

# TEMPLE PROSTITUTES: DEVADASI PRACTICE AND HUMAN TRAFFICKING IN INDIA

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## I. INTRODUCTION

In the summer of 2007, I interned with a Non-governmental Organization (“NGO”) in India that addresses trafficking in women.<sup>1</sup> Accompanying my supervisor on his visitations to various government agencies, I met a number of minor girls rescued from brothels and placed at the state-run aftercare homes in Mumbai and Pune. Ignorant of India’s religious customs, I encountered an unfamiliar word that often appeared in the conversations of my supervisor, the government officials, and the rescued girls – the word “devadasi.” When asked by my supervisor – “Are you a devadasi?” – many of the girls feebly nodded with their heads down. Some shed tears. Later, I realized that one fourteen-year-old girl, placed at the aftercare home run by the NGO, was also a devadasi.<sup>2</sup> I saw the fear and despair in their eyes, and it has haunted my memory ever since; it prompted me to begin a detailed research on the devadasi practice.

This paper is intended to explore the devadasi practice: a Hindu custom in India where minor girls are dedicated to be married to a deity and then forced to provide sexual favors to a patron or other customer. The origin and current trends of the devadasi practice will

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<sup>1</sup> Freedom Firm, <http://www.freedom.firm.in> (last visited Nov. 7, 2008).

<sup>2</sup> Karishma (name changed) is a former devadasi rescued by the police and Freedom Firm from a brothel in Kolhapur, Maharashtra. The detailed story about locating and rescuing her is available at <http://www.freedom.firm.in/Karishma.htm> (last visited Nov. 7, 2008).

be explained in Part II, centering on the religious, social, and economic factors. In Parts III and IV, India's state laws and the international laws pertaining to the devadasi practice will be introduced respectively, as well as the accompanying duties and responsibilities of the governments at the national and state levels. Part V will examine the efforts made to implement the relevant laws introduced in the preceding parts at three different levels: (i) the national and state governments, (ii) international organizations, and (iii) non-governmental organizations in the field. In Part VI, the limitations and the shortcomings of the endeavors made to eradicate the devadasi practice will be discussed, and some corresponding suggestions will be made.

## II. WHAT IS A DEVADASI?

### A. *Origins of the Devadasi Practice*

The word "devadasi" means "female slave of god" and relates to the Hindu religious practice where minor girls in their early teenage years are dedicated to Hindu temples to be "married" to a deity.<sup>3</sup> Officially, their duties upon dedication include taking care of the temple and learning classical Indian dances to be performed at the temple rituals.<sup>4</sup> A devadasi has to sublimate her own soul while dancing and offer herself to the deity.<sup>5</sup>

Traditionally, once it is decided that a girl will be dedicated as a devadasi, she undergoes a ceremony through which she is married to the deity.<sup>6</sup> After this ceremony, the dedicated girl is regarded as being married to the deity and is prohibited from marrying anyone else.<sup>7</sup> However, the prohibition does not prevent her from having sexual relations with individuals or bearing children.<sup>8</sup> In fact, devadasis were

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<sup>3</sup> NAT'L HUMAN RIGHTS COMM'N OF INDIA, A REPORT ON TRAFFICKING IN WOMEN AND CHILDREN IN INDIA 2002-2003 194-96 (2003).

<sup>4</sup> Damian Grammaticas, *Slaves to the Goddess of Fertility*, BBC NEWS, June 8, 2007, available at [http://news.bbc.co.uk/2/hi/south\\_asia/6729927.stm](http://news.bbc.co.uk/2/hi/south_asia/6729927.stm).

<sup>5</sup> Pamyly A. Stiehl & Bharata Natyam, *A Dialogical Interrogation of Feminist Voices in Search of the Divine Dance*, 3 J. RELIGION & THEATRE 2, 291 (2004).

<sup>6</sup> NAT'L HUMAN RIGHTS COMM'N OF INDIA, *supra* note 3, at 199.

<sup>7</sup> Soma Das, *Strangely Mirrored Lives*, HINDU (India), May 6, 2007, <http://www.hindu.com/mag/2007/05/06/stories/2007050600200400.htm> (last visited Oct. 3, 2008).

<sup>8</sup> K. C. TARACHAND, DEVADASI CUSTOM: RURAL SOCIAL STRUCTURE AND FLESH MARKETS 129-32 (Reliance Publ'g House 1991).

publicly auctioned off for sexual services and still are, though such events are now held in secret.<sup>9</sup>

Often, the costs of the dedication ceremony were borne by a future patron who anticipated being entertained by the dedicated girl after she attained puberty.<sup>10</sup> The girl's dedicated status immunized the patron and the girl against social criticism or stigma.<sup>11</sup> Under the patron-devadasi relationship, the children between the patron and the girl could not have any claims as a legitimate offspring of the man.<sup>12</sup> Consequently, the majority of devadasis dedicate their own daughters as devadasis, thereby perpetuating this tradition for generations.<sup>13</sup>

### *B. Traditional Status Enjoyed and Degeneration of the Devadasi Practice*

Long ago, devadasis were regarded as a privileged class.<sup>14</sup> Around the 10th century, the wealth and prestige of a Hindu temple was estimated by the number of its devadasis.<sup>15</sup> Devadasis enjoyed high social prestige and were regarded as a normal part of the temple.<sup>16</sup> Furthermore, devadasis were often welcomed to wedding ceremonies since they were "married" to a divine being and were, therefore, believed to be auspicious.<sup>17</sup> Devadasis were once considered to be in a higher social rank than ordinary women because they married an immortal "husband."<sup>18</sup> Therefore, upper caste families appreciated a devadasi's presence in their home on religious occasions because of her sacred status.<sup>19</sup>

However, during the Islamic rule in India, Muslim invaders destroyed Hindu temples in the northern regions of India.<sup>20</sup> This mass destruction of the Hindu temples in the northern part of the country resulted in a major decline in the devadasi practice, unlike the southern

<sup>9</sup> Grammaticas, *supra* note 4.

<sup>10</sup> NAT'L HUMAN RIGHTS COMM'N OF INDIA, *supra* note 3, at 201.

<sup>11</sup> JOGAN SHANKAR, DEVADASI CULT: A SOCIOLOGICAL ANALYSIS 11 (1990).

<sup>12</sup> TARACHAND, *supra* note 8, at 129-32.

<sup>13</sup> ANTI-SLAVERY INT'L, RITUAL SLAVERY PRACTICES IN INDIA – DEVADASI, JOGINI AND MATHAMMA 4 (2007).

<sup>14</sup> NAT'L HUMAN RIGHTS COMM'N OF INDIA, *supra* note 3, at 195.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> SASKIA C. KERSENBOOM, NITYASUMANGALI 204 (1987).

<sup>19</sup> NAT'L HUMAN RIGHTS COMM'N OF INDIA, *supra* note 3, at 195.

<sup>20</sup> *Id.* at 197.

part of India where the practice flourished.<sup>21</sup> Another historical challenge to the devadasi practice came in the form of a colonial reform movement, where the British-affected reformists distinguished the practice from religious and traditional customs.<sup>22</sup> They perceived the devadasi system as a social evil, and organized gatherings to advocate against such practice.<sup>23</sup>

### *C. Current Trends: Religious, Social and Economic Factors Relating to the Devadasi Practice*

#### 1. From Temple to Urban Brothel

A 2003 report by the United Nations Committee on the Rights of the Child states that fifty percent of all prostitutes in the State of Maharashtra were initiated into the profession as devadasis.<sup>24</sup> Another report, published by the National Human Rights Commission of India, also points out that devadasis do not remain in the same area after the dedication ceremony but travel to other villages to work as prostitutes.<sup>25</sup> A Marathi saying reflects this reality: “[d]evadasi devachi bayako sarya gavachi,” meaning “devadasi is servant of god but wife of the whole town.”<sup>26</sup>

Although many Hindus condemn the devadasi system as exploitative, this practice continues to be prevalent in the states where patronage is still in fashion or the temples are closely tied to urban brothel keepers.<sup>27</sup> The one who deflowers a devadasi, usually a businessman or rich landlord, holds a superior right to be entertained by her over other men for the rest of her life.<sup>28</sup> However, this arrangement does not bind him to financially support her or the children begotten by him. In short, he may leave her whenever he

<sup>21</sup> Pran Nevile, *The Courtesan Was Also a Scholar*, TRIBUNE (India), Dec. 12, 1999, available at <http://www.tribuneindia.com/1999/99dec12/sunday/head3.htm>.

<sup>22</sup> Stiehl & Natyam, *supra* note 5, at 282.

<sup>23</sup> K. Santhaa Reddy, *Devadasis – Time to Review History* (April 12, 2002), <http://www.samarthbharat.com/devadasis.htm>. Ms. K. Santhaa Reddy is a former member of the National Commission for Women of India. *Id.*

<sup>24</sup> Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: India*, ¶ 236, U.N. Doc. CRC/C/93/Add.5 (July 16, 2003).

<sup>25</sup> NAT’L HUMAN RIGHTS COMM’N OF INDIA, *supra* note 3, at 200.

<sup>26</sup> K. Jamanadas, *Devadasis were Degraded Buddhist Nuns* (2002), [http://ambedkar.org/buddhism/Devadasis\\_Were\\_Degraded\\_Buddhist\\_Nuns](http://ambedkar.org/buddhism/Devadasis_Were_Degraded_Buddhist_Nuns).

<sup>27</sup> NAT’L HUMAN RIGHTS COMM’N OF INDIA, *supra* note 3, at 200.

<sup>28</sup> Jamanadas, *supra* note 26.

wants.<sup>29</sup> Then, the devadasi is left alone to live a life of poverty and, often, of prostitution in an urban brothel, which will make her vulnerable to HIV/AIDS.<sup>30</sup> The market value of devadasis is then lowered due to age, children, or sexually transmitted diseases, and they usually end up in a corner of society, desolate and rejected.<sup>31</sup>

## 2. Number of Devadasis

Humanitarian organizations estimate that the number of girls dedicated as devadasis is approximately 5,000 to 15,000 each year.<sup>32</sup> However, according to information recently collected by the National Commission for Women of India, the number of devadasis in southern states, where the devadasi practice has been in vogue, is substantially lower. One of the major reasons for the discrepancy in the data provided by the government agency and NGOs may be due to different criteria in their methodology. The information provided by the National Commission for Women is the only official and the most detailed data available; it is quoted below.<sup>33</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*; HUMAN RIGHTS WATCH & CTR. FOR HUMAN RIGHTS AND GLOBAL JUSTICE, *HIDDEN APARTHEID CASTE DISCRIMINATION AGAINST INDIA'S "UNTOUCHABLES"* 4 (2007).

<sup>31</sup> Jamanadas, *supra* note 26.

<sup>32</sup> Dean Owen, *India: Girls Sacrificed to Tradition, Former Religious Prostitutes Help Those Still Trapped*, WORLD VISION, May 16, 2006, [http://www.worldvision.org/about\\_us.nsf/child/eNews\\_india\\_051606](http://www.worldvision.org/about_us.nsf/child/eNews_india_051606); HUMAN RIGHTS WATCH, *BROKEN PEOPLE: CASTE VIOLENCE AGAINST INDIA'S "UNTOUCHABLES"* (1999), available at [http://www.hrw.org/reports/1999/india/India994-09.htm#P1695\\_354939](http://www.hrw.org/reports/1999/india/India994-09.htm#P1695_354939) [hereinafter *BROKEN PEOPLE*].

<sup>33</sup> Though this data has been cited by quite a few entities, the first-hand source is not available online, i.e. the official website of the National Commission for Women: <http://ncw.nic.in>. This data on the number of devadasis has been cited by The Hindu and Human Rights Watch, to name a few. *Project Combat Launched to Eradicate Devadasi System*, HINDU (INDIA), Jan. 30, 2006 <http://www.hindu.com/2006/01/30/stories/2006013020130300.htm> [hereinafter *Project Combat*]; *BROKEN PEOPLE*, *supra* note 32.

State	Number of Devadasis	State Government's Comments
Karnataka	22,941	*
Andhra Pradesh	16,624	*
Maharashtra	2,479	This is the number of devadasis who have survived the screening process and have been declared eligible for the government allowance for devadasis after 6,314 applicants were rejected.
Orissa	1	Devadasi system is no longer prevalent in Orissa.
Tamil Nadu	0	Devadasi practice has been eradicated.

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However, the data released by the National Commission for Women has flaws. A recent news report said that a thirteen-year-old girl was dedicated as a devadasi by her father, undermining the assertion of the State of Tamil Nadu that the devadasi practice was eradicated.<sup>35</sup> Reportedly, the father was allured by the priest who belonged to the temple where the girl was dedicated.<sup>36</sup>

### 3. Religious, Social, and Economic Factors of the Devadasi Practice

The devadasi system was created as a religious practice, strengthened by social customs such as the caste system and perpetuated for economic reasons. Religious, social, and economic factors are so closely interlinked with one another that they should be addressed together. Nevertheless, it is worth taking a close look at each contributory factor of the devadasi practice with a view to find a possible comprehensive solution to this persistent social evil.

<sup>34</sup> *But cf.* Grammaticas, *supra* note 4 (estimating that at least 25,000 devadasis are in Karnataka alone.

<sup>35</sup> Tamil Nadu [HJL's note: "Tamil Nadu" is not an author's name but a state name and used as a section in this context – *HINDU*. Footnotes 36 and 126 will have to be corrected accordingly as well.], *Minor Girl Made 'Devadasi'*, *HINDU* (India), Nov. 6, 2007, <http://www.hindu.com/2007/11/06/stories/2007110654390400.htm> (last visited Oct. 3, 2008). *But cf.* *Girl "Dedicated to Goddess" Joins Observation Home*, *HINDU* (India), Nov. 7, 2007, available at <http://www.hindu.com/2007/11/07/stories/2007110762301100.htm>.

<sup>36</sup> Nadu, *supra* note 35.

*(a) Religious Factor*

It is a Hindu belief that dedicating girls to be married to a deity will bring blessings to a family.<sup>37</sup> This religious conviction is profoundly powerful, especially in underprivileged communities.<sup>38</sup> Hinduism is said to be the only religion that provides religious justification for prostitution.<sup>39</sup> In fact, such practice is often encouraged by the girl's family; one devadasi girl said when interviewed by an NGO, "My parents told me that God would punish me if I stop it."<sup>40</sup> Understandably, devadasis in commercial prostitution are relatively safe against customers and police because of their religious status.<sup>41</sup> Consequently, brothel keepers tend to procure their girls by initiating them as devadasis to protect themselves against the law enforcement authorities.<sup>42</sup> Even those who are already in the sex industry try to obtain this "license" as a means of immunity.<sup>43</sup>

*(b) Social Factor*

Despite social condemnation, the devadasi practice is still prevalent, partially because of patronage.<sup>44</sup> Patrons are usually from the upper caste,<sup>45</sup> and the number of devadasis a man sponsors indicates his social status.<sup>46</sup> In 1949, the Indian Constitution outlawed

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<sup>37</sup> NAT'L HUMAN RIGHTS COMM'N OF INDIA, *supra* note 3, at 195.

<sup>38</sup> Grammaticas, *supra* note 4.

<sup>39</sup> Jamanadas, *supra* note 26.

<sup>40</sup> Owen, *supra* note 32.

<sup>41</sup> TARACHAND, *supra* note 8, at 129-30.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> NAT'L HUMAN RIGHTS COMM'N OF INDIA, *supra* note 3, at 199.

<sup>45</sup> *Id.*; see generally *The Caste System*, BBC, Nov. 14, 2005, <http://www.bbc.co.uk/religion/religions/hinduism/living/caste.shtml> (last visited Oct. 2, 2008).

Traditionally, there were four main varnas (castes), plus one group of outsiders:

- (1) The Brahmins, or priests: the highest varna (caste), believed to have emerged from Brahma's mouth.
- (2) The Kshatriyas: the warrior or ruling class who were made from Brahma's arms.
- (3) The Vaishyas: merchants or artisans who came from Brahma's thighs.
- (4) The Shudras: the unskilled laborers and servants who emerged from Brahma's feet. These were the lowest varna (caste).
- (5) The Untouchables: those too lowly to be within the varna (caste) system.

*Id.*

<sup>46</sup> BROKEN PEOPLE, *supra* note 32.

the caste system,<sup>47</sup> but discrimination based on the caste system still remains prevalent in Indian society.<sup>48</sup> The tie between the caste system and forced prostitution has been proven by the exceedingly high percentage of prostitutes from the lower castes.<sup>49</sup> The devadasi practice merely bestows a religious sanction or justification to this tie.<sup>50</sup>

Ritualized prostitution is a system designed to prevent the lower caste from gaining self-esteem and to perpetually keep them subjected to the upper caste.<sup>51</sup> Upper caste men, such as the Brahmins or priests, are believed to represent the Hindu gods and deserve whatever is offered to the gods.<sup>52</sup> This religious belief helps the upper caste maintain their social supremacy over the lower caste and justifies their claim over girls from the lower caste communities.<sup>53</sup> The higher castes who worship the deity at the temples do not offer their own daughters to the devadasi practice.<sup>54</sup> Instead, they purchase young girls from lower caste families for an insignificant amount and then offer those girls as a substitute for their daughters.<sup>55</sup>

(c) *Economic Factor*

In the absence of religious and social factors sustaining this practice, the economic factor of the devadasi system would preserve the practice. Extreme poverty, lack of free public education, and absence of employment opportunities have forced girls into temple prostitution under the name of religious custom.<sup>56</sup> One devadasi girl related, "My parents didn't have any sons, so there was nobody to earn the family a living. Instead they turned me into a whore. I don't even remember when I started because I was so young. My parents thought at least they'd get some money from me."<sup>57</sup> Another devadasi girl

<sup>47</sup> INDIA CONST. art. 15, §§ 1-2.

<sup>48</sup> U.S. Dep't of State, *Background Note: India*, Jan. 2008, <http://www.state.gov/r/pa/ei/bgn/3454.htm> (last visited Oct. 2, 2008).

<sup>49</sup> HELEN T. THOMAS, ASIAN DEVELOPMENT BANK, COMBATING TRAFFICKING OF WOMEN AND CHILDREN IN SOUTH ASIA 38 (2002); ANTI-SLAVERY INT'L, *supra* note 13, at 3.

<sup>50</sup> SHANKAR, *supra* note 11, at 28.

<sup>51</sup> BROKEN PEOPLE, *supra* note 32.

<sup>52</sup> Jamanadas, *supra* note 26.

<sup>53</sup> BROKEN PEOPLE, *supra* note 32.

<sup>54</sup> NAT'L HUMAN RIGHTS COMM'N OF INDIA, *supra* note 3, at 197.

<sup>55</sup> *Id.*

<sup>56</sup> *Project Combat*, *supra* note 33.

<sup>57</sup> Grammaticas, *supra* note 4.

testified that when she was thirteen years old, her virginity was auctioned off by her parents to the highest bidder.<sup>58</sup>

Dedicating a daughter lessens the parents' economic burden in that they do not need to provide for the daughter's dowry.<sup>59</sup> A mother who dedicated her daughters said, "Someone had to continue the tradition. It had to be my daughters. Because my daughter earns so much money, she has been able to build us a house and she bought these fields. So what's the big deal?"<sup>60</sup> Her argument sounds quite persuasive considering some devadasis can make as much as 5,000 Rupees (about \$ 120) for a day's prostitution while seamstresses earn only the equivalent of a few dollars a day.<sup>61</sup> In fact, the parents often choose the most attractive daughter to be dedicated as a devadasi in order to draw more profitable customers.<sup>62</sup>

### III. STATE LAWS PROHIBITING THE DEVADASI PRACTICE

#### A. Early Legislative Initiatives

In 1924, the amended Indian Penal Code declared it illegal to dedicate girls for the ultimate purpose of prostitution.<sup>63</sup> The first legislative action taken to criminalize the devadasi practice and to protect the victims thereof was the Hindu Religious and Charitable Endowment Act of 1927 enacted in Mysore.<sup>64</sup> This was soon followed by the Bombay Devadasi Protection Act of 1934.<sup>65</sup> The Bombay Devadasi Protection Act states:

[T]he performance of any ceremony intended to dedicate or having the effect of dedicating of women as a devadasi where such women has or has [sic] not consented to performance of such ceremony, is hereby declared unlawful and to be an effect to any custom or rule to the contrary notwithstanding.<sup>66</sup>

Further, this Act provided that a devadasi's marriage to a man was valid and that the children of devadasis were to be treated as legitimate

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Owen, *supra* note 32.

<sup>62</sup> SHANKAR, *supra* note 11, at 16.

<sup>63</sup> INDIA PEN. CODE §§ 372-73; NAT'L HUMAN RIGHTS COMM'N OF INDIA, *supra* note 3, at 245.

<sup>64</sup> NAT'L HUMAN RIGHTS COMM'N OF INDIA, REPORT ON PREVENTION OF ATROCITIES AGAINST SCHEDULED CASTES 61 (2004).

<sup>65</sup> *Id.*

<sup>66</sup> Jamanadas, *supra* note 26 (quoting the Bombay Devadasi Protection Act, 1934).

offspring.<sup>67</sup> In 1947, the year of India's independence from colonial rule, the southwestern province, now the State of Karnataka, enacted the Devadasi (Prevention of Dedication) Madras Act.<sup>68</sup> In 1982, the State of Karnataka enacted a similar law, the Karnataka Devadasi (Prohibition of Dedication) Act.<sup>69</sup> Six years later, the State of Andhra Pradesh established an analogous Act, the Andhra Pradesh Devdasi (Prohibition of Dedication) Act of 1988.<sup>70</sup> The latest enactment prohibiting the devadasi practice is the Maharashtra Devdasi System (Abolition) Act of 2005.

### *B. Maharashtra Devadasi System (Abolition) Act of 2005*

It is worthwhile to closely examine the Acts prohibiting the devadasi practice. The Maharashtra Devdasi System (Abolition) Act of 2005 ("the Act") is chosen as an example amongst the Acts mentioned above since it is the most recent enactment.

Under the Act, the dedication of a woman as a devadasi is unlawful.<sup>71</sup> The Act also protects the rights of devadasis by validating the marriages these women enter into and by recognizing the children of such women as legitimate offspring.<sup>72</sup> It further recognizes that cohabitation for a reasonable period of time by any man with a devadasi constitutes a legal and valid marriage.<sup>73</sup> The Act states that perpetrators will be prosecuted and defines the corresponding range of penalties, including fines and imprisonment.<sup>74</sup> Under Article 11 of the Act, a perpetrator is anyone who is involved in the performance of a devadasi dedication.<sup>75</sup> According to this provision, a person will be prosecuted for facilitating, participating in, and performing in the dedication ceremony and practice.<sup>76</sup> Under the Act, bail is not

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<sup>67</sup> *Id.*

<sup>68</sup> Comm. on the Elimination of Discrimination Against Women, *Responses to the List of Issues and Questions for Consideration of the Combined Second and Third Periodic Report of India*, at 13, U.N. Doc. CEDAW/C/IND/Q/3/Add.1 (Dec. 13, 2006) [hereinafter CEDAW, *Responses*].

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* The word "devadasi" is also spelled as "devdasi" in some instances.

<sup>71</sup> Maharashtra Devdasi System (Abolition) Act of 2005, art. 3, No. 33 of 2005 (India) [hereinafter Abolition Act].

<sup>72</sup> *Id.* art. 4.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* art. 11.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

available for offenders, and only the courts of the Metropolitan Magistrate level or above may hear the case.<sup>77</sup>

Moreover, the Act regulates how the aforementioned provisions are to be implemented by creating and empowering statutory bodies.<sup>78</sup> The government entities and positions created under the Act are (i) the Devadasi Practice Control and Eradication Board (“Control Board”),<sup>79</sup> (ii) the District Devadasi Practice Control Committee (“District Committee”),<sup>80</sup> and (iii) the Devadasi Prevention Officers.<sup>81</sup> The Act also charges the courts and police officers with specific roles.<sup>82</sup>

Police officers are obligated to report any offences punishable under the Act to the appropriate District Committee.<sup>83</sup> Then, the District Committee is to take all necessary actions to bring charges against the alleged perpetrators.<sup>84</sup> Once the case is tried, the court that heard the case must present a copy of the judgment or the final order to the District Committee.<sup>85</sup> Then, the District Committee must take subsequent actions to ensure compliance with the court order.<sup>86</sup> The District Committee is required to review all the cases within its jurisdiction every three months to ensure the implementation of court orders and to submit a compliance report to the Control Board and the Women and Children Development Department (“WCDD”).<sup>87</sup> The court may publish the names and places of residence of the perpetrators unless an appeal is pending.<sup>88</sup> In case of publication, the court is to send a copy of the publication to the Commissioner of the WCDD.<sup>89</sup>

#### IV. INDIA’S OBLIGATION UNDER INTERNATIONAL LAW

India has ratified a series of international human rights instruments. The devadasi system is a localized religious issue in India, and therefore, the provisions under the Conventions do not

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<sup>77</sup> *Id.* art. 12.

<sup>78</sup> *Id.* art. 15.

<sup>79</sup> *Id.* art. 5.

<sup>80</sup> *Id.* art. 8.

<sup>81</sup> *Id.* art. 10.

<sup>82</sup> *Id.* arts. 15-17.

<sup>83</sup> *Id.* art. 15.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* art. 16.

<sup>86</sup> *Id.*

<sup>87</sup> Information regarding the Women and Children Development Department can be found at <http://wcd.nic.in>.

<sup>88</sup> Abolition Act, *supra* note 71, art. 17.

<sup>89</sup> *Id.*

specifically deal with this issue.<sup>90</sup> However, a number of provisions bind India to take actions to eradicate such practices and to ameliorate the surrounding circumstances that force young girls into the sexual exploitation in the form of religious practice. Importantly, judges at the state and national levels have, from time to time, invoked these Conventions in adjudicating devadasi-related cases.<sup>91</sup> India is a State Party to the following Covenants and Conventions:

International Covenant on Civil and Political Rights (“ICCPR”);<sup>92</sup>

International Covenant on Economic, Social and Cultural Rights (“ICESCR”);<sup>93</sup>

Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”);<sup>94</sup>

International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”);<sup>95</sup>

Convention on the Rights of the Child (“CRC”);<sup>96</sup> and

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (“CRC-OPII”).<sup>97</sup>

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<sup>90</sup> Comm. on the Elimination of Discrimination Against Women, *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women: India*, ¶ 42, U.N. Doc. CEDAW/C/IND/2-3 (Oct. 19, 2005) [hereinafter *CEDAW, Consideration*].

<sup>91</sup> *E.g.*, *Gaurav Jain v. Union of India and Others*, (1997) 8 S.C.C. 114 (urging state governments to take action to completely eradicate the devadasi practice).

<sup>92</sup> U.N. Treaty Collection, List of State Parties to the ICCPR, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (last visited Oct. 3, 2008).

<sup>93</sup> U.N. Treaty Collection, List of State Parties to the ICESCR, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) (last visited Oct. 3, 2008).

<sup>94</sup> U.N. Treaty Collection, List of State Parties to the CEDAW, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) (last visited Oct. 3, 2008).

<sup>95</sup> U.N. Treaty Collection, List of State Parties to the ICERD, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en) (last visited Oct. 3, 2008).

<sup>96</sup> U.N. Treaty Collection, List of State Parties to the CRC, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (last visited Oct. 3, 2008).

<sup>97</sup> U.N. Treaty Collection, List of State Parties to the CRC-OPII, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-c&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en) (last visited Oct. 3, 2008).

Each of these Covenants and Conventions is founded on the basic principle that no individual should be discriminated against on grounds such as race, color, sex, language, religion, or social origin.<sup>98</sup> Each of these instruments obligates India to take necessary actions, including legislative and administrative measures, to ensure that all individuals under its jurisdiction enjoy the rights enumerated therein and are educated of such rights.<sup>99</sup>

Under these Covenants and Conventions, however, an individual cannot bring complaints against the Indian government. The Human Rights Committee and the Committee on the Elimination of All Forms of Discrimination Against Women may consider individual complaints or communications against the State Parties that have ratified the relevant Optional Protocol, i.e. the ICCPR Optional Protocol I and the CEDAW Optional Protocol.<sup>100</sup> However, India has ratified neither.<sup>101</sup> The Committee on the Elimination of Racial Discrimination may also consider individual complaints against the State Parties that have made the necessary declaration under Article 14 of the ICERD,<sup>102</sup> but India

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<sup>98</sup> International Covenant on Civil and Political Rights, art. 2, ¶ 1, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, art. 2, ¶ 2, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR]; Convention on the Elimination of All Forms of Discrimination Against Women, pmbl [HJL's question: what is "pmbl"?] *opened for signature* Dec 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; International Convention on the Elimination of All Forms of Racial Discrimination, preamble, *adopted* Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan 4, 1969) [hereinafter ICERD]; Convention on the Rights of the Child, art. 2, ¶ 1, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC]; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, *adopted* May 25, 2000, G.A. Res 54/263, U.N. Doc. A/RES/54/263 (entered into force Jan. 18, 2002) [hereinafter CRC-OPII].

<sup>99</sup> ICCPR, *supra* note 98, at art. 2, ¶¶ 2-3; ICESCR, *supra* note 98, at art. 2, ¶ 1; CEDAW, *supra* note 98, at art. 2; ICERD, *supra* note 98, at art. 2; CRC, *supra* note 98, at art. 4; CRC-OPII, *supra* note 98, at art. 2.

<sup>100</sup> Optional Protocol to ICCPR, art. 1, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 302 [hereinafter ICCPR Optional Protocol]; Optional Protocol to CEDAW, arts. 1-2, *opened for signature* Dec. 10, 1999, G.A. Res. 4, U.N. Doc. A/RES/54/4 (entered into force Dec. 22, 2000) [hereinafter CEDAW Optional Protocol].

<sup>101</sup> List of the State Parties that have signed, ratified or acceded to the ICCPR Optional Protocol I as of Mar. 5, 2008, <http://www2.ohchr.org/english/bodies/ratification/5.htm>; List of the State Parties that have signed, ratified or acceded to the CEDAW Optional Protocol as of Oct. 1, 2008, [http://www2.ohchr.org/english/bodies/ratification/8\\_b.htm](http://www2.ohchr.org/english/bodies/ratification/8_b.htm).

<sup>102</sup> ICERD, *supra* note 98, art. 14.

has not yet done so.<sup>103</sup> The ICESCR and the CRC have not established a mechanism for individual complaints.

#### *A. Obligation to Prohibit Child Prostitution and Economic Exploitation*

The ICESCR, CRC, and CRC-OPII obligate India to prohibit child prostitution or economic exploitation of children of any kind. Articles 32(1), 34, and 36 of the CRC guarantee the protection of children from economic and social exploitation.<sup>104</sup> Article 34 of the CRC specifically enjoins its State Parties to undertake the protection of children from sexual exploitation.<sup>105</sup> Article 19 of the CRC obligates the State Parties to take all necessary measures including legislative, administrative, social, and educational tools to protect children against physical, mental and sexual abuse.<sup>106</sup> Article 10(3) of the ICESCR also affirms the duty of the State Parties to protect children from all kinds of economic and social exploitation and further imposes the duty to criminalize such acts.<sup>107</sup> In addition, Article 1 of the CRC-OPII provides that State Parties are required to put a ban on the sale of children and to prohibit sexual abuse against them.<sup>108</sup> Article 3 of the CRC-OPII is of particular relevance to the devadasi practice because it requires State Parties to criminalize the acts of sacrificing children to prostitution.<sup>109</sup>

#### *B. Obligation to End Forced Marriage and Trafficking in Women*

Under ICCPR, ICESCR, CEDAW, ICERD, and CRC, India is to end forced marriages and trafficking in women and girls. Forced marriages are prohibited and free choice of a spouse is assured by Article 23(3) of the ICCPR, Article 10(1) of the ICESCR, and Article 16(1) of the CEDAW.<sup>110</sup> It may be controversial whether the provisions governing forced marriage are applicable to the devadasi practice because the girls are forced to be married to a deity not to a

<sup>103</sup> Declarations and Reservations made by the State Parties to the ICERD as of Aug. 17, 2008, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en).

<sup>104</sup> CRC, *supra* note 98, arts. 32(1), 34, 36.

<sup>105</sup> *Id.* art. 34.

<sup>106</sup> *Id.* art. 19.

<sup>107</sup> ICESCR, *supra* note 98, art. 10(3).

<sup>108</sup> CRC-OPII, *supra* note 98, art. 1.

<sup>109</sup> *Id.* art. 3.

<sup>110</sup> ICCPR, *supra* note 98, art. 23(3); ICESCR, *supra* note 98, art. 10(1); CEDAW, *supra* note 98, art. 16(1).

human being. It is debatable whether the girls are actually forced into becoming a devadasi when they are offered by their own parents. However, it is more likely that such provisions would apply to the devadasi practice because the minor girls are dedicated to the deity without their understanding of the nature of the act, therefore without a meaningful consent, or, if understood, most of the time against their will.<sup>111</sup> As a result, they are prevented from enjoying a normal marriage of their choice due to their religious and *de facto* social status as married women.<sup>112</sup> Therefore, the articles guaranteeing a right to choice of spouse should also apply to the devadasi practice.

As to racial equality in terms of the right to marriage and free choice of spouse, Article 5(iv) of the ICERD requires State Parties to eliminate any racial discrimination regarding marriage.<sup>113</sup> ICERD defines “racial discrimination” to include discrimination based on “descent” where the disadvantaged lower castes are prone to sell their daughters off to be devadasis.<sup>114</sup>

Article 6 of the CEDAW and Article 35 of the CRC require State Parties to take all necessary steps to prevent trafficking in women and children, respectively.<sup>115</sup> In 2000, the U.N. adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (“Palermo Protocol”).<sup>116</sup> India signed the Convention on December 12, 2002, but has yet to ratify it.<sup>117</sup> The Palermo Protocol obliges State Parties to take active measures to prevent and combat trafficking as well as protect and

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<sup>111</sup> Carla Power, *Becoming a Servant of God: Devadasis Are Dalit Women Sold into Sexual Slavery*, NEWSWEEK, July 3, 2000, <http://www.newsweek.com/id/85313>.

<sup>112</sup> Das, *supra* note 7.

<sup>113</sup> ICERD, *supra* note 98, art. 5(iv).

<sup>114</sup> Art.1(1) of ICERD reads:

In this Convention, the term racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, *descent*, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

*Id.* art. 1(1) (emphasis added).

<sup>115</sup> CEDAW, *supra* note 98, art. 6; and CRC, *supra* note 98, art. 35.

<sup>116</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, 2225 U.N.T.S. 209., available at <http://untreaty.un.org/English/notpubl/18-12-a.E.htm> [hereinafter Palermo Protocol].

<sup>117</sup> List of the States Parties that have signed and/or ratified the Palermo Protocol, <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist.html> (last visited Nov. 7, 2008).

assist the victims.<sup>118</sup> Although India has not ratified the Palermo Protocol, Article 18(a) of the Vienna Convention on the Law of Treaties (1969) requires India to uphold the purpose of the treaty.<sup>119</sup>

India is also a State Party to a regional convention, the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002), which obligates India to combat trafficking.<sup>120</sup>

### C. Obligation to Prevent Slavery

Article 8(1) of the ICCPR requires India to prohibit all form of slavery, thereby freeing Indian people from slavery.<sup>121</sup> The devadasi practice can be interpreted as a form of modern day slavery under the 1926 Slavery Convention<sup>122</sup> and the 1956 Supplementary Slavery Convention.<sup>123</sup> Article 1(d) of the Supplementary Slavery Convention of 1956 defines slavery as:

Any institution or practice whereby a child or a young person under the age of 18 is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person.<sup>124</sup>

Devadasis are subject to forced arrangements made between their parents<sup>125</sup> and temple priests,<sup>126</sup> and they are forced to provide sexual

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<sup>118</sup> Palermo Protocol, *supra* note 116, arts. 2 & 9.

<sup>119</sup> Article 18(a) of the Vienna Convention on the Law of Treaties reads:

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.

Vienna Convention on the Law of Treaties, art. 18(a), May 23, 1969, 1115 U.N.T.S. 331.

<sup>120</sup> S. Asian Ass'n for Regional Coop., Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, art. 3, Jan. 5, 2002, available at [http://www.humantrafficking.org/uploads/publications/SAARC\\_Convention\\_on\\_Trafficking\\_Prostitution.pdf](http://www.humantrafficking.org/uploads/publications/SAARC_Convention_on_Trafficking_Prostitution.pdf).

<sup>121</sup> ICCPR, *supra* note 98, art. 8(1).

<sup>122</sup> Slavery Convention, art. 1, Sept. 25, 1926, 60 L.N.T.S. 253.

<sup>123</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, art. 1(d), Sept. 7, 1956, 226 U.N.T.S. 3.

<sup>124</sup> *Id.*

<sup>125</sup> Grammaticas, *supra* note 4.

<sup>126</sup> Nadu, *supra* note 35.

services<sup>127</sup> in which they are turned into a source of income for their family.

#### *D. Obligation to Provide Compulsory Primary Education*

Under the ICESCR and the CRC, India has a duty to assure that its children receive compulsory primary education. Articles 13(2) and 14 of the ICESCR and Article 28 of the CRC require India to provide free elementary education.<sup>128</sup> An untold number of Indian children do not go to school and are left vulnerable to various forms of exploitation including mendicancy, forced labor, and prostitution.<sup>129</sup> Girls dedicated as devadasi are usually of school age and, according to India's Constitution (86th Amendment) Act of 2002, are supposed to attend school.<sup>130</sup>

#### *E. Obligation to Assure Children a Decent Life*

ICCPR, CRC, and CRC-OPII obligate India to provide its children with a decent life. Article 24(1) of the ICCPR grants children the right of protection.<sup>131</sup> Article 24(3) of the CRC is pertinent to the devadasi practice as it imposes on India the obligation to abolish traditional practices harmful to children's welfare.<sup>132</sup> Articles 26(1) and 27(1) of the CRC require India to provide children with "social security" and a "standard of living" that would promote their comprehensive development.<sup>133</sup> Article 10(3) of the CRC-OPII urges India to seek international cooperation to eradicate fundamental problems exposing children to sexual exploitation.<sup>134</sup> Furthermore, Article 11(1) & (2) and Article 12 of the ICESCR secure the same rights aforementioned in this paragraph for "everyone" – including children.<sup>135</sup> Implementation of these two articles of the ICESCR may also

<sup>127</sup> *Id.*; ANTI-SLAVERY INT'L, *supra* note 13, at 5.

<sup>128</sup> ICESCR, *supra* note 98, arts. 13(2), 14; CRC, *supra* note 98, art. 28.

<sup>129</sup> HUMAN RIGHTS WATCH, WORLD REPORT 2007 275 (2007) [hereinafter HRW WORLD REPORT 2007].

<sup>130</sup> CENT. ADVISORY BD. OF EDUC. COMM. OF INDIA, FREE AND COMPULSORY EDUCATION BILL AND OTHER ISSUES RELATED TO ELEMENTARY EDUCATION 1 (2005); INDIA CONST. art. 21A: amended by the Constitution (Eighty-sixth Amendment) Act, 2002 (providing for free and compulsory education to all children six to fourteen years old).

<sup>131</sup> ICCPR, *supra* note 98, art. 24(1).

<sup>132</sup> CRC, *supra* note 98, art. 24(3).

<sup>133</sup> *Id.* arts. 26(1), 27(1).

<sup>134</sup> CRC-OPII, *supra* note 98, art. 10(3).

<sup>135</sup> ICESCR, *supra* note 98, arts. 11(1)-(2), 12.

indirectly lead to the decrease in the number of dedicated girls by ameliorating the living conditions of the lower caste communities.<sup>136</sup>

## V. EFFORTS AT DIFFERENT LEVELS TO IMPLEMENT THE RELEVANT LAWS

Parts III and IV examined the legal duties of India's National and State governments to eradicate the devadasi practice under national and international laws. This Part introduces the efforts made to implement the laws by the Indian and State Governments, international organizations, and NGOs.

### A. National and State Governments

#### 1. Administrative Endeavors

##### (a) National Government Agencies

The Indian government at the national level has invested resources to promote public awareness of the laws prohibiting the devadasi practice and to enforce them. For example, "Project Combat" by the National Legal Services Authority was launched to make officials aware of the systematic sexual exploitation through the devadasi practice and the existence of the Acts prohibiting this practice.<sup>137</sup> The project provides education regarding the Devadasi Prohibition Acts and rehabilitation programs to approximately 500 judicial officers, 1,000 lawyers, 100 NGOs, 500 law enforcement officials, 500 administrative officials, and devadasis in Maharashtra and Karnataka.<sup>138</sup> This movement is not limited to this region and similar efforts are being pursued in Andhra Pradesh and Goa.<sup>139</sup>

Another government agency that works on devadasi issues is the National Commission for Women.<sup>140</sup> The Commission sponsors its partner NGOs in the field and keeps record of issues related to violence against women, such as rape, sexual harassment, and the

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<sup>136</sup> *Id.*

<sup>137</sup> *Project Combat*, *supra* note 33.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Nat'l Comm'n for Women, <http://ncw.nic.in/frmAboutUS.aspx> (last visited Nov. 15, 2008). "The National Commission for Women was set up as a statutory body in January 1992 under the National Commission for Women Act, 1990... to: (i) review the Constitutional and Legal safeguards for women; (ii) recommend remedial legislative measures; (iii) facilitate redressal of grievances; and (iv) advise the Government on all policy matters affecting women." *Id.*

devadasi practice.<sup>141</sup> As one of the Commission's important mandates, it officially announced the number of devadasis in each state where the devadasi practice existed.<sup>142</sup> The announcement helped many other entities better understand the current trend and the grave nature of the devadasi practice.<sup>143</sup>

### (b) State Governments

State governments are making efforts to protect minors from the devadasi practice and to provide counseling for the victims.<sup>144</sup> To take an example, the State of Karnataka launched the Devadasi Rehabilitation Programme in 1991, which includes education and awareness campaigns at temples and villages.<sup>145</sup> The Karnataka Government expected to reduce the number of future devadasis by providing them with financial aid to help their rehabilitation and requiring them to send their children to school and to refrain from offering their children back to the temples.<sup>146</sup>

## 2. Judicial Exertion

In the judicial sector, the High Court of Delhi<sup>147</sup> took several proactive steps from 2001 to 2003.<sup>148</sup> The Court mustered various government officials and NGO workers in the field to evaluate actual situations on ground and give detailed directions for rescuing and counseling trafficked victims.<sup>149</sup> A number of senior officials from

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<sup>141</sup> CEDAW, *Consideration*, *supra* note 90, ¶¶ 42, 45.

<sup>142</sup> *Id.* at ¶ 45.

<sup>143</sup> *Id.* at ¶¶ 42, 45.

<sup>144</sup> CEDAW, *Responses*, *supra* note 68.

<sup>145</sup> *Id.*

<sup>146</sup> Karnataka [HJL's note: Same as the note for FN 35 – Karnataka is a state name used here as a section of *HINDU*], *Kumaraswamy Promises to Eliminate Devadasi System*, *HINDU* (India), Apr. 29, 2007, available at <http://www.hindu.com/2007/04/29/stories/2007042902790300.htm>.

<sup>147</sup> High Courts are right under the National Supreme Court. There are eighteen High Courts in India; three of the High Courts have jurisdiction over more than one state. For example, Bombay High Court has the jurisdiction over Maharashtra, Goa, Dadra and Nagar Haveli, Daman and Diu. Delhi has a High Court of its own. Detailed explanation of India's judicial hierarchy and each court's jurisdiction is available at the official website of the Supreme Court of India, [http://www.supremecourtsofindia.nic.in/new\\_sf/juris.htm](http://www.supremecourtsofindia.nic.in/new_sf/juris.htm).

<sup>148</sup> NAT'L HUMAN RIGHTS COMM'N OF INDIA, *supra* note 3, at 284.

<sup>149</sup> *Id.*

various states were charged with the responsibility to implement rehabilitation and prevention programs.<sup>150</sup>

The active involvement of the High Court of Delhi has changed the atmosphere in this field and is highly appreciated as an effort to defend the rights of present and potential victims.<sup>151</sup> For instance, twenty-eight perpetrators have been convicted for the trafficking and exploitation of women and girls, which is a significant action compared to the number of preceding years' convictions, and several brothels have been shut down by the Court's orders.<sup>152</sup> Judicial exertion made by a high level court prompts sensitivity among government agencies and helps form the close networking of various actors in this arena.<sup>153</sup>

### B. International Organizations

India has a population of 1.1 billion people who suffer from a variety of grave problems including corruption both in public and private sectors,<sup>154</sup> infanticide,<sup>155</sup> poor hygiene conditions,<sup>156</sup> chronic poverty, a high HIV/AIDS-infected ratio, child labor, and child trafficking.<sup>157</sup> International organizations do not highlight the devadasi practice as a distinct concern. Instead, they have documented India's trafficking problems in general, touching upon the issue of devadasis as well, and have funded NGO research projects on trafficking.<sup>158</sup> Other than that, the monitoring bodies of the Conventions to which India is a State Party continue to urge India to legislate against harmful practices including the devadasi system or to fully enforce laws pertaining to devadasis.<sup>159</sup>

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<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> TRANSPARENCY INT'L INDIA, INDIA CORRUPTION STUDY 2005 TO IMPROVE GOVERNANCE VOL. 1- KEY HIGHLIGHTS 27 (2005).

<sup>155</sup> Uma Girish, *Infanticide of Girls and Sex-selective Abortion in India*, CATHOLIC ONLINE, Feb. 21, 2008, [http://www.catholic.org/international/international\\_story.php?id=26919](http://www.catholic.org/international/international_story.php?id=26919).

<sup>156</sup> World Health Org., *Core Health Indicators*, [http://www.who.int/whosis/database/core/core\\_select\\_process.cfm?countries](http://www.who.int/whosis/database/core/core_select_process.cfm?countries) (last visited Nov. 12, 2008).

<sup>157</sup> Cent. Intelligence Agency, *The World Factbook: India*, Central Intelligence Agency, <https://www.cia.gov/library/publications/the-world-factbook/geos/in.html> (last visited Oct. 2, 2008).

<sup>158</sup> *See supra* notes 92-97.

<sup>159</sup> *E.g.*, Comm. on the Rights of the Child, *Thirty-Fifth Session Consideration of Reports Submitted by States Parties Under Article 44 of the Convention -*

### C. NGOs in the Field

For similar reasons mentioned in the previous paragraph, there seems to be a lack of NGOs that focus solely on the devadasi practice. However, there are a number of NGOs working on the prevention of trafficking in women and children, such as: International Justice Mission,<sup>160</sup> Freedom Firm,<sup>161</sup> Save the Children,<sup>162</sup> Rescue Foundation,<sup>163</sup> Bombay Teen Challenge,<sup>164</sup> World Vision,<sup>165</sup> and SANLAAP.<sup>166</sup> What they do can be categorized according to the nature of the work involved: (i) investigation, rescue, and advocacy and (ii) aftercare and rehabilitation of traffic victims. These NGOs, however, are subject to various limitations, such as shortage of funds, limited access to government resources or information, corrupted government officials, and even physical threats by perpetrators facing the threat of imprisonment.<sup>167</sup>

## VI. LIMITATIONS AND SUGGESTIONS

As observed above, the Indian national government and Indian state governments have attempted to uproot the devadasi practice through legislative, executive and judicial efforts. Moreover, international organizations and numerous NGOs urge and assist the governments to better carry out their obligations under the national and international laws. These efforts, however, have been faced with a variety of persistent obstacles, including passivity from within the government. In this part, the limitations that prevent the relevant laws from fully functioning will be examined and some corresponding suggestions will be presented.

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*Concluding Observations: India*, ¶ 58, U.N. Doc. CRC/C/15/Add.228 (Feb. 26, 2004); Comm. on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention*, ¶ 18, U.N. Doc. CERD/C/IND/CO/19 (May 5, 2007).

<sup>160</sup> See Int'l Justice Mission, <http://www.ijm.org> (last visited Nov. 7, 2008).

<sup>161</sup> See Freedom Firm, <http://www.freedom.firm.in> (last visited Nov. 7, 2008).

<sup>162</sup> See Save the Children, <http://www.savethechildrenindia.org> (last visited Nov. 7, 2008).

<sup>163</sup> See Rescue Foundation, <http://www.rescuefoundation.net/index.html> (last visited Nov. 7, 2008).

<sup>164</sup> See Bombay Teen Challenge, [http://www.compassionlink.org/Devaraj\\_Bombay\\_Teen\\_Challenge.pdf](http://www.compassionlink.org/Devaraj_Bombay_Teen_Challenge.pdf) (last visited Nov. 7, 2008).

<sup>165</sup> See World Vision, <http://www.worldvision.org> (last visited Nov. 7, 2008).

<sup>166</sup> See Sanlaap, <http://www.sanlaapindia.org> (last visited Nov. 7, 2008).

<sup>167</sup> See generally U.S. DEP'T. OF STATE, INDIA: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2005, <http://www.state.gov/g/drl/rls/hrrpt/2005/61707.htm>.

### A. Corruption

Carrying out its obligations as a State Party to international human rights conventions, India enacted some necessary statutes in incorporating these conventions into the domestic system.<sup>168</sup> However, deeply rooted corruption hinders the full enforcement of those statutes.<sup>169</sup> In 2006, Indian courts charged various officials from different government agencies, such as police officers, state ministers, and even an official from the Central Bureau of Investigation for colluding with traffickers.<sup>170</sup> Many police officers are either heavily bribed<sup>171</sup> or threatened by brothel owners, traffickers, and their associated criminal circles.<sup>172</sup> In worst case scenarios, police officers themselves may exploit as the devadasis' customers.<sup>173</sup>

Many Indian citizens feel helpless against the deep-seeded corruption evident in each level of public and private societal hierarchies and do not anticipate substantial improvement.<sup>174</sup> Meanwhile, corruption perpetuates the devadasi practice by giving the perpetrators room to continue their business.<sup>175</sup> Corruption permeates the government hierarchy; however, India may find hope by mobilizing its civic society and the international community to establish a high level of integrity in law enforcement, which will help bring justice to perpetrators of the devadasi practice.

### B. Lack of Comprehensive Approaches

As examined in Part II, the devadasi practice continues from a variety of intermingled causes. While laws and policies targeting the practice itself are needed, more comprehensive and fundamental

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<sup>168</sup> E.g., Commissions for Protection of Child Rights Act, No. 04 of 2006; INDIA CODE (2006); The Protection of Human Rights (Amendment) Act of 2006, No. 43 of 2006; INDIA CODE (2006); The Nat'l Comm'n For Backward Classes Act of 1993, No. 27 of 1993; INDIA CODE (1993); Prevention of Immoral Trafficking Act of 1956, No. 104 of 1956; INDIA CODE (1956).

<sup>169</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 117 (2007), available at <http://www.state.gov/documents/organization/82902.pdf> [hereinafter TRAFFICKING 2007].

<sup>170</sup> *Id.*

<sup>171</sup> Factbook: India, Coalition Against Trafficking in Women, <http://www.catwinternational.org/factbook/india.php>.

<sup>172</sup> E-mail from Greg Malstead, Int'l Director, Freedom Firm, to author (Oct. 26, 2008, 22:47:01 EDT) (on file with author).

<sup>173</sup> BROKEN PEOPLE, *supra* note 32.

<sup>174</sup> TRANSPARENCY INT'L INDIA, *supra* note 154.

<sup>175</sup> TRAFFICKING 2007, *supra* note 169.

approaches are necessary as well.<sup>176</sup> Parents dedicate their daughters to survive extreme poverty because they are not given equal access to social resources and cannot afford to feed their family.<sup>177</sup> Those from underprivileged and uneducated groups do not feel shame about selling their daughters.<sup>178</sup>

What if the lower caste communities could benefit from a social safety net? What if the parents had employment opportunities? What if towns had free public schools that provided a midday meal for the children? What if the parents had been educated appropriately enough to understand the vice associated with such practice? They may be discouraged from dedicating their daughters to become prostitutes, and thereby reduce or eliminate the need for government's intervention. In order to cut down on the number of trafficked girls from disadvantaged communities, the Indian government is strongly encouraged to allocate more funds to social security policies and develop a more comprehensive long-term plan for education and other social services.<sup>179</sup>

### C. Inadequate Action of the Governments

Though the national and state governments of India are trying to enhance law enforcement efforts against trafficking in women, it does not appear to be effective.<sup>180</sup> The national government reported only twenty-seven convictions on trafficking-related offences throughout the country in 2006.<sup>181</sup> It rescued 275 sexually exploited victims from forty-three rescue operations, but the prosecution process of the traffickers was not meticulous.<sup>182</sup> Inadequate incentives coupled with ignorance of the Acts prohibiting the devadasi practice have resulted in passivity in governmental action at the law enforcement level.<sup>183</sup> Therefore, a more vigorous strategy should be designed to motivate and educate the police officers on the urgent need for law enforcement in this area. Various promotional incentives may be an effective way to motivate the government officers.

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<sup>176</sup> *Project Combat*, *supra* note 33.

<sup>177</sup> THOMAS, *supra* note 49.

<sup>178</sup> TARACHAND, *supra* note 8, at 134.

<sup>179</sup> Comm. on the Rights of the Child, *supra* note 24, ¶ 11.

<sup>180</sup> TRAFFICKING 2007, *supra* note 169.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> TARACHAND, *supra* note 8, at 135.

#### D. Concentration on Post-Factum Action

A substantial part of resources are invested to rescue and rehabilitate devadasis after already exploited and traumatized. Aftercare and reintegration of devadasis is a significant issue. However, despite the endeavors of the government agencies and NGOs to rehabilitate them, their lives as devadasis, whether short or long, have a permanent effect on their mental health and other capacities.<sup>184</sup> Furthermore, most of the devadasis in brothels contract HIV/AIDS, meaning they are not, medically speaking, expected to live as long as average healthy persons.<sup>185</sup> Therefore, more aggressive measures should be taken to prevent the devadasi practice from happening in the first place.

#### E. International Sex Tourism

It is well documented and reported that thousands of men travel overseas to solicit underage prostitutes at cheap prices.<sup>186</sup> India is one of their favorite destinations where they can easily buy preteen virgin girls.<sup>187</sup> In addition to domestic customers of India's sex industry, foreign customers spur brothel keepers to continue their business by procuring girls through the devadasi system. The popularity of India for sex tourism is reflected in the world-famous tour guide book, LONELY PLANET: SOUTH INDIA.<sup>188</sup> This book provides a map for tourists from all over the world to locate red light districts.<sup>189</sup>

Other countries may be able to assist in India's battle against trafficking in women. The International Anti-Trafficking Programs launched by the U.S. Department of State,<sup>190</sup> the Trafficking Victims Protection Reauthorization Act of 2003 of the United States,<sup>191</sup> and

<sup>184</sup> ANTI-SLAVERY INT'L, *supra* note 13, at 2.

<sup>185</sup> Jangveer Singh, *Devadasis Fight Bias*, THE TRIBUNE INDIA, Mar. 4, 2007, <http://www.tribuneindia.com/2007/20070304/society.htm#1>.

<sup>186</sup> Susan Song, *Global Child Sex Tourism: Children as Tourist Attractions*, YOUTH ADVOCATE PROGRAM INT'L, <http://www.yapi.org/rpchildsextourism.pdf> (last visited Nov. 12, 2008).

<sup>187</sup> Allan Urry, *Goa - New Paedophile's Paradise*, BBC NEWS, Jan. 8, 2007, [http://news.bbc.co.uk/2/hi/south\\_asia/6230957.stm](http://news.bbc.co.uk/2/hi/south_asia/6230957.stm).

<sup>188</sup> RICHARD PLUNKETT ET AL., LONELY PLANET: SOUTH INDIA 162-63 (2d ed. 2001).

<sup>189</sup> *Id.*

<sup>190</sup> U.S. Dep't of State, *The U.S. Government's International Anti-Trafficking Programs* (2003), <http://www.state.gov/g/tip/rls/rpt/17858.htm>.

<sup>191</sup> 18 U.S.C. § 2423(c).

Australia's Crimes (Child Sex Tourism) Amendment Act of 1994<sup>192</sup> are examples of the measures that could support the eradication of the devadasi practice in India.

#### *F. Politics in the International Community*

Since India is emerging as a new force in international economy and trade, the international community is reluctant to confront India with regard to its human rights issues.<sup>193</sup> India possesses not only a huge economy manufacturing market and incredibly cheap labor force, but also nuclear weapons and an accompanying military force. In publishing its annual report, *Trafficking in Persons in 2007*, the U.S. Department of State rejected the recommendation of some officials to place India on the Tier 3 "blacklist."<sup>194</sup> Instead, India remains on the Tier 2 Watch List for its fourth straight year.<sup>195</sup> Also, India is often considered as a countervailing power against the rapid economic and military growth of China.<sup>196</sup> Human rights concerns, in many cases, cannot be tackled as humanitarian or legal issues in the international context, as political and economic concerns predominate.

The Indian government does not appear to be fully committed to improving the dire human rights conditions of its people, and the international community seems to be hesitant to take action against the Indian government's unwillingness or indifference to this issue. Therefore, NGOs working on the trafficking in women issues in India should be encouraged to fill the gap created by international politics.

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<sup>192</sup> Crimes (Child Sex Tourism) Amendment Act 1994, (Austl.). Article 50BA reads: "A person must not, while outside Australia, engage in sexual intercourse with a person who is under 16. Penalty: Imprisonment for 17 years." *Id.* art. 50BA.

<sup>193</sup> HRW WORLD REPORT 2007, *supra* note 129, at 276.

<sup>194</sup> K. ALAN KRONSTADT, CONGRESSIONAL RESEARCH SERVICE, CRS REPORT FOR CONGRESS: INDIA-U.S. RELATIONS 48 (2007); Elise Labott & Zane Verjee, *India Escapes U.S. List of Worst Human Traffickers*, CNN, June 13, 2007, <http://www.cnn.com/2007/US/06/12/human.trafficking/index.html>.

<sup>195</sup> TRAFFICKING 2007, *supra* note 169, at 115.

Governments that fully comply are placed in Tier 1. For other governments, the Department considers whether they are making significant efforts to bring themselves into compliance. Governments that are making significant efforts to meet the minimum standards are placed in Tier 2. Governments that do not fully comply with the minimum standards and are not making significant efforts to do so are placed in Tier 3. Finally, the special watch list criteria are considered and, when applicable, Tier 2 countries are placed on the Tier 2 Watch List.

*Id.* at 12.

<sup>196</sup> Siddharth Varadarajan, *America, India, and Outsourcing Imperial Overreach*, HINDU (India), July 13, 2005, available at <http://www.hindu.com/2005/07/13/stories/2005071305411000.htm>.

The first step in protecting the vulnerable victims is attracting wider media coverage, and thereby putting more pressure on the government and international organizations.

## VII. CONCLUSION

It may not be easy to imagine that thousands of parents are selling their own young daughters to earn a living for the family in the name of religious tradition. Like most victims of human rights violations, these young girls, married to a deity, live dreadful and hopeless lives in the face of international silence and indifference. As an aspiring human rights advocate especially committed to children, I hope this paper will make a small contribution to the efforts of the field workers dedicated to rescuing these voiceless young souls.