonial Bombay, Ashwini Tambe steers clear of treating the

³⁸ Several interdisciplinary scholars have drawn upon Michel Foucault’s concept of governmentality (1991), an analytic he used to describe schemes, tactics, and apparatuses aimed to improve the condition of a given population, to examine a range of projects of “improvement” by state and nonstate actors. Foucauldian scholars have applied the concept beyond state interventions to those involving other authorities – civil society, philanthropists, social workers, experts, etc. Anthropologists have used the concept to extend critiques of the narrow lens through which developmentalist states “see” populations and problems (Scott 1998) to forms of expertise beyond the state, including NGOs – their simplistic technical assumptions, constitutive exclusions, and messy consequences (Li 2005).

colonial state as a uniform and unified entity, showing instead how the fissures in administration reveal the limits of empire (2009).³⁹ Studying the governance of sexuality in contemporary India, feminist sociologists have shown how tensions and disagreements between state agencies, and hybrid state/nonstate institutional spaces created to incorporate sex workers in India's HIV/AIDS response have inadvertently helped sex worker rights advocacy efforts (Lakkimsetti 2020; Vijayakumar 2021). In this book, I foreground the tensions and disjunctures (between state agencies and between Indian legal actors and NGOs) that mark the intersection of anti-trafficking and anti-prostitution interventions.

Beyond prostitution, ethnographers of the Indian state have dismantled the pervasive fiction of "the state" as monolithic, unified, and coherent. Instead, they center the instabilities, inconsistencies, fractures, and disjunctures within and across state agencies and practices, while contending that this very incoherence makes the state more powerful (Ferguson and Gupta 2002; Gupta 2012; Hansen and Stepputat 2001; Puri 2016). These frictions are seen beyond the state, across multiple forms of governance where the concurrence of multiple ideologies, techniques, and forms of power can be unstable, complex, and contradictory (Roy 2017: 886).

A third clarification about my use of the "governmentalized legal complex" framework is about whether, in situating law in a broader "legal complex," I frame my analysis as an "NGOization" of Indian law. Critical NGO studies scholars have, for instance, debated whether there is an "NGOization" of feminism and development in the Global South (Bernal and Grewal 2014). In India, as in other Global South contexts, the professional, technical/managerial approach to social issues taken by a new donor-driven NGO culture has been critiqued for depoliticizing social movements (Kamat 2003; Schuller 2009). The Indian women's movement has expressed concern at a donor-driven "NGOization" that has co-opted, transnationalized, professionalized, and therefore depoliticized many feminist and radical agendas (Roy 2015).

While I agree with these critiques and concerns, NGOization 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 such as social movements. In the context of prostitution, anti-trafficking NGOs have certainly taken significant space away from

³⁹ Tambe finds, in the context of the Contagious Diseases Act enacted in 1870 to curb venereal disease in colonial Bombay, that though the law was implemented through an unprecedented degree of surveillance of sex workers, it failed because of rifts between the judiciary, police, and public health officials. This made evident a "disharmony between the different arms of the colonial state" (2009: 44). Similarly, Jessica Hinchy examines the fractures of colonial governance in the context of the criminalization of *hijras* (a third gender community) in colonial India (2019). Beyond India, feminist scholars have highlighted the inconsistencies and contradictions marking the governance of prostitution in other colonial contexts. Mariana Valverde finds in the case of moral reform in English Canada (1885–1925), for instance, that "the policing of prostitution was ... caught up in a web of interests ... that made it impossible for authorities to settle on any policy and be consistent in its enforcement" (2008: 176).

sex worker rights activists in their influence on the law and its implementation. As I have explained, this is rooted, for good measure, in the way postcolonial Indian law legitimizes only those it sees as “respectable social welfare” NGOs. However, anti-trafficking NGOs have not suddenly taken over the work or influence of state agencies, which have long depended on nonstate actors to curb prostitution. India’s sociolegal 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 prostitution. I therefore prefer the “legal complex” framework as a conceptual apparatus that accommodates how anti-prostitution intervention in India has always already been “NGOized,” and how law’s reliance on and legitimation of NGOs, and NGOs’ reliance on and deployment of law, have expanded and intensified through anti-trafficking campaigns.

Critical Trafficking Studies

This book builds upon insights from the interdisciplinary feminist field of “critical trafficking studies” that challenges the narrow definition, ill-conceived conceptual framing, and “ideological capture” of anti-trafficking discourses and policies (Musto 2016: 169–170).⁴⁰ This “anti-anti-trafficking” approach recognizes trafficking as a problem, but calls for a different approach, invoking concerns that anti-trafficking interventions can sometimes do more harm than good to those they aim to assist (Lindquist 2013: 321–322). Feminist scholars taking this approach have questioned: (1) the US government’s conflation of sex trafficking with prostitution, (2) the global anti-trafficking discourse’s portrayal of Global South sex workers as passive victims in need of rescue and protection, and (3) the US-driven anti-trafficking campaign’s focus on law enforcement and criminal justice, instead of seeing sex trafficking as a structural problem rooted in poverty, gender inequality and discrimination, and migration gone wrong, or connected to other forms of labor exploitation.⁴¹

Feminist scholars across disciplines have traced the rise of current global anxieties around sex trafficking to an assemblage of US experts, activists, and legislators concerned about organized crime, immigration, and conservative Christian values

⁴⁰ Though she does not use the label of “critical trafficking studies,” feminist sociologist Elizabeth Bernstein explains its premise succinctly by pointing out that “the framework of ‘trafficking’ (and its attendant notions of sexual victimization and exploitation) has been far better suited to the goals of aid organizations and governments than it has been to the needs of sex workers” (2018: 4). Bernstein further describes the remit of this growing area of interdisciplinary feminist inquiry by explaining her own landmark contribution as the “study of the growing cadre of humanitarian projects that have emerged to reclassify all or certain forms of sexual labor as ‘trafficking’ or ‘slavery,’ to press for laws that punish the individuals who are deemed responsible for this captivity, and to vigorously pursue sex workers’ rescue” (2018: 8).

⁴¹ See Agustin 2007; Bernstein 2018; Brennan 2014; Chacon 2006; Chapkis 2003; Chuang 2010; Doezeema 2001; Fukushima 2019; GAATW 2007; Hua 2011; Kapur 2005; Kempadoo et al. 2012; Kotiswaran 2021; Mahdavi 2011; Musto 2016; Parreñas 2011; Weitzer 2007.

during the Bush administration, joining existing concerns about human rights and violence against women (Bernstein 2018; Hua 2011).⁴² They have tracked how abolitionist feminists (who equate prostitution with violence against women) have gained a strong moral and ideological voice in the US government's conflation of trafficking with prostitution (Chuang 2010; Halley et al. 2006; Huckerby 2007). They have also explained how the agendas of abolitionist feminists and Christian faith-based organizations coalesced when both groups received generous funding under the Bush administration from 2001, and how they concurrently gravitated toward criminal justice solutions.⁴³ Although the US *TIP Report* emphasizes the importance of victim protection and assistance, a core concern remains the number of trafficking prosecutions and convictions and the quality and impact of law enforcement efforts (2010: 6). Feminist critiques have called into question how the US government does not address the socioeconomic causes of sex trafficking, regulate the labor conditions of sex work, or provide legal protection to migrant sex workers.⁴⁴ Providing robust critiques of the US-led "anti-trafficking industrial complex" for its heavily carceral, militarized, and securitized approach, feminist scholars have called, instead, for more nuanced, complex, and empirically informed perspectives on the global sex trade.⁴⁵

Yet there remains a scarcity of empirical research on anti-trafficking interventions (Marcus and Snadjr 2013; Lindquist 2013). Anthropologists are uniquely positioned to fill this gap, peeling away layers of meaning and experiences to reveal the messy realities of people's lives (Montgomery 2013: 317) and challenge the dominant frameworks of the anti-trafficking narrative (313). Feminist ethnographies in different global contexts have illuminated several aspects of anti-trafficking campaigns in recent years, such as the complex interpretive frameworks of those tasked with implementing anti-trafficking law and assisting trafficked persons (Peters 2015), the concurrently punitive and protective approaches of anti-trafficking interventions (Musto 2016), the market-based humanitarianism anti-trafficking campaigns mobilize to attract Western consumers and volunteer tourists (Shih 2017), and the overlap between US-driven carceral approaches to curb trafficking and migration control (Vanderhurst 2022).

A key contribution of critical trafficking studies has been to explore and critique the unlikely alliance in the US between NGOs, abolitionist feminists, faith-based

⁴² Alliances between certain feminist and faith-based groups to curb prostitution have a longer history beyond the US. In the context of the moral regulation of prostitution in English Canada (1885–1925), Mariana Valverde finds that "clergymen and nonconformist ministers, together with ardent Christian feminists such as the famed Josephine Butler, undertook evangelical missions to persuade both prostitutes and their customers to leave their lives of sin" (2011: 162).

⁴³ The production of the US *TIP Report* in an office headed by a former prosecutor and the international proliferation of the Swedish model of decriminalizing sex workers and criminalizing customers have also worked to shape these agendas and alliances (Bernstein 2018; Kotiswaran 2011a).

⁴⁴ Indeed, it imposes stringent conditions on providing such protections (Chapkis 2003; Huckerby 2007).

⁴⁵ See Bernstein 2010; Chacon 2006; Chapkis 2003; Chuang 2010; GAATW 2007; Kotiswaran 2021; Musto 2016.

groups, social service providers, law enforcement, and criminal justice in anti-trafficking campaigns.⁴⁶ Feminist scholars have theorized and critiqued these alliances in depth.⁴⁷ Ethnographic work in other global contexts, such as France (Ticktin 2011) and Brazil (Amar 2013), has also highlighted the unlikely pairing of policing and moral humanitarian agendas. In the Indian context, anthropologist Kimberly Walters has argued that the global panic over sex trafficking “animates a mode of global governmentality that fuses together otherwise contradictory registers of care and punishment in the disciplining of women who sell sex” (2020: 289).

This book builds upon, but also departs from, these insights and critiques, by situating anti-trafficking interventions firmly, deeply, and broadly within the Indian sociolegal context. In doing so, it tracks US-funded anti-trafficking campaigns as one among multiple forms of intervention against prostitution in India. While existing feminist research and critiques have focused on the connections, collaborations and coalitions between state agencies and NGOs in anti-trafficking campaigns, *Immoral Traffic* shows how the possibilities of alliance and cooperation among Indian NGOs, legal actors, and state agencies are contingent on several factors, and often fraught with tension and resistance. Fewer scholars have highlighted these aspects of anti-trafficking campaigns, a notable exception being Paul Amar, who emphasizes the temporary and tense alliances between a diverse set of actors involved in anti-trafficking rescue campaigns in Brazil (172–173).⁴⁸

During my research, tensions and contradictions centered on the meanings of prostitution and victimhood played out most sharply in the encounters between

⁴⁶ Bernstein 2018; Germain and Dewey 2017; Halley et al. 2006; Musto 2016.

⁴⁷ Feminist legal scholars Halley et al. use the term “governance feminism” to describe the incremental installation of feminists and feminist ideas in actual legal-institutional power, where there is an emphasis on criminal law (2006: 340). They argue that abolitionist feminist involvement in the law and policy against sex trafficking reflects the ascendance of governance feminism (348). Elizabeth Bernstein also describes the gravitation of US abolitionist feminists and evangelical anti-trafficking activists toward solutions that support increased policing and prosecution, and state agendas of border control, terming these neoliberal alliances “carceral feminism” (2018). Jennifer Musto uses the term “carceral protection” to describe the blurred line between protection and punishment in the “complex interplay between state and non-state actors as they cooperate to identify and ostensibly help people in exploitative sex-trafficking situations” (2016). Musto describes these alliances as “a blending of criminal justice efforts with non-state assistance efforts that put a collaborative spin on efforts aimed at protection” (2016: 13). Also in the US, Tania St. Germain and Susan Dewey describe efforts to curtail prostitution as a “criminal justice-social services alliance, a punitive-therapeutic confederation of federal, state, and municipal law enforcement agencies and state, municipal, or independent non-profit social services entities” (2017: 3). They use the term “the alliance” to refer to the “coalescence of punitive-therapeutic forces that work together to police or otherwise regulate street-involved women through arrest, incarceration, and court-mandated drug or other therapeutic treatment” (4).

⁴⁸ Amar highlights the “mutability and contested, internally contradictory character of human-security governmentality” (2013: 177). His work shows how the different contradictory logics that came together in an anti-sex trafficking campaign in Brazil clashed profoundly, to a point where they could no longer be reconciled.

NGOs and police I discuss in Chapter 2. Other chapters reveal the myriad interdependencies, inconsistencies, and contingencies marking the encounters between NGOs and legal Indian law enforcement and criminal justice actors. Across the chapters, the book highlights how the relationships between anti-trafficking NGOs and state actors, though written into Indian law, are often fraught and constantly negotiated, rather than always already in coalition or collaboration.

Sex Work, Feminism, and Where I Stand

This book does not provide definitive answers to whether or not the women at the different sites and processes I observed were trafficked or what their identities “really” were. I explore, instead, how they presented their accounts to NGOs, state agents, and legal actors, how they were perceived, engaged, and processed, and how they navigated and resisted the ways in which they were interpellated. Via feminist criminologist Carol Smart (1989), I recognize the power of law’s claim to truth, as well as how its accounts of women’s experiences are partial and fragmented. However, and again with Smart, I do not seek to provide an alternate truth to resist the power of the law. Instead, I demonstrate how Indian and Bangladeshi women experience and respond to interventions aimed at rescuing, assisting, representing, and reforming them. The book highlights the myriad strategies through which women navigate both NGO-led anti-trafficking efforts and Indian law’s anti-prostitution framework – by seizing upon the opportunities they provide, resisting them, or escaping them altogether. The women I met did not deploy the identities of either trafficked victim or sex worker as they strategized to navigate the interventions acting upon them: how to seek the outcomes they desired, or how to escape the interventions affecting their lives, incomes, and families.

I am often asked, in connection with my research, whether I support an abolitionist, anti-prostitution position or a non-abolitionist one that recognizes the legitimacy of sex work. To clarify, I came to this project, and wrote this book, as an anthropologist of law, the Indian state, and NGOs. I have not been involved in advocacy or activism on either side of the feminist debates on prostitution, which are polarized between radical or abolitionist feminists who consider prostitution inherently coercive and violent toward women and thus synonymous with trafficking (Barry 1979; Jeffreys 1997), and pro-sex work feminists and sex worker rights groups who consider consensual sexual labor a legitimate means to earn a living (Delacoste and Alexander (eds.) 1998; Doezenia 2005; Pheterson 1989). In India, too, prostitution is located at what Shohini Ghosh terms the “faultlines” of feminism (2008).⁴⁹

⁴⁹ Although, as Prabha Kotiswaran notes, the Indian women’s movement has failed to include prostitution/sex work among its principal legal struggles. She underlines the fact that the mobilization of sex workers in India for law reform from the early 1990s was accomplished as a “spill-over effect” of HIV/AIDS prevention efforts (2011b). See also Sahni et al. (2008): 15–16.

I will briefly clarify the extent to which I have a position on these contentious debates. I recognize the possibilities of both sex trafficking and consensual sex work. I also acknowledge the distinction anthropologist Svati Shah points out between what is described in Hindi as *zabardasti* (force) and *majboori* (compulsion or constraints). Shah notes that force is not the same as the structural factors that shape constraints or compulsions leading someone to certain livelihood options (2014: 125, 199).

Of the women I encountered during my research, some said they were trafficked (brought by force or *zabardasti*), many provided accounts that included elements of *marzi* (choice), *majboori* (economic compulsion), or both, and yet others said they were not even involved in the sex trade. Some said they wanted to be rescued, while many said they were forcibly rescued against their will. My ethnographic accounts across the chapters cover this spectrum of coercion, choice, and denial in the narratives that Indian and Bangladeshi women removed from the sex trade presented to state agents, legal actors, and NGO representatives.

This book, though not an ethnography of sex work, is informed by a rich body of feminist ethnographic work on the complexities of sex workers' lives that calls into question the flawed assumptions of anti-trafficking campaigns that simplistically reduce sex workers to "trafficked victims." These scholars have shown how sex work involves diverse work conditions that public policies do not recognize (Dewey and Kelly 2011), and that sex workers make complex agentive choices to sell sex under structural constraints, from among limited employment choices, income-generating activities, and migration strategies.⁵⁰ Recent ethnographies in India have illuminated the diverse conditions and modes of organization of the sex trade (Kotiswaran 2011a), and sex work's imbrications with strategies of migrant labor (Shah 2014), caste and kinship ties (Agrawal 2008), practices of religiosity, sexuality, and matrimony (Ramberg 2014), and reproductive labor (Vijayakumar 2022). They have also explored sex workers' involvement in HIV/AIDS interventions (Lakkimsetti 2020; Vijayakumar 2021) and sex worker-led, community-based anti-trafficking interventions (Dasgupta 2014; Magar 2012).

This book, however, shifts focus from sites where sex is sold, from the lived experiences of sex workers, and from spaces and practices of sex worker activism, to encounters between sex workers and state agents, legal actors, and NGO workers at sites and processes where anti-prostitution and anti-trafficking interventions meet. My findings and conclusions here are based on what was observable at the sites and processes I studied – police stations, NGO offices, courts, and a state-run shelter. As I did not conduct ethnography in sex workers' homes, communities, places of work, or at sites and moments when they entered the sex trade, I cannot claim to know what their lives were actually like in the sex trade or the extent of choice and/or coercion they experienced.

⁵⁰ See Agustin 2007; Brennan 2005; Cheng 2010; Kempadoo 1998; Parreñas 2011; Zheng 2008.

Lastly, though the book critiques many assumptions and practices of anti-trafficking NGOs, state agents, and legal actors, my primary objective here is not an oversimplified claim that these entities “do no good” (Fisher 1997; Lashaw et al. 2017). I did observe anti-trafficking interventions help several women leave a life in the sex trade that was forced and exploitative, and I discuss those observations in this book. At the same time, I maintain a critical perspective, showing how these intersecting anti-trafficking and anti-prostitution interventions are deeply moralistic, paternalist and punitive, often imposed on those who do not seek the forms of assistance they offer, and do not always deliver outcomes that are useful or acceptable to those who seek to leave the sex trade.