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“These Girls Never Give Statements”: Anti-Trafficking Interventions and “Victim-Witness Testimony” in India

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Abstract: Framing sex trafficking as primarily a law enforcement and criminal justice issue, the U.S. State Department funds global South NGOs to work with the Indian legal system to strengthen prosecutions of sex trafficking cases. Though rescuing sex workers and training them to testify against alleged traffickers is key to these interventions, and though rescued sex workers do sometimes testify, my ethnographic research and interviews with NGOs, legal actors, and sex workers in India revealed that this is a rare occurrence. This article explores the reasons behind this reported pattern, as well as the challenges faced by those who do testify. Through these findings, it critically examines the possibilities and limitations of the prosecutorial focus of U.S.-driven, NGO-mediated anti-trafficking interventions. It situates anti-trafficking interventions centered on “victim-witness testimony” in the Indian socio-legal context, demonstrating how prosecution is shaped by a range of factors, circumstances, and contingencies involving foreign-funded NGOs, the procedures, political economy and culture of the Indian legal system, individual legal actors’ motivations, and rescued sex workers’ complex subjectivities, experiences, choices, and perceptions of justice. It draws upon and contextualizes these findings to challenge prevalent assumptions about the victimhood of global South sex workers, about global South legal systems necessarily lacking resources and commitment, and about anti-trafficking solutions rooted in criminal justice incontrovertibly benefiting survivors of sex trafficking.

Keywords: sex trafficking; NGOs; India; law; courts; prosecution; testimony



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1. Introduction

Current global anxieties around sex trafficking are traced to U.S.-based experts and activists concerned about a range of issues including organized crime, immigration, and conservative Christian values around sexuality during the Bush administration. “Abolitionist” feminists who view all prostitution as violence against women have helped to shape the U.S. government’s conflation of sex trafficking with prostitution (Bernstein 2018). Socio-legal and critical international relations scholars have critiqued the U.S. for playing “global sheriff” via its annual *Trafficking In Persons Reports* and anti-trafficking interventions in the global South (Chuang 2005), acting upon moral anxieties and politics around prostitution rather than factual accuracy (Weitzer 2007; Wylie 2016). India is often the setting for images and accounts, constructed by and circulating in media reports and policy and donor networks, that have fed U.S.-funded anti-trafficking interventions in the global South.¹

Since the early 2000s, spearheading concerns about sex trafficking, the U.S. State Department, U.S. faith-based organizations, and several global aid agencies have spent millions of dollars to fund NGOs in the global South to carry out anti-trafficking interventions including raid-and-rescue operations at brothels, facilitating anti-trafficking prosecutions, and protecting trafficked sex workers. The State Department has taken it upon itself to strengthen legal responses to the issue, especially in global South contexts.² Framing sex trafficking as primarily a law enforcement and criminal justice issue, the State Department funds NGOs and pressures governments to adopt a prosecutorial approach that prioritizes

efforts to convict the accused.³ In India, a key remit of U.S.-funded anti-trafficking NGOs is to work with women they rescue from the sex trade and with Indian police, prosecutors, and judges, to bolster what the U.S. State Department perceives as India's weak response to trafficking.

This U.S.-driven and NGO-mediated prosecutorial approach foregrounds "victim-witness testimony" testimony as the central piece of evidence to improve the rate at which traffickers are convicted (*TIP Report 2014*, p. 16; *UNODC 2017*, p. 11). It is built on the assumption that if offered access to justice, shelter, medical care, legal aid, psycho-social counseling, and other forms of assistance, "many victims step forward voluntarily and without pressure to become powerful and confident witnesses, telling their stories in court and achieving justice not only for the state . . . but on a personal level as well" (*TIP Report 2007*, p. 37).

However, contrary to this assumption, prosecutors in New Delhi and Mumbai estimated that even with NGOs' efforts to keep in touch with rescued sex workers, to "counsel" them to testify, and to facilitate their travel to court, "victim-witnesses" testified in support of the prosecution in only 10–15% of these cases. Though training rescued sex workers to testify against alleged traffickers is a key component of NGO-led anti-trafficking efforts, and though rescued sex workers do sometimes testify in support of the prosecution, my interviews with legal actors revealed that this is a rare occurrence. This resonates with the findings of studies of sex trafficking cases in the U.S., which have also shown that those categorized as victims of trafficking rarely testify against the accused (see Section 1.2).

This article explores the reasons behind this reported pattern in the Indian socio-legal context, as well as the challenges faced by those who do testify. Through these findings, it critically examines the possibilities and limitations of U.S.-driven, NGO-mediated anti-trafficking interventions that are focused on prosecuting those accused of sex trafficking-related offenses, and on enjoining "victim-witnesses" to testify in these cases. It situates anti-trafficking interventions centered on "victim-witness testimony" in the Indian socio-legal context, demonstrating how prosecution is shaped by a range of factors, circumstances, and contingencies involving foreign-funded NGOs, the procedures, political economy and culture of the Indian legal system, individual legal actors' motivations, and rescued sex workers' complex subjectivities, experiences, choices, and perceptions of justice.

The article applies a conceptual framework informed by existing global studies of "victim-witness testimony" in sex trafficking cases, critical trafficking studies, feminist ethnographies of sex work, and insights from Indian socio-legal and feminist scholars. Methodologically, it draws upon participant observation and interviews conducted in courts, police stations, and NGO offices in New Delhi and Mumbai, and a judicial training session in New Delhi.

A central component of the article is an ethnographic account of a trafficked woman who testified for the prosecution in a New Delhi court, the efforts of the NGO and Indian legal actors who supported her, and the limitations of these efforts. Observing this case and conducting interviews with those involved in it revealed the specific constellation of factors that made this case exceptional, while also bringing to light the more typical pattern of sex workers' *resistance* to testify and the range of factors shaping their decisions. The article brings together findings from this exceptional case as well as the broader pattern, to challenge prevalent assumptions about the victimhood of global South sex workers, about global South legal systems necessarily lacking resources and commitment, and about anti-trafficking solutions rooted in criminal justice incontrovertibly benefiting survivors of sex trafficking.

1.1. The U.S.-Led Anti-Trafficking Regime, NGOs, and the Indian Criminal Justice System

From the U.S. State Department's annual *Trafficking in Persons (TIP) Reports* to Nicholas Kristof's *New York Times* columns, CNN's *Freedom Project*, and several 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. These images

and narratives recycle what postcolonial feminist scholars have long critiqued as colonial-era assumptions about vulnerable, victimized Third World women that continue to frame certain radical feminist and human rights campaigns (Kapur 2005). However, resonating with insights from feminist ethnographies of sex work, the narratives I observed rescued sex workers present to NGOs and legal actors during my research ranged from being trafficked (i.e., forced, threatened, abducted, or deceived), to varied combinations of choice and compulsion.

Since 2002, India has also ranked poorly on the U.S. State Department's annual *Trafficking in Persons (TIP) Reports* (mandated by U.S. anti-trafficking law: The Victims of Trafficking and Violence Protection Act of 2000), which ranks countries based on the U.S.' assessment of their anti-trafficking efforts, with repercussions on the flow of aid dollars. The State Department's definition of trafficking as one of organized crime to be addressed through measurable criminal justice outcomes, also shapes the solutions that are devised. Legal anthropologist Sally Merry has pointed out that the number of prosecutions or training sessions conducted for local police, judges, or prosecutors, can be measured, unlike more qualitative information, such as whether anti-trafficking programs are actually helping rescued women (Merry 2016). The production of the *TIP Reports* 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 the agenda of the *Report* (Bernstein 2018; Kotiswaran 2011).

As part of this agenda, the *TIP Reports* have criticized India's lack of efforts to investigate trafficking, prosecute traffickers, or assist victims. To quote from the *TIP Report* (2011),

Obtaining convictions in many parts of India was difficult due to many causes, including overburdened courts, the lack of modern docket systems, a weak understanding of the laws, and lack of commitment and awareness by some local authorities. (p. 189)

The *TIP Reports* criticize the Indian legal system for its "overburdened" courts, "weak understanding of the laws, and lack of commitment and awareness by some local authorities" (*TIP Report* 2011, p. 189). Though they have recognized increased efforts to combat human trafficking in India such as rescues and registration of cases, they express concern at inadequate police action and a low rate of conviction of traffickers, relative to the scale of human trafficking in India (*TIP Report* 2012, p. 185; 2016, p. 200). Citing NGOs as sources, the *Reports* note that the Indian police are corrupt, protect traffickers, expect victims to provide them sexual services (*TIP Report* 2016, p. 199), and are overburdened, underfunded, and lack necessary resources (*TIP Report* 2018, p. 223). Similarly, again citing NGOs, the *Reports* note that judges and courts do not have the resources, including adequate support staff, to "properly prosecute cases" (*TIP Report* 2016, p. 201). Overall, the problems the *Reports* identify with the Indian legal system's response to human trafficking include a lack of resources and a lack of commitment. To address these concerns, the U.S. State Department funds local anti-trafficking NGOs to work with legal actors and rescued sex workers to prioritize the prosecution of alleged traffickers.

Via the *TIP Report*, the State Department's evaluation of the Indian legal system thus reprises what postcolonial legal scholars have long recognized as a colonial-era legal orientalism that assumes and bemoans the inferiority of non-Western legal systems (Chimni 2006; Darian-Smith 2013; Hussain 2003; Rajagopal 2008; Ruskola 2013). This article calls such blanket assumptions and statements by the U.S.-led anti-trafficking regime into question and demonstrate how the roles, motivations, and efforts of Indian legal actors, and their interactions with NGOs and sex workers are far more complex, contingent, contextual, and unpredictable.

In India, non-state actors and elite women's groups have a long history of involvement in curbing prostitution from a moralistic social welfare perspective. Non-state actors have long been an extended entity of governance whom the state entrusts with both removing and reforming women from the sex trade. The late colonial state in India actively sought

the assistance of women's groups to whom it outsourced the regulation of prostitution (including rescuing women from brothels and managing rescue homes) (Legg 2014). Post-colonial India's anti-prostitution legislation (the Immoral Traffic (Prevention) Act of 1956 or ITPA), which ambivalently treats sex workers as both immoral women in need of reform and victims of sexual exploitation, requires "respectable" members of "social welfare organizations" to assist the state in rescues and post-rescue procedures. India's anti-prostitution law thus carves out space for non-state actors committed to curbing prostitution, into which anti-trafficking NGOs have smoothly stepped. However, the prosecutorial focus of donor-driven contemporary anti-trafficking NGOs is a new development since the early 2000s, as is their professionalization and capacity to attract foreign funding. A 2008 amendment to the Indian Criminal Procedure Code (CrPC) allows for victims of any crime to engage their own lawyers to support and help the prosecution.⁴ During my ethnographic research in India, I observed NGOs drawing upon this amendment, as well as the ITPA's dependence on "social welfare organizations," to authorize their assistance in sex trafficking cases and expand their work into law enforcement and criminal justice; areas in which NGOs and their donors consider local legal actors to be deficient.

1.2. "Victim-Witness Testimony" in Sex Trafficking Cases in Other Global Contexts

Existing studies about "victim-witness testimony" in sex trafficking cases have drawn attention to the limitations and potential harms of a U.S.-funded, NGO-driven prosecutorial approach in a wider global context. In the United States, it has been found that despite federal and state laws that criminalize human trafficking and support the prosecution of perpetrators, only a small number of human trafficking cases are prosecuted, and human trafficking suspects are rarely convicted of trafficking offenses (Farrell et al. 2016). Farrell et al.'s study found that with physical or corroborating evidence being hard to come by in these cases, they end up resting on the believability of the victim and their willingness to cooperate with the prosecution. However, most prosecutors and police they interviewed cited an inability to locate victims, and victims' refusal to cooperate with law enforcement and/or prosecution, as major barriers to successful prosecution. The study further revealed that in the absence of safe and secure spaces to house victims, the police resorted to arresting victims of sex trafficking for prosecution to secure their cooperation to testify.

Scholars studying sex trafficking trials in the U.S. note that those categorized as victims of trafficking rarely want to testify against the accused. Many trafficked individuals who need assistance do not testify due to fear of retaliatory action from the trafficker and/or a lack of trust in law enforcement (Srikantiah 2007). Someone categorized as a victim may in fact identify as a voluntary sex worker, deny the narrative of victimization imposed upon her by the police and prosecution, and refuse to testify against the alleged trafficker (Hua 2011). These critiques call into question whether efforts that primarily emphasize arresting and prosecuting traffickers can actually secure rights for victims of trafficking (Fukushima 2019).

Studies from Europe have questioned the adequacy of protections for trafficked persons expected to testify. Given the low conviction rate in trafficking cases, it is argued that those who testify are unnecessarily placed at risk of being intimidated, threatened, and attacked by their traffickers (Goodey 2004). Those researching prosecution as an anti-trafficking intervention in Europe have called for the extension of "victim-witness" protection beyond the trial, and beyond the victim to those close to the victim who might also be in danger (Pearson 2002) and for survivors of trafficking to be served not merely through criminal justice, but also through social assistance and employment opportunities (Berman 2010). In the U.S. and Europe, temporary visas, social services, health benefits, or employment options are often conditional on a trafficked person's willingness to be a prosecution witness (Haynes 2004; Pearson 2002; Sadruddin et al. 2005). Overall, these studies critique how victim assistance is tied to cooperation in the case against traffickers and raise the question of whether anti-trafficking efforts centered on prosecuting traffickers benefit or harm trafficked victims.

1.3. Approach and Conceptual Framework

Anthropologists studying anti-trafficking interventions identify a scarcity of research on the “empirical realities and quotidian experience of those counted as ‘trafficking victims’” (Marcus and Snadjr 2013, p. 191). They also observe the need for a “deeper understanding of the individuals, institutions, and networks that engage with anti-trafficking, and of the world they inhabit” (Lindquist 2013, p. 322). Anthropologists are uniquely positioned to fill such gaps in existing research, peeling away layers of meaning and experiences to reveal the messy realities of people’s lives (Montgomery 2013, p. 317). Beyond filling gaps in research, they can challenge the dominant frameworks of the anti-trafficking narrative through their findings (313). In pursuit of this objective, this article draws upon ethnographic research to focus on the complexities, contingencies, and multiple entities and factors shaping anti-trafficking interventions.

My approach is also shaped by insights from the growing 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, pp. 169–70) and calls into question the heavily carceral, militarized, and securitized agenda of the U.S.-led “anti-trafficking industrial complex” (Leigh 2016; cited in Hoefinger 2016, p. 1; and Walters 2020, p. 295; Bernstein 2018, p. 5; see also: Amar 2013; Musto 2016). This “anti-anti-trafficking” approach recognizes trafficking as a problem, but advocates for it to be approached differently, due to concerns that anti-trafficking interventions can sometimes do more harm than good to those they aim to assist (Lindquist 2013, pp. 321–22). Scholars taking this approach⁵ have questioned: (1) The U.S. government’s conflation of sex trafficking with prostitution, (2) The global anti-trafficking discourse’s stereotypical portrayal of global South sex workers as passive victims, of traffickers as foreign villains, and of (usually global North) rescuers as heroes and saviors, and (3). The U.S.-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, or connected to other forms of labor exploitation (Agustin 2007; Baker 2013; Bernstein 2018; Chacon 2006; Chapkis 2003; Chuang 2010; Doezema 2001; Mai 2016; O’Brien 2019; Soderlund 2005).

Several feminist scholars have also examined and critiqued the unlikely alliance between NGOs, law enforcement and criminal justice in anti-trafficking campaigns (Halley et al. 2006; Bernstein 2018; Musto 2016). I build upon these insights, but also depart from them by demonstrating that these alliances are a work in progress shaped by the procedures, political economy and culture of the Indian legal system, individual legal actors’ motivations, rescued sex workers’ complex subjectivities, experiences, and choices, and perceptions of justice, and a range of factors, circumstances, and contingencies.

This article explores the roles of three sets of entities involved in anti-trafficking prosecutions in India: sex workers, NGOs, and Indian legal actors. Though my research is not, therefore, an ethnography of sex work, my approach is informed by nuanced feminist ethnographic perspectives on the complexities of sex workers’ lives that call into question the flawed assumptions of anti-trafficking campaigns in simplistically reducing sex workers to “trafficked victims”. In New Delhi, most women rescued by the NGO whose work I observed said they were trafficked. The case at the center of this article is that of a woman who was indeed trafficked and testified in support of the prosecution. However, the larger set of sex workers I met at shelters and courts in New Delhi and Mumbai, provided accounts of entry into the sex trade that ranged from being trafficked (i.e., forced, threatened, abducted, or deceived), to varied combinations of choice and compulsion. Some welcomed the opportunity to leave the sex trade, while others preferred to continue sex work. This range of accounts resonates with the findings of feminist ethnographers who 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 agentic choices to sell sex under structural constraints, from among limited employment choices, income-generating activities and migration strategies (Agustin 2007; Brennan 2005; Cheng 2010; Kempadoo

1998; Parrenas 2011; Zheng 2008). Recent ethnographic work in India has illuminated the diverse conditions and modes of organization of the sex trade (Kotiswaran 2011), sex workers' transformative relationships to potential pleasures and dangers (Walters 2016), and sex work's imbrications with strategies of migrant labor (Shah 2014), caste and kinship ties (Agrawal 2008), and reproductive labor (Vijayakumar 2022).

Dominated by an abolitionist agenda that claims all prostitution is inherently exploitative, the U.S.-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). Several scholars and activists in India have critiqued forced and indiscriminate raid-and-rescue operations by NGOs and police teams that have removed voluntary and not just trafficked sex workers (Ahmed and Seshu 2012; Dasgupta 2019; Kapur 2007; Kotiswaran 2011; Shah 2014; Walters 2018). G.B. Road, New Delhi's red-light area from where the woman whose case I track in this article was rescued, has also seen its share of forced rescues. A petition filed before the Delhi High Court by a group of adult sex workers from G.B. Road alleges that they were forcibly removed from the brothel and away from their children (*Tara v. State of Delhi* 2012). I mention these reports and critiques to recognize that not all sex workers in India are victims of trafficking, and that forced rescues do occur as part of some anti-trafficking interventions.

2. Methods

This article is based on ethnographic research and interviews conducted in New Delhi for six months in 2012–2013 and a follow-up visit in 2015, and in Mumbai for eight months between 2012–2014. Both are metropolitan cities with flourishing sex trades, where anti-trafficking NGOs conduct rescues and work with law enforcement and criminal justice actors to encourage the arrest and prosecution of traffickers, brothel owners, madams, pimps, etc. Though eight to ten years have passed since I conducted this fieldwork, the *TIP Reports* continue to foreground a prosecutorial approach, and provide a simplistic critique of the Indian legal system's lack of resources and a lack of commitment. rather than acknowledge the nuances and complexities of "victim-witness testimony" in the Indian socio-legal context (see Section 1.1). Interestingly, the *TIP Report* (2019) acknowledges that victims of trafficking are "often reluctant to testify against traffickers due to inadequate witness protection and the lengthy judicial process" and "face systemic barriers in pursuing justice, including victim blaming by law enforcement, challenges to successfully filing FIRs,⁶ and poor access to services" (p. 238). This acknowledgment is still, however, very narrow in its understanding of victimhood and the Indian legal system. My research, based on the methods described below, examines the possibilities and limitations of prosecution and "victim-witness testimony" as anti-trafficking solutions, the multiple and complex reasons why most rescued sex workers do not testify, the somewhat serendipitous constellation of factors that lead a small proportion of them to testify, and the challenges faced even by those who do testify in the Indian socio-legal context (see Sections 3.3–3.5 and 3.8).

In New Delhi, I situated my research at the intersections of NGO interventions and criminal justice. To examine the various factors shaping "victim-witness testimony" in the Indian socio-legal context, I closely followed the case of a trafficked woman, Sunaina Das,⁷ who testified for the prosecution in a trial court, and the efforts of the NGO, police, and judicial officer in this case. I observed the court proceedings and interviewed those involved in the case while accompanying members of a New Delhi-based U.S.-funded anti-trafficking NGO whose work I was shadowing and with whom I volunteered. Apart from this case, I also tracked this NGO's work by accompanying its teams on rescue operations with the police, spending time at the NGO office, and attending a training session where NGOs and legal experts explained the issue of sex trafficking to judges.⁸ I conducted further interviews at each of these sites. I interviewed five NGO representatives, three judges, one prosecutor, and five law enforcement officers in New Delhi. Apart from Sunaina Das,

I interviewed five other sex workers rescued by the same NGO, and three rescued by a different NGO. I have summarized the range of accounts of entry into the sex trade these interviews yielded in Section 1.3. They also inform my discussion in Section 3.3.

Before explaining the Mumbai leg of my research, it is important to discuss why I place Sunaina Das' case at the center of this article, and its significance for my overall analysis. The case study method provides a detailed description based on close empirical observation of a single subject carried out over time, usually in reference to a wider field of cases (Darlan-Smith and McCarty 2017). Conducting research on anti-trafficking interventions, Ahmed and Seshu (2012), for instance, use a single case study to illuminate a range of harmful impacts of anti-trafficking efforts on a sex worker community in Sangli, Maharashtra. They explore in detail the experience of one sex worker being prosecuted, and another forcibly rescued (in the same case) to demonstrate the harmful impacts of anti-trafficking interventions on a sex worker community. The authors explain that this case typifies the detrimental effects of raids and rescue operations on HIV programs and services and sex worker rights (Ahmed and Seshu 2012, p. 158).

However, a detailed case study can illustrate both the typical and the exceptional. The rationale behind the selection of case studies ranges from them being typical (of characteristics common to several cases), key (featuring a specific aspect or characteristic for the analysis), or exceptional (illustrating the extremes of variation in a field of cases) (Darlan-Smith and McCarty 2017). Sunaina Das' case exhibits the characteristics of a case study in each of these ways—bringing forth what is key, typical, and exceptional in anti-trafficking prosecutions. Observing Sunaina's case, and conducting interviews with those involved in it, revealed the constellation of factors that made it exceptional, while also bringing to light the more typical pattern of sex workers' *resistance* to testify and the range of factors shaping their decisions. Further, Sunaina's case demonstrates the challenges faced by those who *do* testify, and provides insights into whether it helps them rebuild their lives.

My analysis of the broader pattern of sex workers not supporting the prosecution draws upon further participant observation and interviews I conducted in another city—Mumbai, where I observed a trial court instead of following the work of a particular NGO. This court, where I observed proceedings against accused madams, brothel keepers and brothel managers, is the only Special Court in India that exclusively prosecutes cases under the ITPA, in contrast to the court where I observed Sunaina Das' case in New Delhi, where several other kinds of cases also come up for hearing. At the Mumbai court, I interviewed two judges, three prosecutors, six law enforcement officers and ten NGO representatives about whether rescued women usually testified in these cases, and what their reasons for testifying, not showing up in court, or not supporting the prosecution case might be.

I did not meet sex workers at these trial proceedings in Mumbai, for two reasons: (1) During my fieldwork over six months, sex workers rarely came to court to testify, for reasons the following sections will discuss. (2) In the rare cases where rescued women testified, they were *in-camera* proceedings that I could not observe. However, I interviewed sex workers at other sites in Mumbai, especially a government-run shelter where they were placed in what is termed "protective custody" under Indian law. Though a detailed discussion of my larger research study is beyond the scope of this article, I have summarized the range of accounts of entry into the sex trade it yielded in Section 1.3. It also informs my discussion in Section 3.3.

Finally, some methodological challenges while conducting interviews with anti-trafficking NGOs are worth noting here. Sometimes, NGOs just did not have the information that I sought on how often women they had rescued testified against the accused in court. The turnaround of NGO staff (often young college graduates who moved on to newer employment or educational opportunities) tended to be faster than the turnaround of cases, which sometimes made it challenging for NGOs track the progress of cases. Though some NGOs were more forthcoming than others, it was nonetheless difficult to glean information from organizations that "rely on their reputation and status for donor funding" and

“guard their image accordingly” (Molland 2013, p. 314). I often sensed that NGOs withheld information or presented it in ways that would not potentially threaten their image or credibility before their donors, given the global circulation of information in which I, as a researcher, might participate.

Even those funding anti-trafficking NGOs seemed to find it challenging to get information. For instance, a Japanese funding agency I frequently encountered in Mumbai⁹ was concerned about the lack of data on how often victims of sex trafficking testified in support of the prosecution, and on what factors influenced the prosecution of trafficking crimes. Eventually, they partnered with a Mumbai anti-trafficking NGO, Save the Children India (STCI) to conduct interviews to understand the “legal and social factors influencing the success or failure of prosecution of trafficking crimes” in Mumbai, and in the state of Maharashtra (Save the Children India 2014). STCI arranged access to sex workers participating in post-rescue programs through different NGOs in Maharashtra, to police and prosecutors working on their cases, to the judges adjudicating them, and to judgments in a few disposed cases. Another researcher conducted the interviews, and I was hired as a consultant to analyze judgments and interviews. Though this article mainly draws upon my own ethnographic research, I include in the analysis some cases from this STCI study that contrast with Sunaina Das’ case, to illustrate the broader set of possibilities within which Sunaina’s case fits, what makes Sunaina’s case exceptional, and how, even with sustained NGO involvement, the constellation of factors shaping these cases can lead to a range of decisions and outcomes.

3. Results and Discussion

3.1. NGOs, Prosecution, and “Victim-Witness Testimony”

Most Indian anti-trafficking NGOs I encountered began working against 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 larger NGOs most actively working in the courts I observed had received funding from the U.S. State Department or U.S. faith-based organizations, the backgrounds, motivations, and sources of funding of anti-trafficking NGOs were complex and diverse. Some NGOs I encountered in New Delhi and Mumbai had funding from European sources, the Indian government, and the Japanese funding agency mentioned in the previous section. Some focused only on sex trafficking and others worked on a broader set of human rights, child rights, and gender justice issues. The NGO in New Delhi whose work I examine here fell in the latter category. It worked on human trafficking more broadly, including labor trafficking and child trafficking. Though some anti-trafficking NGOs focused more on providing services such as counseling and livelihood training after rescue, two of the largest foreign-funded NGOs in New Delhi, and three in Mumbai, actively worked in trial courts to support the prosecution of alleged traffickers.¹⁰

In their advocacy material, interactions with foreign donors, and interviews with me, these five NGOs foregrounded the support they provide to victims to facilitate and strengthen their testimony against the accused. This reflects their donor-driven prosecutorial approach that treats “victim-witness testimony” testimony as the central piece of evidence to improve the rate at which traffickers are convicted (*TIP Report 2014*, p. 16; *UNODC 2017*, p. 11).

The U.S.-funded NGO in New Delhi whose work I shadowed used two key strategies to work with Indian legal actors to strengthen its response to sex trafficking:

1. Providing various forms of support to encourage rescued sex workers to testify effectively for the prosecution.
2. “Training” criminal justice actors (police, prosecutors, judges) to implement India’s anti-prostitution law as an anti-trafficking instrument, treat all women in the sex trade as victims of trafficking, and take punitive action against traffickers.

The trial court I observed in Mumbai was the only Special Court in India, set up in 2004, that exclusively prosecutes cases under the ITPA (India’s anti-prostitution law that

NGOs seek to reframe as an anti-trafficking law). This small court has attracted much global interest among anti-trafficking experts, activists, and policymakers, due to its frequent mention and recognition in the U.S. *TIP* report. Indeed, this court came into being to a significant extent due to a (then) U.S.-funded anti-trafficking NGO in the city.¹¹ Before the Special Court was established, the *TIP* Report expressed concern that prosecutions in Mumbai remained inadequate relative to its role as the largest center for sex trafficking in India (*TIP Report 2004*, p. 2103). Thereafter, the *TIP Report* has appreciated this court's role in clearing the backlog in trafficking cases and ordering a record number of convictions against traffickers and brothel owners (*TIP Report 2011*, p. 49).¹²

Lawyers representing a large U.S.-funded NGO and two other NGOs with significant foreign funding were at this Court nearly every day, assisting the prosecution by preparing rescued women to testify, and accompanying them to court when they came to testify. NGO lawyers told me that they did the bulk of the prosecutor's work in the cases they were involved in. They said that overall, it was very hard to prosecute ITPA cases without the testimony of the "victim-witness". They emphasized the need to follow up with the rescued women and keep them "motivated" to participate in the criminal justice system.

Echoing the concerns reflected in the U.S. *TIP Reports*, many described the inadequate and indifferent responses of the police, prosecutors, and state-run protective home where rescued sex workers were sent¹³ as the main reasons why they needed to intervene. One NGO lawyer said the state machinery did not want to devote time, resources, or energy towards getting sex workers to testify. Another observed that "police cannot train women to give evidence", because they did not have the motivation, skill, or time to build rapport with them.

Unlike police, prosecutors, and judicial magistrates (see next section), who frequently lamented that rescued sex workers made "hostile witnesses", NGOs and their lawyers tended to tell positive stories about "victim-witness testimony". They told me they only rescued those who were victims of sex trafficking and did not do forced rescues. Given the prosecutorial focus of NGO funders, I got the sense that these NGOs did not want to invest time and resource in forced rescues, focusing instead on rescuing those who would be willing to testify against the accused. One NGO lawyer I encountered regularly at the court told me that about 60% of the women they rescued testified as prosecution witnesses, due to their efforts.

Only one NGO lawyer at the Mumbai court acknowledged the possibility that some rescued sex workers may not have been trafficked, or perhaps that they were initially trafficked, but wished to remain in the sex trade instead of being rescued. This lawyer's more nuanced understanding of sex work and/or her willingness to share it with me likely had to do with the fact that she had her own practice handling other cases and worked for the NGO only part time. Though committed to anti-trafficking work, she seemed more invested in strengthening the cases she worked on than in the donor-driven aspects of anti-trafficking campaigns that conflate sex trafficking and sex work:

To be honest, in maximum cases, they turn hostile . . . Not all are victims. If they say they came into the sex trade by choice, I let them be . . . I am concerned with minors, and those adults who say they were forced. I want to help them.

Though most NGO representatives and lawyers either did not share this nuanced understanding or did not feel comfortable sharing it with me, they acknowledged that in some cases, if rescued sex workers had gone back to their homes or had gotten married, they were reluctant to come to court and testify. They admitted that in a few cases, they had "lost track" of them. Some had returned to the sex trade after being rescued (for which NGOs used the term "re-trafficked") or became "untraceable". They also admitted that some women they had rescued refused to testify, or turned "hostile", as they had "moved on" in life and the idea of testifying did not appeal to them. On rare occasions, women rescued by NGOs have also deposed via video conference with the help of NGOs at the place where they have returned after rescue.¹⁴

3.2. "These Girls Never Give Statements"

At the back of a small courtroom at New Delhi's Tis Hazari courts, a tall, broad-built middle-aged police officer consulted a voluminous file folder on her lap as she rapidly posed questions to the petite young woman next to her. The young woman mostly gazed at the floor and nodded, occasionally looking up to provide short, tentative answers. Two years earlier, Police Inspector Ahuja had helped Sunaina Das escape from a brothel in G.B. Road, New Delhi's red-light area. By all available accounts (from the police, the NGO who helped with the rescue and whose work I was following, and Sunaina herself), she had been trafficked there from an impoverished district in West Bengal (in eastern India) in July 2010 and was forced into prostitution by the accused brothel madam who was now facing trial. After a month of being forced to have sex with multiple clients for no pay, Sunaina (then sixteen years old) managed to persuade a client to facilitate her escape from the brothel. She gave her family's phone number to this client and asked him to let them know she needed help. Upon his doing so, Sunaina's mother and uncle rushed to New Delhi from West Bengal, looking for her. The client had also informed the local police of the situation, and Inspector Ahuja called the NGO to assist in the rescue (per the established protocol in these cases). The police-NGO team raided the brothel and rescued Sunaina. She later helped the police identify the accused madam, who was arrested and now facing trial. Sunaina was re-united with her family and returned with them to West Bengal. On this warm September day, Inspector Ahuja was in court to refresh Sunaina's memory about the facts of the case, so that her answers during the forthcoming cross examination would not contradict statements she gave the police and magistrate after her rescue.

The day before I met Sunaina and Inspector Ahuja in court, a *pairvi* officer¹⁵ from the police station had come to court for the same purpose—to refresh Sunaina's memory of the details of the case. "*Dates yaad rakhna*" ("Remember the dates"), he said, wagging his forefinger at her for emphasis. I caught up with him as he left the courtroom, explaining that I was conducting research on these trials. "Ah, then you must know that in these G.B. Road cases, there are hardly any convictions?" Nodding, I asked him to explain why. He gave me the following perspective on cases against brothel madams accused of sex trafficking:

These madams are very powerful. Money is not a problem for them. They get bail very easily. Here's how it is. Basically, these girls are poor and the madams take advantage of their poverty. The defense counsel also know the "weak points" of the girls. They know how to break them. This girl's cross-examination is tomorrow (pointing at Sunaina). You will see, she won't say anything, she won't be able to. These girls never give statements, that's why there are no convictions.

By "not giving statements", the *pairvi* officer meant that during court trials, sex workers rescued by police-NGO teams refuse to say they were forced into prostitution, and do not name the accused. Most police officers I interviewed lamented rescued women's absences, silences, reluctance to testify, or turning hostile. "Will this girl give a statement?" was a question the police asked after every rescue I observed.

A senior police officer at New Delhi's Kamla Market (with jurisdiction over G.B. Road) expressed his frustration about rescues not leading to convictions,

To tell you the truth, these rescues are a thankless job . . . These girls never say anything against the accused. Initially they are sometimes willing to give us statements, which they later contradict by saying, "we came on our own, we want to go back to the brothel".

He explained that those who initially said they were trafficked later changed their narrative to one of consensual sex work. He went on to say that after returning to their villages, rescued sex workers were usually "not traceable", because the brothel keepers, madams and pimps from G.B. Road used threats or other forms of pressure to ensure that they did not show up in court.

Inspector Ahuja (the police officer who had rescued Sunaina and was preparing her for the cross-examination) also described the tremendous challenges involved in locating

rescued women once they returned to their villages, and in bringing them to New Delhi to testify. When I asked her why “victim-witnesses” might turn hostile, she echoed her colleagues’ views. “They are bought over [by the accused]. After all, they are poor”. Ahuja went on to describe an instance where a rescued sex worker had initially “given a good statement” to the police, but later refused to recognize the brothel owner in court. In another case, the rescued woman had even refused to recognize her (Ahuja) in court. Ahuja recounted the case as follows,

At the police station she had said, ‘I will ensure the accused is hanged!’ Then, her attitude changed so much, she turned completely hostile.

Interviews with police at the Mumbai court brought forth similar concerns about hostile witnesses and further possible explanations. Overall, they said that if a sex worker was willing to be rescued, there was a greater likelihood that she would testify effectively. In other words, the police recognized that forced rescues of voluntary sex workers would not yield “victim-witness testimony”. Many were of the view that most adult women whose rescues they were involved in were “unwilling to co-operate” with the prosecution because they were willingly involved in prostitution, as their livelihood depended on it.

The Mumbai police pointed out that even in cases where sex workers had been trafficked and were not forcibly rescued, the chances of them returning to Mumbai to testify after returning to their homes was slim, as they were often from different states or even countries (in the case of women from Nepal or Bangladesh). In cases of trafficked sex workers, the police also mentioned several examples where the person introducing them to the sex trade was a neighbor, relative, friend, boyfriend, or spouse, against whom the women were unwilling to testify. The police also discussed the possibility that some trafficked women wished to lead “respectable” lives as married women after leaving the sex trade and saw little benefit in testifying in court about what had happened to them.

The three different prosecutors I met at the Mumbai court also echoed the police’s lament that rescued sex workers did not usually support the prosecution case. When I spoke with a new prosecutor who assumed duty at the court in April 2013 two weeks after he started work, he expressed his surprise at how few of them testified in support of the prosecution case. A few months later, with more experience handling these cases, he estimated that rescued women would show up to testify only 10–15% of the time, that too mostly in cases where an NGO had rescued them, stayed in regular contact with them, “counseled” them to testify, and facilitated their travel to and presence in court; a coalescence of factors similar to Sunaina’s case in New Delhi. Like the police, the greatest challenge prosecutors noted was that “victim-witnesses” could not be traced, especially when several years had passed since their rescue. The prosecutors surmised that perhaps, having escaped both trafficking and the stigma of prostitution, the women feared that their names would be tarnished by participating in the case against the accused.

Frustrations about rescued sex workers either being “untraceable” or turning hostile also plagued those adjudicating these cases. In response to my question about how often rescued women testified in these cases, the Mumbai magistrate replied “*na ke barabar*” (virtually never). When I interviewed the magistrate presiding over Sunaina’s madam’s trial in New Delhi, protocol demanded that we did not discuss this specific case. My questions to her were framed around the role of “victim-witness testimony” in G.B. Road cases more generally. The main problem she highlighted was that the rescued women were from villages in distant provinces. Once they returned there, they usually could not be traced. If they could, they rarely came to court to testify. Like the police, the magistrate also gleaned that the women were made to disappear by the friends or kin of the accused. After some hesitation, she went on to provide her own perspective on the hostility of those witnesses who did testify,

In these cases, I have noticed victims *lie* also. Sometimes I can tell they are lying. These girls are scared and poor. Just recently one girl had come. Clearly, she has been paid off. She just stood here, folded her hands and said to me, “Madam, I am very poor”. That said it all to me. We can tell them, “say the truth”, but

what after that? They get a better offer from the accused. The main thing is that someone needs to *counsel* them.

The magistrate's faith in the power of "counseling" resonated with what police and NGO workers believed was the way to prevent "victim-witnesses" turning hostile and ensure their support of the prosecution case. As I will discuss in Section 3.4, "counseling" is based on presumptions that do not acknowledge the range of possible reasons why rescued women do not testify against alleged traffickers, pimps, or madams.

3.3. Why "These Girls Never Give Statements"

From observing rescues and trials, and interviews with NGO workers, legal actors, and rescued sex workers in New Delhi and Mumbai, I discerned several possible reasons why many deemed as "victim-witnesses" do not support the prosecution case against alleged traffickers. I outline them here and provide some context and elaboration in the next section.

1. They entered sex work voluntarily, and therefore did not want to be rescued. This emerged in my conversations with sex workers at a shelter in Mumbai, with the police (see Section 3.2), and in the interactions at a New Delhi court I discuss in Section 3.5. As I mentioned in Section 1.3, though I did not directly observe forced and indiscriminate raid-and-rescue operations where anti-trafficking NGOs and police teams removed voluntary and not just trafficked sex workers, there are credible reports of such situations.
2. They did not enter sex work voluntarily, but eventually came to terms with it and/or were earning a sustainable livelihood from it. Dasgupta provides an illustrative instance of this possibility (Dasgupta 2019, pp. 137–38). Some of the detained sex workers I met at a Mumbai shelter who described similar situations pointed out that they did not want to be rescued and wished to move on with their lives rather than assist in the prosecution of the accused.
3. They *were* trafficked, but:
 - (a) They did not have the information needed to strengthen the prosecution case. They did not remember the names of the perpetrators, locations, timelines, etc. Many trafficked women the Delhi-based NGO rescued from G.B. Road reported being drugged along the way, hampering their ability to remember details. The perpetrators were also skilled at never revealing their real names. Women trafficked from the eastern state of West Bengal to New Delhi often named a ubiquitous "Raju" (a common male name) who brought them from their villages to the city. Those from the southern states of Andhra Pradesh and Karnataka similarly named "Laxmi" (a common female name).
 - (b) They were threatened or "bought over" by the accused to say nothing, lie, or refrain from naming the accused. This was the explanation Indian legal actors gave me most frequently (see Section 3.2), which I elaborate and contextualize in the next section (see Section 3.4).
 - (c) In some instances, they were related or closely connected to the accused. Police and NGOs both mentioned this during interviews. A prime example comes from the STCI study, which included a case where an NGO had rescued a girl who was trafficked by her own parents. She was reluctant to reveal their involvement in her entry to the sex trade and refused to testify against them.
 - (d) They wanted to move on with their lives, rather than participate in the criminal justice system. This was recognized by the police and acknowledged by NGO workers as well (see Section 3.2).
 - (e) Those who had crossed the border from neighboring Bangladesh (some voluntarily and others whose situations involved elements of trafficking) often wanted to stay on in India. They preferred not to participate in the criminal justice system to avoid being sent back to Bangladesh.¹⁶

Many survivors consider the costs of testifying greater than the gains. Some possibilities that emerged from my interviews were:

1. They are not convinced that testifying against the accused, given the associated risks and threats, would be helpful to them.
2. They may have initially agreed to testify, but eventually lost faith or patience in the system, due to the risks involved, challenges posed, and the nature of the proceedings, which impacted even those who testified (see Sections 3.6 and 3.7).

3.4. “Hostile Witnesses”, “Compromise”, and “Counseling” in the Indian Socio-Legal Context

Though the pattern of those categorized as “victim-witnesses” in sex trafficking cases not testifying in support of the prosecution is not specific to India, it is shaped by, and in turn shapes, the Indian socio-legal context. In India, the “hostility” of “victim-witnesses” of violent crimes, usually members of marginalized socio-economic groups, is a widespread occurrence beyond sex trafficking. It is frequently reported in trials for sexual assault, murder, caste-based atrocities, and sectarian crimes (Roy 2013).

Indian legal scholar Mrinal Satish explains the procedural background as follows. Per the Indian Criminal Procedure Code (1973), the statement that a person acquainted with the facts and circumstances of a case under investigation gives the police is not admissible in court. The rationale is that the police can coerce witnesses into providing statements.¹⁷ Witnesses are therefore required to restate what they had said to the police during investigation before the court during the trial. At this juncture, some witnesses change their statement or deny having made the statement to the police in the first place. The main reason is a fear of retaliation by the accused in the absence of witness protection. In most such instances, the prosecution is then unable to prove its case as the benefit of the inconsistencies goes to the accused (Satish 2003).

Though the Law Commission of India has acknowledged the problem and recommended measures for witness protection inside and outside courtrooms, such programs are not yet fully in place (Kashyap 2013). The socio-economic situations of marginalized groups can make offers of payment from the accused attractive, and fears of retaliation by the accused well-founded. Those working with “victim-witnesses” in rape cases in India have pointed out that without constant and adequate support from police, judges, and NGOs, survivors from impoverished socio-economic backgrounds turn hostile, whereas those who have the support are far more likely to support the prosecution case (Agnes et al. 2014). In 2018, the Indian government has set up a witness protection scheme approved by the Supreme Court, pending the enactment of legislation on the matter, but the scheme has been critiqued for its short time frame of protection, screening of witnesses for threat perception, and other shortcomings (Gera and Makkar 2022).

Legal anthropologists and feminist scholars have explained the gender politics and kin and community attachments and obligations that cause sexual assault victims to turn hostile witnesses in the Indian criminal justice system (Berti 2011; Baxi 2014; Roychowdhury 2019). In the context of rape trials in India, Baxi describes informal settlements between the accused and the victims outside the court in which the victim agrees not to testify against the accused. While illegal, these “compromises” are common, shaped by factors such as procedural delays, lack of witness protection, and the gendered social stigma a rape complainant faces. “Compromise” may help to ensure safety, preserve social ties, and mitigate economic precarity (Baxi 2014, pp. xlii, 174–222). Ethnographic research thus shows how the Indian socio-legal context—shaped by kin and community pressures and by the accused “paying off”, threatening, and intimidating witnesses—often steers witnesses towards such arrangements and solutions. Inspector Ahuja’s analysis of “victim-witnesses” being paid for their absence or silence, and the magistrate’s description of poverty as the explanation for it, vividly illustrate this “culture of compromise”.

As deployed in anti-trafficking interventions, “counseling”—a series of persuasive interactions with rescued sex workers—aims not only to support, but also to get them to admit that they were trafficked (even when they deny it), name those who allegedly

exploited them, and maintain consistency across their statements and testimony. Aimed at eliciting, shaping, and producing testimony against the accused, “counseling” was central to anti-trafficking NGOs’ work in the criminal justice system. After the rescues I observed, the police would always urge NGO representatives to “counsel” rescued sex workers to “give statements”. “Counseling” was seen as an art of persuasion at which female NGO workers, female police officers like Ahuja, and female prosecutors and judges¹⁸ were deemed especially adept.

“Counseling” came up frequently in my conversations with police, NGOs and prosecutors, who explained that rescued women would not reveal “the truth” (presumed to be that they were trafficked) at first, and would “gradually open up only with counseling”. It was presumed that women who said they did sex work willingly were lying, due to pressure from the accused and mistrust of the police and legal system. “Counseling” was deployed to produce a shift from an initial account that might deny trafficking, to one admitting it—in other words, to produce the possibility of sex trafficking from its denial. However, it did not always produce this result, given the multiple reasons why sex workers either choose to, or are pressured to, become “hostile” witnesses (see Section 3.3).

The assumptions behind “counseling” and what it was intended to accomplish became clearer to me through the requests repeatedly made of me to “counsel” rescued sex workers. In New Delhi, I usually introduced myself to the police as a researcher, but they often perceived me as a member of the NGO, as I usually accompanied the NGO team. With the label of “respectable” woman ascribed to me,¹⁹ I, too, was seen as a potential “counselor”. On one occasion, when I accompanied NGO staff bringing a group of rescued women in court, the Kamla Market police officer who came with them urged me to “please counsel them too”, gesturing towards three other women they had brought to the court that day. “Please convince them to give statements”. He asked me to urge them to take the names of the accused in front of the magistrate, to strengthen the case.

To oblige the police and satisfy my own curiosity, I spoke (without presumption or intention to “convince”) to the three women (one Nepali and two Indian) seated dejectedly on a bench as they waited for a magistrate to summon them for their statements. They had all been rescued by a different anti-trafficking NGO. The two Indian women said they had entered the sex trade voluntarily (in Hindi, “Hum apni marze se is line mein aaye”) and wanted to be left alone. In angry tones, they asserted that they had been rescued forcibly. They did not want to name the accused. The third woman, who was Nepali, did not say whether she was trafficked or entered the sex trade voluntarily, but said she just wanted to return to Nepal. She, too, did not want to take the names of anyone in G.B. Road. This fleeting interaction in court did not afford the time to build rapport with these women to develop deeper insights into their situations or decisions, but it did serve to instantiate how not all sex workers from G.B. Road wanted to be rescued, or to participate in the arrest or prosecution of the accused.

3.5. Sunaina Das in Court

As police Inspector Ahuja, the NGO, and the prosecutor priming her for the task had hoped, and as an exception to the broader pattern of cases as reported by the police, prosecutors, and judges, Sunaina Das testified in full support of the prosecution case against the madam. Contrary to the *pairvi* officer’s pessimistic prediction, she did not turn hostile. During the examination-in-chief, conducted prior to my fieldwork, she answered the prosecutor’s questions with clarity and detail, narrating how two young men had lured her from her village in West Bengal, drugged her, pulled her on to a train to Delhi and sold her to the accused madam at G.B. Road, who forced her into prostitution. She provided details of how she was trafficked, sexually and financially exploited, and beaten. She even named and identified the accused madam. Here, is a short excerpt from her testimony:²⁰

SD: In the evening, that lady took me to a *kotha* (brothel) and handed me over to the accused present today in court (correctly identified). I was kept in the *kotha* run by the accused. There were several other girls also. I was forced into

prostitution by the accused. She made me do *ganda kaam* (dirty work) with different persons.

Court Question: What do you mean by *Ganda Kaam*?

SD: Accused used to force me to have sexual intercourse with different persons. Whenever I used to refuse, accused used to beat and abuse me. She also used to keep all the money earned by me.

Sunaina's cross examination was held *in camera*. The NGO had arranged a lawyer to assist the prosecutor, who remained in the courtroom with Sunaina during the proceedings, while I stepped out with her family and the NGO workers. When the lawyer and Sunaina emerged an hour and a half later, they told us the defense lawyer had asked Sunaina why she had agreed to "roam around" with the two men who brought her to Delhi, and why she had not protested when they took her away. This "roaming around" accusation is a common strategy for defense lawyers in rape trials in India. They characterize a woman's "roaming around" with the accused without raising a "hue and cry" as her failure to immediately report the rape. They use this argument to imply that she consented to sex (Baxi 2014, pp. 227–28).

The prosecutor had anticipated this line of questioning while preparing Sunaina for her testimony. In response to the defense's questions about "roaming around" without raising a "hue and cry", Sunaina applied the prosecutor's advice and explained that she *had* protested, but no passer-by could hear her. In this way, she drew effectively upon the training she had received from the NGO and prosecutor to establish herself as an "ideal victim" who was credible both because she had been under the total control of traffickers, and because she had actively resisted it. My point here is not to say that this was a made-up story. Sunaina was indeed trafficked, and beyond raising a "hue and cry", had actively initiated her own rescue from the brothel. What her response to the "hue and cry" question reveals is that she knew how to provide an account that was legitimate, credible, and established her as an ideal victim with just enough agency to show that she tried to resist, rather than a more complex account that might show too much agency and suggest consent to the situation the prosecution was presenting as a trafficking case (Hoyle et al. 2011; Milivojevic and Copic 2010; Srikantiah 2007).

During the cross-examination, Sunaina navigated tremendous anxiety at being interrogated. The cross-examination was done in Hindi, which was not her native language. The court had not arranged for a translator because Sunaina was able to provide statements to the police and court in Hindi earlier (with assistance from the NGO). These aspects of the cross-examination, and the difficulties she and her family faced in having to make repeated trips to Delhi, could well have turned Sunaina into a "hostile witness". Instead, a somewhat arbitrary and serendipitous, and partly intentional constellation of factors facilitated her coming to court and testifying for the prosecution against all odds.

3.6. Factors Shaping Sunaina Das' Case

In Sunaina's case, police Inspector Geeta Ahuja was a major source of support. The police officer described her work in deeply affective terms. She told me that the first time she went to G.B. Road, she was repulsed by the foul smell and cramped cubicles, but also felt a deep sense of pity. She described going to the brothels regularly to "counsel" the girls, assuring them of her support. Not every police officer could, or would, provide this amount of investment and affective engagement in these cases. Most male police officers depended heavily on NGO workers for "counseling".

I thought, I should take this work positively and do something good for the girls. I realized that they were not willing to be rescued because they are taught to fear the police. They are threatened (by the pimps and madams) that if you tell them (the police) you did not come by choice, they will put you in jail, beat you, make a case against you. See, madam, males cannot deal with these girls like I can, they

cannot do the kind of inquiry I can. The way the girls can tell me things openly, they cannot tell a man. After rescues, for half an hour they just cry at my bosom.

While Ahuja was invested in increasing the conviction rate, others at the same police station had ties with those running the sex trade in G.B. Road. For instance, two other trafficked sex workers for whose rescues I had accompanied the NGO team told me that the police constables who brought them to court for their statements before the magistrate had arranged a meeting on the way with pimps from the brothel, who threatened and pressured them not to take any names in court. I do not mean to suggest that higher-ranked police always strengthened cases and lower-ranked police always undermined them, but it was a pattern NGOs frequently reported.

Ethnographic research on the police in India shows that the “social lives, practices, and narratives of police are configured by the complex sociocultural, political, and legal bureaucratic worlds with which they are deeply entangled” (Jauregui 2016, p. 31). In the context of child labor and domestic work, lower-ranking police officers cited long work hours and inadequate pay as reasons to not intervene in cases involving the labor exploitation of underage domestic workers in India, as these conditions structured their own work experience (Ramachandran 2019). However, motivated police officers do work beyond some of these constraints to innovate and improvise to help those seeking redress, as seen in the context of domestic violence cases (Satyogi 2019). The role of the police in anti-trafficking interventions thus needs to be understood in the context of the political economy and labor conditions of police work in India.

Inspector Ahuja’s interest, empathy, commitment, and ability to build rapport with some of the women she rescued were indeed somewhat unusual within this context. However, these factors did not lead to every survivor of sex trafficking Ahuja rescued testifying against the accused. In her discussion of hostile witnesses when I interviewed her, Ahuja cited several instances when they did not (see Section 3.2).

Sunaina’s own strength and motivation were clearly the most significant factor shaping her support of the case against the madam. Her initiative began with her escape from the brothel and continued thereafter. Had she not sought the client’s help, the police and NGO would not have been able to help her (see Section 3.2). During the trial, she continued to come to court against tremendous odds. NGO workers and the prosecutor said it was rare for a survivor and her family to be this “co-operative”. The day of the cross-examination was the third time they had had to come to Delhi from West Bengal as witnesses in the trial. The magistrate admonished the accused madam and her defense lawyer for their delay tactics, such as asking for more time and making excuses not to show up. Due to these delays, Sunaina’s mother and uncle had to shut down the small food stall they ran in their village—their main source of income—for several days every time they came to Delhi.

For Sunaina’s family, the most daunting part of coming to testify was the constant threats they received from the accused, both in West Bengal and on the train back from Delhi, on the phone and face-to-face. Her family—her mother, in particular—played a key role in ensuring that she testified. Undaunted by the repeated threats from the accused, Shanti often reiterated her desire to fight for her daughter, however long it would take. With translation assistance from an NGO worker, Shanti told me how she and her older daughter had both faced domestic violence. She wanted justice for both her daughters, so they would not face the same fate she did. The family sat together and watched *India Fights Back* for motivation, a TV show based on real-life instances of victims getting justice with the help of police and NGOs.²¹

Finally, the NGO’s intervention was crucial to the progress of Sunaina’s case and her presence and testimony. It offered several forms of support to boost her confidence to testify against the accused and to shape her testimony with the elements that would strengthen the prosecution case. Before and during the trial, NGO staff, along with Inspector Ahuja, schooled Sunaina in court procedures and jogged her memory about the details she would be asked to testify about: the sequence of events, names, etc. The NGO’s intervention went far beyond training rescued women to testify. After rescues, NGO staff often accompanied

rescued sex workers back to their villages, kept in touch with them, and encouraged them to testify. They monitored cases from rescue to trial, keeping in touch with the police and prosecution on their progress. During the trial, they provided the material and logistical support for Sunaina and her family to come to court—paying for their train tickets, picking them up from the train station, arranging accommodation, etc. In the absence of witness protection from the legal system, NGO workers accompanied the family for court proceedings to alleviate their fears of the accused.

3.7. *Anti-Trafficking NGOs and Judicial Training*

Another major way in which the NGO impacted the outcome of Sunaina's case was through a training session for judicial officers it organized in partnership with government agencies in New Delhi. At this training session, anti-trafficking NGOs and legal experts explained the issue of sex trafficking to an audience of judicial officers. Urging the judicial officers to bring justice to the victims, NGOs balanced legal expertise with emotional appeals through survivor accounts, documentary films, and news clips about sex trafficking cases. A representative from the Delhi-based NGO involved in Sunaina's case was one of the key speakers at the event. The judicial magistrate hearing Sunaina's case (whose perspective on hostile witnesses I discussed in Section 3.2) was one of the attendees. Observing this training session thus provided a sense of the NGO's impact on the magistrate's approach towards these cases, and on Sunaina's case in particular.

In his presentation at the training session, Mr. Rai from the NGO in Sunaina's case was both pedagogue (educating the judicial officers about new developments in Indian law) and human rights advocate (providing them what he presented as the victims' perspective). He devoted much of his presentation to a recent amendment to the Indian Criminal Procedure Code (CrPC), which gave courts the power to order monetary compensation for victims, emphasizing that this was the most appealing incentive for victims to come and testify.

Mr. Rai's presentation, focused on legal provisions and procedures, was followed by a guest speaker. Kiran was a survivor of trafficking whom the NGO had rescued from a G.B. Road 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 judges that the NGO had rescued Kiran's children from the custody of the trafficker, and assisted in the prosecution in the case, resulting in a conviction.

Kiran told the judicial officers a powerful story of how she was trafficked to a Delhi brothel and managed to escape, highlighting the plight of others like her being forced into the sex trade by traffickers taking advantage of their poverty and promising them money, jobs and marriage. She explained how difficult it was for victims to escape, and how they faced threats and violence from brothel madams who forced them into prostitution and threatened to harm their children. Kiran urged the participating judges to pay heed to these stories and help victims. She ended with a deeply emotional appeal.

There is not just one Kiran there. There are many girls 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 judges, leaving many of them visibly shocked. They engaged in hushed conversations about their visceral reactions to her story. A Delhi High Court Justice overseeing the training session, who spoke right after Kiran, shook his head as he stood up, nodding at the many aghast faces and clicking tongues around him, "I don't know what to say after this. I think her wake-up call has shaken all of us".

Overall, the presentations highlighted not just the plight of rescued women, but also, very pointedly, the role and legitimacy of NGOs. Mr. Rai framed Kiran's narrative by emphasizing the role of the NGO in facilitating rescues and convictions. He explained how the NGO was working to facilitate victim testimony in these trials, and asked the judges to understand the difficulties victims faced, like having to travel from their home villages multiple times to testify, deal with threats from the accused, etc. Mr. Rai also offered his NGO's assistance to the judges, especially in "tracing" rescued women from

their villages, given the police's inability to do so. The police's lack of success in "tracing" rescued women who had returned to their home states was compounded by the fact that each state in India has its own police force. I had learned that an important aspect of this NGO's anti-trafficking work was to help the police to "trace" or locate rescued women and their families through its contacts in states like West Bengal, where the past two decades have seen an increase in trafficking from certain impoverished districts. This was a task at which both the NGO and judges deemed the police's efforts inadequate. Co-ordination between the police of different states was often mired in bureaucratic delays and linguistic differences. Beyond offering support to trafficked sex workers and training Indian legal actors to take action, it was by taking on these aspects of police work that the NGO worked to strengthen the prosecution case.²²

The training session took place a week before I interviewed the magistrate presiding over Sunaina's madam's trial in Delhi. During a session break, the magistrate asked Mr. Rai for more details about how his NGO was assisting victims. Mr. Rai told me later that the magistrate had seemed surprised to learn that "victim-witnesses" had to make multiple trips to testify; it was not something she had given thought to earlier. During the training session, magistrates dealing with ITPA cases were asked to discuss problems they were facing in these cases, to receive input from a High Court Justice supervising the session. This magistrate had four such cases before her. She brought up the issue of victims not being traceable, even after she directed the police to locate them. In response, the High Court Justice²³ suggested that she ask an NGO for assistance.

3.8. *The Outcome in Sunaina's Case*

Though I cannot infer what the outcome would have been had the magistrate not attended the NGO-led training session, the following developments indicate that the training session did impact the outcome of the case. The magistrate wrapped up Sunaina's madam's case just weeks later, though the case had dragged on for two years before that. Her admonition to the madam for her delay tactics (which adversely affected Sunaina and her family), was also after participating in the training session. When I interviewed the magistrate (also after the training session), she had clearly begun to consider leaning on NGOs more. Though I had explained that I was not an NGO representative, she associated me with the NGO because she had seen me accompany the NGO to court. The first thing she asked me, with reference to Sunaina's safety in court, was whether "the girl" (Sunaina) was with us (the NGO). She also asked if the NGO could help trace women in other pending cases and help the court find translators for the witnesses in these cases. Having seen the NGO accompany "victim-witnesses" in multiple cases, and having attended the training session, magistrate was beginning to respond and seek its assistance. She shared the NGO's frustration at the police's inability to trace rescued women, and expressed a willingness to have NGOs perform this investigative role instead.

A year after Sunaina's cross-examination, and three years after she was trafficked, the magistrate convicted the madam under provisions of India's Immoral Traffic Prevention Act (1956) that penalize procuring and detaining a person for prostitution and confining an abducted person. She noted that Sunaina's testimony "inspired confidence", a "truthful disclosure of facts by a victim of human trafficking which she narrated before the court upon an opportunity given to her to state so". The magistrate not only convicted the accused madam, but also ordered that she pay a fine to Sunaina as victim compensation. Following the criminal law amendment about monetary compensation that Mr. Rai had emphasized in his presentation, the Delhi government had also devised a new victim compensation scheme. The magistrate ordered the local Legal Services Authority to award Sunaina further compensation under this scheme.

The magistrate's approach and decision, shaped by the NGO-led training session and her exposure to the NGO's work, was somewhat exceptional. A comparative case from Osmanabad, Maharashtra, analyzed in the STCI study, demonstrates the significance of the role of the magistrate and the NGO-led training session in Sunaina's case. In the

Osmanabad case, a magistrate disregarded the testimony of the “victim-witness”, who had been supported by an NGO and provided strong testimony against the accused. That magistrate had not participated in anti-trafficking training, and the case resulted in an acquittal despite strong “victim-witness testimony”.

Although, like Sunaina’s case, this had been an exceptional case of both “victim-witness testimony” and family support, it resulted in an acquittal due to the magistrate’s presumptions and prejudices. The analysis of that judgment showed that the magistrate had been convinced by the defense’s arguments about the woman’s character using the “roaming around” accusation.

An interview with the trafficked sex worker’s mother brought forth their sense of the system failing them, despite the family’s valiant efforts to resist the pressure to “compromise”.

I feel that everyone involved in the case may have been bribed. I feel this way as even I was offered a bribe. Sometimes I wish that I should have taken the money and withdrawn the case. Here, we lost the case as well as made enemies.

This case demonstrates how “victim-witness testimony” is only one ingredient of an anti-trafficking conviction. The STCI study included three case of trafficked victims giving detailed accounts of their exploitation, but still being failed by the system—in one case, due to a lack of support from the police, and in two cases (including the Osmanabad case above), due to judicial prejudices around prostitution. What Sunaina’s case demonstrates, in contrast, is a delicate and contingent coalescence of the efforts and motivations of the NGO, Indian legal actors, and Sunaina herself.

Sunaina’s case also brings up the significant question of whether convictions truly deliver justice. Though the judgment in Sunaina’s case was a complete contrast to the Osmanabad case in terms of judicial recognition of trafficking versus judicial decisions based on moralistic assumptions about prostitution, the conviction did not significantly change her life. The provision of victim compensation remained mired in bureaucratic delays. Yet again, Sunaina and her family had to travel to Delhi to claim the money from the court, which did not give it to her pending paperwork that Police Inspector Ahuja was supposed to submit, but was delayed due to her transfer to a different police station and the work she had to attend to there. It is worth noting here that the delay in this case was due to the police officer’s existing responsibilities, not the incompetence or disinterest assumed in anti-trafficking discourse. Finally, Sunaina received Rupees 50,000 (about \$800) about two years after the madam’s conviction.

This outcome was ecstatically received by the NGO representatives who gave me the news. Sunaina, however, had disappeared. During the trial, she had returned to school back home in West Bengal, but then stopped going because the local community viewed her as immoral. She had escaped G.B. Road, but not the stigma of prostitution. The NGO was trying to help her find a job, but because of her limited education and remote location, this was proving difficult. Sunaina wanted to study—she mentioned wanting to become a lawyer after her experience of the trial—and to earn an income, but the moral judgments of her community, and her continued lack of access to education and employment, prevented her from building the life she wanted. Then, she apparently left home to marry a neighbor her family did not approve of. Later, her mother came around to the marriage and was scrambling, with meager means and heavy debt, to arrange the money to organize a grand wedding.

4. Conclusions

This article has marshaled ethnographic research to examine the possibilities and limitations of anti-trafficking interventions that foreground prosecution and “victim-witness testimony” from the perspectives of those implementing and experiencing them. It has focused on the multiple factors, complexities and contingencies shaping these interventions that anti-trafficking policy formulations and donor priorities do not recognize when emphasizing a prosecutorial approach. Through these explorations, the article has challenged prevalent assumptions about the victimhood of all sex workers, about global South legal

systems necessarily lacking resources and commitment, and about anti-trafficking solutions rooted in criminal justice incontrovertibly benefiting trafficked sex workers.

In India, the prevalence of “victim-witnesses” turning “hostile” is shaped by the exigencies of the Indian socio-legal context. However, the claims of incompetence, lack of commitment, or lack of resources made in the *TIP Reports* and in donor, policy, and NGO circles more broadly, while substantiated in some instances, are a reductive and over-generalized analysis of the Indian socio-legal context. Sunaina’s case highlights an exceptional situation where a trafficked woman received support from not just an NGO, but also from local legal actors (the police, prosecutor, and judicial officer) who shaped the outcome of the case in significant ways. Though my interviews indicated instances of lack of support from Indian legal actors in other cases, the systemic issues that emerged are not merely a matter of motivation, competence, or even resources. The Indian criminal justice system is impacted by procedural issues such as the absence of adequate witness protection, the multi-agency coordination required (between police across states, in granting monetary compensation, transfers of police and prosecutors, etc.), the political economy of testifying (the sheer cost of traveling to court from remote villages, or the financial situations that make “hush money” from the accused an attractive proposition), and the “culture of compromise” that shapes marginalized groups’ engagements with the criminal justice system.

Sex workers’ complex subjectivities, experiences, choices, and perceptions of justice vary. The article has brought together insights from an exceptional case of “victim-witness testimony” and the broader pattern of rescued sex workers refusing to testify against the accused, to show how the individual situations, experiences, subjectivities, and motivations of sex workers, their families, and Indian legal actors, shape decisions about testifying. Some, like Sunaina, choose to testify despite the pressure from the accused, procedural and personal challenges. Sunaina’s case illustrates a serendipitous and contingent constellation of factors—partly constructed through intentional efforts, and partly based on individual motivations and resources—leading to some rescued women testifying in support of the prosecution. Other rescued women become “untraceable,” refuse to testify, or turn “hostile,” navigating these pressures and challenges differently to protect themselves and their families. They reject criminal justice as an anti-trafficking solution, due to varied combinations of choice and coercion. The pattern of most rescued women turning “hostile” indicates that the coalescence of the efforts of NGOs and Indian legal actors, and rescued sex workers’ choices to support these efforts, is rare.

Sunaina’s case counters the assumptions in the U.S. *TIP Reports* and framing U.S.-led anti-trafficking campaigns about passive, infantilized Third World sex workers as victims (Kapur 2005) and about an indifferent or incompetent global South legal system. However, it also demonstrates how the convictions and financial compensation that criminal justice can deliver do little to improve the lives of trafficked women. Buoyed by the support of the NGO, police, and prosecutor, and the strength of her own motivation, Sunaina’s testimony helped the prosecution secure a conviction. Though it reflected the NGO’s success at both “victim-witness” support and judicial training, it did not improve significantly her socio-economic status or rid her of the social stigma she continued to face. From the perspective of the U.S.-driven, NGO-mediated, and criminal justice-focused anti-trafficking campaign, Sunaina’s was a “success story”. However, this perspective takes the conviction of the accused, the supportive roles played by the NGO and legal actors, and Sunaina’s decision to testify as the only parameters for success. While these efforts are commendable, the fact that testifying in court could not significantly alter Sunaina’s situation deserves scrutiny. These on-the-ground realities must be recognized and carefully examined to evaluate whether and to what extent prosecution as an anti-trafficking strategy is helpful to those who were trafficked into the sex trade and seek to rebuild their lives.

Further, focusing on the factors that set Sunaina’s case apart from those who do not testify provides an incomplete picture. The similar circumstances that *all* trafficked sex workers face at the prospect of testifying need to be acknowledged. Among those who were

indeed trafficked (i.e., not voluntary sex workers), the “co-operative” “victim-witness”, the “hostile” witness, and the “untraceable” non-witness all face similar challenges, posed by the criminal justice system, the accused, and their own circumstances. These challenges remain unaddressed in anti-trafficking strategies focused on prosecution. While NGOs do offer other forms of support, the prosecutorial focus of anti-trafficking interventions takes funding, efforts, and priorities away from more substantial forms of educational, employment, and socio-economic assistance with which survivors of trafficking could build more secure futures.

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Notes

- ¹ For a critique of such representations and their reductive assumptions about the sex trade, sex workers, and “saviors”, see, for e.g., (Baker 2013; Shah 2013).
- ² In 2004, the Bush Administration gave funding priority to Brazil, Cambodia, India, Indonesia, Mexico, Moldova, Sierra Leone, and Tanzania (*TIP Report 2005*, p. 27).
- ³ While victim protection and assistance are also included, those studying the State Department’s anti-trafficking efforts have noted that twice as much funding has been granted to organizations with a law enforcement or criminal justice focus as those protecting rights (Huckerby 2007, p. 236). Across global anti-trafficking efforts, prosecution has remained a key focus, with only broad and vague guidance on victim protection (Goodey 2004; Haynes 2004).
- ⁴ Supporting this amendment, Indian legal experts cite the possibility of the victim being exploited or denied justice when unaware of the functioning of the legal regime and her entitlements under it (Satish and Chandra 2005).
- ⁵ Though not all of them necessarily label their work as critical trafficking studies, a term used by Musto (2016).
- ⁶ A written complaint about the commission of a crime: the first step in the initiation of criminal proceedings in India.
- ⁷ All names have been changed to protect the confidentiality and anonymity of my interlocutors.
- ⁸ The NGO also conducted training sessions with police and prosecutors in New Delhi, which I did not get a chance to observe during my research.
- ⁹ Their primary objective, which they had worked towards in Cambodia and wished to pursue in India, was to fund anti-trafficking NGOs to support rescued women to testify.
- ¹⁰ These NGOs also provided a range of victim support services, training sessions for Indian police, prosecutors and judges, and programming aimed to prevent trafficking.

- 11 In response to a petition by the anti-trafficking NGO Prerana, a judgment of the Bombay High Court called for Special Courts to be set up to expedite trials in cases related to commercial sexual exploitation. *Prerana vs. State of Maharashtra*, Criminal Writ Petition No. 1694 of 2003.
- 12 This court has evoked considerable interest among foreign anti-trafficking donors in Mumbai.
- 13 For an account of how the “protective custody” of sex workers under Indian anti-prostitution law violates their freedom and prevents them from earning a living, see [Ramachandran \(2015\)](#).
- 14 I came across a total of three such cases in my analysis of judgments in Mumbai.
- 15 Police officer who assists the Investigating Officer in ensuring the production of witnesses in court.
- 16 For insights on the situations of Bangladeshi women in the Indian sex trade, especially how they are “repatriated” to Bangladesh against their will, see [Bose \(2018\)](#), [Ganguly \(2016\)](#), and [Ghosh \(2015\)](#).
- 17 This has a likely genealogy in the colonial mistrust of the native police (as discussed by [Kolsky 2005](#); [Lal 1999](#); [Samaddar 2008](#); [Singha 1993](#)).
- 18 Otherwise far outnumbered by men in the Indian legal system, but frequently assigned to these cases.
- 19 An identity that the police read from my clothes, speech, and overall positionality to assume an “educated” class location.
- 20 Excerpted from the court record of Sunaina’s testimony.
- 21 The popular show covers not only sex trafficking cases, but several crimes against women.
- 22 This appears to be a feature of the NGO-police relationship in neoliberal India more generally. In domestic violence cases, for instance, the police expect victims to “drive their cases forward” with their own resources, including NGO assistance ([Roychowdhury 2015](#)).
- 23 This High Court Justice had worked closely with NGOs in her prior role as a counsel for the Delhi government.

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