

# DESTINATIONS: A COMPARISON OF SEX TRAFFICKING IN INDIA AND THE UNITED STATES

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*This Note examines the similarities and differences between sex trafficking in India and the United States. It highlights three similarities between the countries. First, the basic sexual demands of the johns are not being met by the local population of women despite that population's vulnerabilities. Second, sex trafficking is usually more profitable than legal alternatives for the pimps. Third, the victims are lured by the dreams of a better life that the traffickers supposedly can provide and will therefore often consent to travel with them until it is too late. This Note argues that if these three truths apply in India and the United States, despite the differences between the two countries, then they illustrate three global issues that the international community should address.*

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## INTRODUCTION

One would not expect sex trafficking in India and the United States to have much in common. If anything, one might assume that the poverty and gender inequality in India would create a source for women and girls who could be trafficked to a wealthy destination country like the United States. On closer examination, however, India is as much a destination country as the United States.<sup>1</sup> The terms “destination country” and “source country” come from the State Department Trafficking in Persons (TIPS) report.<sup>2</sup> Destination countries are those *into* which victims are trafficked, while source countries are those *out of* which victims are trafficked.<sup>3</sup> The United States and India are both examples of destination countries, while Nepal and Bangladesh are examples of source countries.<sup>4</sup>

This Note examines why the United States and India are destination countries. The two countries differ in several significant respects: majority religion, poverty levels, social structure, gender equality, and global prominence.<sup>5</sup> Despite these differences, however, similarities between the demand for

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1. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 171, 339 (10th ed. 2010) [hereinafter TIPS], available at <http://www.state.gov/documents/organization/142979.pdf>.

2. *Id.* at 10. I use the terms “supply” and “demand” in their common economic meaning. See, e.g., ALFRED MARSHALL, PRINCIPLES OF ECONOMICS 316–26 (Prometheus Books, 8th ed. 1997) (1920).

3. TIPS, *supra* note 1, at 171, 339.

4. *Id.* at 171.

5. See *infra* Part IV.

trafficked victims in the United States and India still exist. Three root causes drive demand in both countries. First, the women and children who are already in the local sex industry are not meeting the sexual demands of “johns.”<sup>6</sup> Second, sex trafficking is a very profitable business, usually more so than legal alternatives. Third, the victims of sex trafficking are vulnerable to promises made by traffickers and thus often consent to travel willingly—at least in the beginning. Such similarities found amid such differing countries indicate that these three causes might be universal.

This Note begins with a definition of trafficking and then explores the general scope of the problem. Parts II and III examine the factors making the United States and India, respectively, destination countries. The two parts specifically focus on the pimps, johns, victims, and law enforcement in each country. Part IV compares and contrasts the two countries. The final section explores conclusions, along with some suggestions for where the realization of these similarities might lead.

## I. BACKGROUND

### A. *The Definition of Sex Trafficking*

The United Nations Convention Against Transnational Organized Crime defines sex trafficking as follows:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation . . . ;
- (b) The consent of a victim of trafficking in persons . . . shall be irrelevant . . . ;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not

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6. “A prostitute’s client.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 674 (11th ed. 2004).

- involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.<sup>7</sup>

Sex trafficking is thus a global problem of transnational crime. It includes any movement of people—for recruiting, transporting, transferring, harboring, or receiving—through coercion.<sup>8</sup> This coercion can include threats, violence, deceit, or an abuse of power that is used to exploit people for prostitution or sexual slavery.<sup>9</sup> Although broad enough to include different forms of exploitation and methods of coercion, the definition of sex trafficking is also narrow enough to focus on trafficking by and for sexual predators.<sup>10</sup>

### *B. The Size and Complexity of the Sex Trafficking Problem*

Between eight hundred thousand and two million people are trafficked globally every year.<sup>11</sup> International human trafficking is estimated to yield \$31.6 billion in profit to organized crime operations per year.<sup>12</sup> The exact numbers are not known, however, because of a lack of data and unreliable estimates.<sup>13</sup> The vagueness of the data is due mainly to the illegality of the practice and a lack of trustworthy law enforcement data.<sup>14</sup>

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7. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, art. 3, Dec. 25, 2003, 2237 U.N.T.S. 319, available at <http://treaties.un.org/doc/publication/UNTS/Volume%202237/v2237.pdf>.

8. *Id.*

9. See SILVIA SCARPA, *TRAFFICKING IN HUMAN BEINGS: MODERN SLAVERY* 5 (2008).

10. *See id.*

11. *Id.* at 8; Trafficking Project, *Trafficking in Person Worldwide Estimates 1997–2009*, UNESCO BANGKOK, [http://www.unescobkk.org/fileadmin/user\\_upload/culture/Trafficking/project/abc/Selected\\_Articles\\_and\\_Publications/Graph\\_VT\\_Trafficking\\_in\\_Person\\_01.pdf](http://www.unescobkk.org/fileadmin/user_upload/culture/Trafficking/project/abc/Selected_Articles_and_Publications/Graph_VT_Trafficking_in_Person_01.pdf) (last visited Mar. 28, 2012).

12. SCARPA, *supra* note 9, at 16.

13. “Such data, as exist, are often contaminated with ideological and moral bias.” Bebe Loff & Jyoti Sanghera, *Distortions and Difficulties in Data for Trafficking*, 363 *LANCET* 566, 566 (2004); see also *Trafficking Statistics Project*, UNESCO BANGKOK, <http://www.unescobkk.org/culture/cultural-diversity/trafficking-and-hiv-aids-project/projects/trafficking-statistics-project> (last visited Mar. 28, 2012).

14. SCARPA, *supra* note 9, at 8–10.

Eliminating human trafficking is a complicated problem. There are three stages of human trafficking: before, during, and after. Each must be examined separately because each stage requires different analysis, demands different solutions, and has a different victim impact. There are different causes and effects for each stage. For example, what causes people to enter sexual exploitation might be different from what causes them to continue being exploited. And a victim who is in the early stages of trafficking—being abducted or deceived—will be affected differently, and have different needs, than a victim who has engaged in forced prostitution for years.

Sex trafficking also differs depending on its location. Professor Mary Crawford maintains that sex trafficking is not a single, global problem but a multitude of local problems:

Sex trafficking is not uniform across social, cultural, and political contexts, but rather highly situation-specific. To begin with, the girls and women who are vulnerable are not all alike. . . .

The perpetrators differ . . . .

. . . [T]here are also enormous differences in root causes, modes of trafficking, victim characteristics, and perpetrator characteristics . . . .

. . . .

. . . I contend that attempts to understand sex trafficking as a unitary, global phenomenon are misplaced and likely to be ineffective. Instead, I hope to demonstrate that trafficking in girls and women is a product of the social construction of gender and other dimensions of power and status within a particular culture and at a particular historical moment.<sup>15</sup>

If we accept Crawford's thesis, then no two systems of sex trafficking are alike, and each path that a woman follows to exploitation must be examined separately. But there are some similarities, even in sex trafficking systems that seem different, in countries that have very disparate "social construction[s] of gender" and "dimensions of power and status."<sup>16</sup> This Note argues that similarities can exist between sex trafficking systems despite significant cultural, political, and sociological differences.

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15. MARY CRAWFORD, *SEX TRAFFICKING IN SOUTH ASIA: TELLING MAYA'S STORY* 8–9 (2010).

16. *Id.* at 9.

## II. FACTORS THAT MAKE THE UNITED STATES A DESTINATION COUNTRY

### A. *Some Basic Facts*

The U.S. State Department issues the Trafficking in Persons (TIPS) report annually as a tool for evaluating trafficking activity in different countries.<sup>17</sup> In 2010, the TIPS report classified the United States as a “Tier 1” country.<sup>18</sup> This means that the U.S. government fully complies with the minimum standards of the Trafficking Victims Protection Act (TVPA), which was established by the United States in 2000.<sup>19</sup> Despite this high rating, however, State Department officials still estimate that between 17,500 and 50,000 women and children are trafficked into the United States annually.<sup>20</sup>

The TIPS report explains that “[t]he United States is a . . . destination country for men, women, and children subjected to trafficking in persons, specifically forced labor, debt bondage, and forced prostitution.”<sup>21</sup> Although “[m]ore foreign victims are found in labor trafficking than sex trafficking” in the United States, the TIPS report found that around fifteen percent of the

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17. TIPS, *supra* note 1, at 8.

18. *Id.* at 22, 338. The report defines Tier 1 as follows: “*Tier 1*: Countries whose governments fully comply with the TVPA’s minimum standards for the elimination of trafficking.” *Id.* at 22.

19. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464. The U.S. legislature enacted this law for the purpose of combating trafficking both in the United States and abroad. Theodore R. Sangalis, Comment, *Elusive Empowerment: Compensating The Sex Trafficked Person Under the Trafficking Victims Protection Act*, 80 FORDHAM L. REV. 403, 417–18 (2011). Although it is a U.S. law, it expressly provides a standard by which the State Department can evaluate the progress of anti-sex trafficking efforts in other countries through the TIPS report. *Id.* at 418.

20. LIANA SUN WYLER & ALISON SISKIN, CONG. RESEARCH SERV., RL34317, TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 8–9 (2010), available at <http://fpc.state.gov/documents/organization/147256.pdf>. It should be noted that there also are a number of victims trafficked *within* the United States. See KEVIN BALES & RON SOODALTER, THE SLAVE NEXT DOOR: HUMAN TRAFFICKING AND SLAVERY IN AMERICA TODAY 102 (2009). See generally Emily Harlan, *It Happens in the Dark: Comparing Current Obstacles to Aid for Child Sex Trafficking Victims in India and the United States*, 83 U. COLO. L. REV. (forthcoming May 2012) (describing internal trafficking of child victims within the United States).

21. TIPS, *supra* note 1, at 338. It should be noted that, in TIPS and elsewhere, the United States is referred to as more than a destination country. It can also be a source country and a country that has internal trafficking. *Id.* By discussing it as a destination country, I do not mean to argue that it is *only* a destination country—that is simply the focus of this Note.

adults trafficked into the United States, and a disturbing thirty-eight percent of the children, were imported to the United States for sexual exploitation.<sup>22</sup> When combined with the estimate that as many as fifty thousand women and children are trafficked into the United States, this indicates that, despite the U.S. government's efforts to curtail the problem and its compliance with the TVPA standards, sex trafficking in the United States is still an enormous problem.

People are thus trafficked into the United States despite a readily available supply of vulnerable individuals within the country itself. The TIPS report noted that, of those trafficked within the United States, “[m]ore U.S. citizens, both adult[s] and children, are found in sex trafficking than labor trafficking; U.S. citizen child victims are often runaway and homeless youth.”<sup>23</sup> If there is already a vulnerable population of homeless and runaway youth, why would traffickers need to bring anyone into the United States from outside? The TIPS report indicates that the primary countries of origin for foreign victims were Thailand, Mexico, the Philippines, Haiti, India, Guatemala, and the Dominican Republic.<sup>24</sup> What is it about the sex trade in the United States that demands that victims from these countries be imported? There may not be one single answer, but by looking at several different factors—the johns who purchase sex from trafficking victims, the pimps who sell it, the profiles of the victims themselves, and the law enforcement responses—some answers emerge.

### *B. The Johns*

The first reality of sex trafficking is that the basic, sexual desires of the consumers must be met. As Kevin Bales and Ron Soodalter explain: “It is obvious that without the demand for the sexual services of women and young girls there would be no need to write this . . . . Yet the demand exists, and it is vast.”<sup>25</sup> And, Bales and Soodalter ask, “[w]ho are the men who pay for sex, often with enslaved women and children? They go by several euphemistic names, but for the sake of this discussion we’ll call them ‘johns.’ They are ubiquitous and have been for

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22. *Id.* at 341.

23. *Id.* at 338.

24. *Id.*

25. BALES & SOODALTER, *supra* note 20, at 85.

thousands of years.”<sup>26</sup> In general, research on the customers of sex trafficking “cautions against sweeping characterizations and generalizations. Customers vary in their background characteristics, motivation, and behavior, and they buy sex for different reasons.”<sup>27</sup>

There are, however, some common characteristics among the men who buy sex from victims of trafficking. According to one study, “the typical john is around thirty years old, married, and employed full-time with no previous criminal record.”<sup>28</sup> Interviews with prostitutes in the United States and abroad also revealed that “[d]espite their diverse backgrounds, johns tend to share similar perceptions about prostitution.”<sup>29</sup> A study of 1342 men arrested for soliciting prostitutes found that johns shared misconceptions about prostitutes—for example, believing that “prostitution is not harmful and that prostitutes enjoy and choose their work.”<sup>30</sup> Johns also often “feel entitled to any sexual service they desire because they dehumanize the prostitutes, and instead view them as cheap sex objects.”<sup>31</sup> Numerous studies have concluded that “a subgroup of hardcore, habitual users account for a disproportionate share of the demand for prostitution.”<sup>32</sup> In the United States, one study found “that 11% of men who had ever purchased sexual acts did so more than 100 times.”<sup>33</sup>

In addition to the demand for prostitution, “[m]ale demand also plays a pivotal role in determining the characteristics of the trafficked victims” and the sex trafficking industry.<sup>34</sup>

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26. *Id.*

27. *Id.* at 86 (quoting sociologist Ronald Weitzer).

28. Iris Yen, Comment, *Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand Through Educational Programs and Abolitionist Legislation*, 98 J. CRIM. L. & CRIMINOLOGY 653, 670 (2008).

29. *Id.* at 671 (citing Noël Bridget Busch et al., *Male Customers of Prostituted Women: Exploring Perceptions of Entitlement to Power and Control and Implications for Violent Behavior Toward Women*, 8 VIOLENCE AGAINST WOMEN 1093, 1101–04 (2002)).

30. *Id.* at 671 n.126.

31. *Id.*

32. *Id.* at 672 (citing DONNA M. HUGHES, BEST PRACTICES TO ADDRESS THE DEMAND SIDE OF TRAFFICKING 13 (2004)).

33. *Id.* “In the same study, 22% of men had purchased sex up to four times . . . .” *Id.* at 672 n.139. It is also interesting to note that using the services of a prostitute does not necessarily diminish a man’s image in the United States. Perhaps the best-known example from the present age is Hugh Grant, who has remained a romantic-comedy icon and movie super-star heartthrob despite his well-published history of being a john. See 1 ENCYCLOPEDIA OF PROSTITUTION AND SEX WORK 261 (Melissa Hope Ditmore ed., 2006).

34. Yen, *supra* note 28, at 666.



Throughout history, abundant male demand has combined with an insufficient supply of local prostitutes to create a booming sex trafficking industry.<sup>35</sup> As the demand exceeds the supply, sex traffickers must “kidnap women and girls from various countries in the region and force them into the commercial sex industry” in order to satisfy their customer base.<sup>36</sup> But why does the demand exceed the supply if there are vulnerable women and children in America?

One answer seems to be a matter of taste among male consumers. One study explains that “[j]ohns typically do not explicitly ask for trafficked women, but they often demand ‘something different,’ meaning they desire ‘exotic’ foreign women.”<sup>37</sup> Globally, johns currently seem to have a “preference for Eastern and Central European women,” which has meant that “these women now comprise almost 25% of the global sex trade.”<sup>38</sup> Additionally, the demand for virginal girls who are (relatively) “clean” has caused child prostitution to increase at an alarming rate.<sup>39</sup> Because a younger victim is more likely to be “clean,” or virginal, sex trafficking victims are increasingly younger, making it more common to find girls who are thirteen years old or younger among trafficked victims.<sup>40</sup> The demand for “novelty and variety” has also prompted the sex industry to create “circuits” in which victims are rotated within a country or region after they are imported, increasing the appearance of difference.<sup>41</sup>

Thus, there is a demand for novel, exotic, and foreign women among the johns in the United States. This explains the need for imported women, as no amount of internally trafficked U.S. citizens could fulfill that specific demand. The particular tastes of the American johns, therefore, account for one cause of the United States’ status as a destination country.

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35. *Id.*

36. *Id.*

37. *Id.*; see also Michelle R. Adelman, Comment, *International Sex Trafficking: Dismantling the Demand*, 13 S. CAL. REV. L. & WOMEN’S STUD. 387, 402 (2004).

38. Yen, *supra* note 28, at 666 (citing VICTOR MALAREK, *THE NATASHAS* 4–6 (2003)).

39. *Id.* at 666–67.

40. *Id.* at 667 & n.88 (“In a five-country study, 22% of the interviewed men preferred girls aged eighteen or under.”) (citing BRIDGET ANDERSON & JULIA O’CONNELL DAVIDSON, INT’L ORG. FOR MIGRATION, *IS TRAFFICKING IN HUMAN BEINGS DEMAND DRIVEN?: A MULTI-COUNTRY PILOT STUDY* 19 (2003)).

41. *Id.* at 667 (citing MORRISON TORREY & SARA DUBIN, *DEMAND DYNAMICS: THE FORCES OF DEMAND IN GLOBAL SEX TRAFFICKING* 13 (2004)).

### C. *The Pimps*

It is also important to consider the pimps—the people who sell the sex. Sex trafficking is a profitable business.<sup>42</sup> Aside from the demand of the johns, “the relatively low risks of detection, prosecution and arrest attached to trafficking compared to other activities of organized crime” also contribute to the success of the sex trafficking business.<sup>43</sup> International trafficking is “estimated to generate profits upwards of \$7 billion annually.”<sup>44</sup> The United Nations Educational, Scientific and Cultural Organization (UNESCO) has collected estimates that place annual earnings at over \$250,000 per trafficker.<sup>45</sup> This makes sex trafficking “the third most profitable illicit business, behind drugs and arms dealings.”<sup>46</sup> The chances of getting caught and the relative punishments for sex trafficking are also low enough to make the cost-benefit analysis more favorable than that of drugs or arms dealing.<sup>47</sup> With such a vast amount of money to be made and relatively little risk, criminal organizations and individuals are bound to be drawn into the trade of sex slavery as a means of making easy money.

In addition to the monetary gain available, some segments of popular culture in the United States have accepted “pimping” as a glamorous job that is worthy of envy and emulation.<sup>48</sup> The 2005 Academy Award for Best Original Song went to “It’s Hard Out Here for a Pimp,” from the movie *Hustle*

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42. See Trafficking Project, *Profit from Trafficking Industry 2010*, UNESCO BANGKOK (2011), [http://www.unescobkk.org/fileadmin/user\\_upload/culture/News/Profit\\_from\\_Trafficking\\_Industry\\_2010\\_.pdf](http://www.unescobkk.org/fileadmin/user_upload/culture/News/Profit_from_Trafficking_Industry_2010_.pdf); see also Hanh Diep, Comment, *We Pay—The Economic Manipulation of International and Domestic Laws to Sustain Sex Trafficking*, 2 LOY. U. CHI. INT’L L. REV. 309, 311 (2005).

43. Diep, *supra* note 42, at 311 (quoting ANDREAS SCHLOENHARDT, AUSTL. INST. OF CRIMINOLOGY, ORGANISED CRIME AND THE BUSINESS OF MIGRANT TRAFFICKING: AN ECONOMIC ANALYSIS 11 (1999)).

44. *Id.*

45. Trafficking Project, *Trafficker Earning per Person*, UNESCO BANGKOK (2011), [http://www.unescobkk.org/fileadmin/user\\_upload/culture/News/Trafficker\\_Earning\\_per\\_Person.pdf](http://www.unescobkk.org/fileadmin/user_upload/culture/News/Trafficker_Earning_per_Person.pdf).

46. Diep, *supra* note 42, at 313 (citing Kathryn E. Nelson, Comment, *Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approaches*, 24 HOUS. J. INT’L L. 551 (2002)). UNESCO estimates that it is the third most profitable business after illegal drugs and media piracy. Trafficking Project, *Illegal Business*, UNESCO BANGKOK, [http://www.unescobkk.org/fileadmin/user\\_upload/culture/Trafficking/project/abc/Selected\\_Articles\\_and\\_Publications/Graph\\_VI\\_Illegal\\_Business.pdf](http://www.unescobkk.org/fileadmin/user_upload/culture/Trafficking/project/abc/Selected_Articles_and_Publications/Graph_VI_Illegal_Business.pdf) (last visited Mar. 28, 2012).

47. Diep, *supra* note 42, at 313.

48. See BALES & SOODALTER, *supra* note 20, at 87–88.

& *Flow*.<sup>49</sup> The film, about a pimp with dreams of becoming a rapper, also earned a Sundance Film Festival award.<sup>50</sup>

Additionally, every year pimps hold a “Players’ Ball” in a different city in the United States.<sup>51</sup> At the event, pimps show off their fancy cars, clothes, and jewelry and vie for awards such as “No. 1 International Pimp of the Year” and “No. 1 Super Player.”<sup>52</sup> These events are often high-profile, drawing the attention of the national media and sometimes even the endorsement of the city’s mayor.<sup>53</sup> One club owner described the Players’ Ball as “strictly a dress-up costume party,” but it is important to remember that “the pimps who attend are often facing indictments for sex trafficking, involuntary servitude, sexual abuse of a minor, kidnapping, assault with a deadly weapon, and racketeering.”<sup>54</sup> These men are often responsible for damage inflicted by drugs, alcohol, physical abuse, PTSD, depression, suicide attempts, AIDS and other STDs, forced or coerced abortions, and many other brutalities against women and children.<sup>55</sup>

Pimps choose the vocation for a number of reasons, both personal and professional. Perhaps overseeing prostitutes and trafficking victims allows these men to control women (which can satisfy an abusive personality), perhaps they are in it for the glory and the fame, or perhaps they are just in it for the money. Whatever the reason, it is clear that the pimps—the salesmen and day-to-day perpetrators of the sex business—are directly responsible for making sure that the demand for sex is met, and that they profit from that demand. Where there is demand, there is usually supply, and that is the job of the traffickers. The money to be made trafficking women and children into the United States, the cultural reverence of pimping, and the power of the position make sex trafficking an attractive option for some Americans and are reasons that the

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49. *Id.* at 87.

50. *Id.* It is also interesting to note the romantic notion of prostitution that is portrayed in movies such as *Pretty Woman*. See *Pretty Woman (1990)*, IMDB, <http://www.imdb.com/title/tt0100405> (last visited Feb. 18, 2012) (“A man in a legal but hurtful business needs an escort for some social events, and hires a beautiful prostitute he meets . . . only to fall in love.”).

51. BALES & SOODALTER, *supra* note 20, at 88.

52. *Id.*

53. *Id.*

54. *Id.*

55. *See id.*

United States has become a destination country for sex traffickers.

*D. The Victims*

Victims are often brought to the United States under false pretenses such as the promise of a good income, an education, or a better life.<sup>56</sup> In its handbook on sex trafficking for lawyers, the American Bar Association (ABA) offers a striking case study of one such a victim:

Neelam came to the U.S. when she was sixteen to live with her aunt and uncle in Boston. Her aunt had promised Neelam's parents she would send Neelam to school. However, Neelam's aunt told her that she would be pulled out of school and shamefully sent back to India if she didn't cook and clean for the family from the time she got home from school until well past midnight. Neelam obeyed her aunt for awhile, but she was so tired she eventually asked to go back to India. Neelam's uncle then raped her and sold her to a co-worker for sex. He told Neelam that she could never return to India now that she was a "street woman" and would have to stay in the U.S. and work for them.<sup>57</sup>

Neelam's story is a good example of the vulnerability, especially of children, to trafficking into America.

One author has cited "the growing demand for international migration" and "the restrictions on legal immigration imposed by industrialized countries" as "creat[ing] the demand for alternative, illegal avenues of migration."<sup>58</sup> Sex traffickers provide one such illegal avenue of migration.<sup>59</sup> Because, for many, the United States offers a vast improvement in quality of life from their country of origin, many women and children are eager to immigrate, legally or illegally, to the United States.<sup>60</sup> This makes the immigrants easy targets for traffickers who promise a better life in America

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56. See, e.g., EVA KLAIN ET AL., A.B.A., MEETING THE LEGAL NEEDS OF CHILD TRAFFICKING VICTIMS: AN INTRODUCTION FOR CHILDREN'S ATTORNEYS & ADVOCATES 10 (2008).

57. *Id.* (footnote omitted).

58. Diep, *supra* note 42, at 311 (quoting SCHLOENHARDT, *supra* note 43, at 11).

59. *Id.*

60. *Id.* at 317; see also *infra* Part IV.A.

and arrange for transportation into the country.<sup>61</sup> It is only once the victims reach the United States that reality sets in and the real purpose of their travel becomes clear. Once in the country, the victims are forced into prostitution or private sex slavery, as Neelam was.<sup>62</sup> The special situation of the United States—a wealthy country with many employment and educational opportunities—makes it a particularly attractive destination for individuals from less affluent or powerful countries.<sup>63</sup> Thus, the victims who are trafficked into the United States are often particularly susceptible to deception or coercion.

### *E. Law Enforcement*

Law enforcement against sex trafficking is making progress in the United States. According to TIPS, the U.S. government “sustained strong law enforcement efforts and continued to encourage a victim-centered approach among local, state, and federal law enforcement.”<sup>64</sup> The evaluation specifically noted that the U.S. government “saw improvement in the protection of trafficked foreign children due to new procedures to grant benefits and services more promptly upon identification.”<sup>65</sup> In general, America has received a positive review from TIPS for its law enforcement efforts, although there were many suggestions for improvement.<sup>66</sup>

In the United States, “[p]enalties for sex trafficking range up to life imprisonment with a mandatory minimum penalty of 10 years for sex trafficking of minors and 15 years for sex trafficking by force, fraud, or coercion or sex trafficking of minors under age 14.”<sup>67</sup> This indicates that the U.S. justice system takes sex trafficking crimes seriously and punishes perpetrators severely. According to the TIPS review,

TVPA trafficking offenses are investigated by federal law enforcement agencies and prosecuted by the U.S. Department of Justice (DOJ). The federal government tracks its activities . . . [and in Fiscal Year] 2009, the

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61. See KLAIN ET AL., *supra* note 56, at 10.

62. *Id.*

63. See *infra* Part IV.A.

64. TIPS, *supra* note 1, at 338.

65. *Id.*

66. *Id.* at 338–44.

67. *Id.* at 339.

Human Trafficking Prosecution Unit, a specialized anti-trafficking unit . . . , charged 114 individuals, and obtained 47 convictions in 43 human trafficking prosecutions . . . .<sup>68</sup>

In addition to those federal prosecutions, “[t]raffickers were also prosecuted under a myriad of state laws, but no comprehensive data [are] available on state prosecutions and convictions.”<sup>69</sup> The data that are available, however, indicate that even more prosecutions for sex trafficking happen at the state level than at the federal level.<sup>70</sup>

Even beyond the local and federal prosecutions, “DOJ funds 38 anti-trafficking task forces nationwide comprised of federal, state, and local law enforcement investigators and prosecutors, labor enforcement, and a nongovernmental victim service provider.”<sup>71</sup> This means that there is a significant amount of training for law enforcement available in the United States, specifically on human trafficking. In fact, “[t]he DOJ task forces trained over 13,000 law enforcement officers and other persons likely to come into contact with human trafficking victims” in the 2009 fiscal year.<sup>72</sup>

Although there is always more to be done, the state and federal governments in the United States are successfully criminalizing, prosecuting, and punishing sex traffickers. This means that, even though some sex traffickers will evade justice, the United States continues to send a clear message that trafficking is a crime and will be punished. The TIPS report makes no mention of corruption among police and prosecutors in the United States, and therefore it seems that failings on the part of law enforcement are a result of limited resources (monetary and temporal) rather than something more sinister. This is not the case in India, however, as is discussed in the next Part.

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68. *Id.*

69. *Id.*

70. *Id.* at 340.

71. *Id.*

72. *Id.*

## III. WHY INDIA HAS A DEMAND FOR TRAFFICKED WOMEN

A. *Some Basic Facts*

According to the 2010 TIPS report, India is a “Tier 2 Watch List” country.<sup>73</sup> This means that, in the eyes of the U.S. State Department, India’s government does not fully comply with the TVPA’s minimum standards but is making significant efforts to bring itself into compliance with those standards.<sup>74</sup> In Tier 2 “Watch List” countries:

- (a) the *absolute number of victims* of severe forms of trafficking is very significant or is significantly increasing;
- (b) there is a *failure to provide evidence of increasing efforts* to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and *decreasing evidence of complicity* in severe forms of trafficking by government officials; or,
- (c) the determination that a country is making significant efforts to bring themselves [sic] into compliance with minimum standards was based on *commitments by the country to take additional steps over the next year*.<sup>75</sup>

This means not only that the Indian government fails to comply with the standards set out by TIPS and the U.S. State Department but also that India is sliding backwards in its enforcement of sex trafficking, despite its alleged efforts.<sup>76</sup>

The TIPS report also indicates that “India is a . . . destination . . . country for men, women, and children subjected to trafficking in persons, specifically forced labor and commercial sexual exploitation.”<sup>77</sup> Thus, India, like the United States, is a country into which people are trafficked. As in the United States, this occurs despite a readily available population of vulnerable women and children within India.<sup>78</sup>

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73. *Id.* at 171.

74. *See id.* at 22.

75. *Id.*

76. *See id.*

77. *Id.* at 171. Like the United States, India is more than a destination country. It is also a source country and a country in which internal trafficking takes place. *Id.* Although I only focus on one of those aspects, I do not argue that it is *only* a destination country.

78. *See supra* Part II.A.

The TIPS report explains that “[w]omen and girls are trafficked within the country for the purposes of commercial sexual exploitation.”<sup>79</sup> This is done partially because “[m]ajor cities and towns with tourist attractions continue to be hubs of child sex tourism, and this phenomenon also takes place in religious pilgrim centers” due to “Indian nationals engag[ing] in child sex tourism within the country.”<sup>80</sup> While “[n]inety percent of trafficking in India is internal,”<sup>81</sup> a large number of international girls “from Nepal and Bangladesh are also subjected to forced prostitution in India.”<sup>82</sup> This means that, despite the poverty, overpopulation, lack of education, and many other factors that contribute to the vulnerability of Indian women,<sup>83</sup> the supply of Indian women does not satisfy the demand, and women must be brought in from Nepal and Bangladesh.

There are no reliable estimates of the number of women and children trafficked into India each year. Some state that there are as few as 10,000 women and children trafficked into India from Nepal and Bangladesh each year.<sup>84</sup> Other statistics show, however, that Bangladeshi women (presumably trafficked, as discussed above) make up about seventy percent of the brothel population in Kolkata alone.<sup>85</sup> Whatever the exact numbers may be, there is a large population of women and children trafficked into India. This occurs despite the availability of vulnerable Indian women. Why?

### B. *The Johns*

One of the reasons that women and children must be brought into India involves the demands of the men purchasing sex within India—the Indian johns. Stanly K.V., co-founder of Odanadi (a non-governmental organization in Mysore, India, dedicated to human trafficking victims) believes the demand

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79. TIPS, *supra* note 1, at 171.

80. *Id.*

81. *Id.*

82. *Id.*

83. *See infra* Part IV.A.

84. P.M. NAIR & SANKAR SEN, INDIA NAT'L HUMAN RIGHTS COMM'N, TRAFFICKING IN WOMEN AND CHILDREN IN INDIA 17 (2005).

85. *Id.*; *see also Traffickers Turn to Northeast India to Supply the Sex Trade*, HUMANTRAFFICKING.ORG (Nov. 5, 2006), <http://www.humantrafficking.org/updates/449> (“Police say at least 700 girls from the region have been reported missing over the last five years, 300 of whom disappeared in 2005 alone. But activists estimate thousands of northeastern girls disappear every year . . .”).



for non-Indian women and children goes to the root of male psychology and social ideals of beauty.<sup>86</sup> He explains that, in India, fair skin is considered attractive, and the fairer a woman is, the better.<sup>87</sup> Nepali women and children usually have lighter skin than Indian women and are therefore seen as more attractive than their Indian counterparts.<sup>88</sup> This observation is corroborated by research done for Human Rights Watch Asia.<sup>89</sup> That research also found that Indian johns prefer Nepali girls for their faces and body shapes, as well as the color of their skin.<sup>90</sup>

This preference for light-skinned victims also explains why “NGO reports indicate that an increasing number of girls from the northeast—including those with education—are . . . forced into prostitution.”<sup>91</sup> Indian johns thus prefer women from Northern India, who are generally lighter-skinned than those from the South.<sup>92</sup> Stanly K.V. offers another interesting insight. He explains that, due to a large number of transplanted Southern Indians settling in the North hoping for better job prospects, women in the South are now also being trafficked to Northern India.<sup>93</sup> This is not because of a preference for their skin color but because of the desire for a woman who is somehow familiar (i.e., similarly South Indian) but not a member of the john’s own community.<sup>94</sup>

Stanly explains that men are more likely to hire a prostitute—and more likely to abuse her—if she is not seen as a member of their own social circle but somehow as an “other” or “outside” their own community.<sup>95</sup> For South Indian women, this means that they are favored not only by North Indian men, who see them as outsiders, but also by displaced South Indian men, who believe that these South Indian women, while they may look similar, are not members of their home communities.<sup>96</sup> Indian johns are thus able to view South Indian

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86. Interview with Stanly K.V., co-founder, Odanadi, in Mysore, India (Mar. 21–22, 2011).

87. *Id.*

88. *Id.*

89. HUMAN RIGHTS WATCH/ASIA, RAPE FOR PROFIT: TRAFFICKING OF NEPALI GIRLS AND WOMEN TO INDIA’S BROTHELS 16 (1995).

90. *See id.* at 41.

91. TIPS, *supra* note 1, at 171.

92. Interview with Stanly K.V., *supra* note 86.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

women as castaways who have come north and therefore no longer deserve the same respect as a woman “back home.”

Whether it is internal difference (i.e., Southern versus Northern Indian) or international difference (i.e., Indian versus Nepalese), the Indian johns certainly prefer women who fit a certain “outsider” demographic. Whether familiar or exotic, the johns demand a woman they can identify as an other.<sup>97</sup> As in the United States, this desire on the part of the johns will never be satisfied by even an endless supply of Indian women who are familiar to them. Thus, there will always be a demand for women from outside, which must be met by human trafficking.

### C. *The Pimps*

Sex trafficking in India is a very profitable business, just as it is in the United States. By one estimate, “[a]t least one million Indian girls and women work in India’s sex industry which is estimated to be worth around 400 billion rupees [Rs.] (\$9 billion) annually.”<sup>98</sup> The profit margin is especially large for trafficking from Nepal to India.<sup>99</sup> Traffickers can purchase girls from the rural hill villages in Nepal, usually from the girls’ relatives or local recruiters, for “amounts as small as Nepali Rs.200 [\$4.00].”<sup>100</sup> These women are then delivered and sold to “brothel owners in India for anywhere from Rs.15,000 to Rs.40,000 [\$500–\$1,333].”<sup>101</sup> Thus, a trafficker stands to make somewhere between \$450 and \$1300 on each girl trafficked from Nepal to India. The annual per-capita income in Nepal is around \$490.<sup>102</sup> The sale of one girl can net more than what the average Nepalese makes in an entire year. With this kind of monetary incentive, sex trafficking from Nepal to India is bound to continue.

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97. *Id.*

98. *Traffickers Turn to Northeast India to Supply the Sex Trade*, *supra* note 85.

99. HUMAN RIGHTS WATCH/ASIA, *supra* note 89, at 1.

100. *Id.* at 1–2 (conversion in original).

101. *Id.* at 2 (conversion in original).

102. World Bank Group, *Ease of Doing Business in Nepal*, DOING BUSINESS, <http://www.doingbusiness.org/data/exploreconomies/nepal> (last visited Mar. 23, 2012).

#### D. *The Victims*

In addition to the incentives for the traffickers, there are also economic incentives for the victims of sex trafficking in India and their families, who often live in poverty.<sup>103</sup> Svati P. Shah, who did field work in Mumbai on sex trafficking and prostitution, argues that poverty and sex trafficking are inextricably linked.<sup>104</sup> She explains that there are “growing links between migration and economic sustainability for poor communities in India.”<sup>105</sup> This migration, according to Shah, “is occurring against the rural context of depleted water tables, more arable land becoming drought-prone, and areas that have experienced massive rural displacement after receiving few of the benefits of industrial growth and economic prosperity.”<sup>106</sup> Originally, agricultural work was “the main mode of survival in these areas, but, as food security decreases with the increased consolidation of food production, seed patenting, and greater areas of cultivated land being devoted to the production of cash crops (e.g., sugar cane), seasonal farm work has become less and less sustainable.”<sup>107</sup> This means that, rather than sustaining and maintaining their original inhabitants, “[s]uch regions now supply the lion’s share of migrant laborers to the world’s urban economies.”<sup>108</sup> In India and Nepal, this means that historically rural, agricultural communities are no longer able to survive off the land, and people are increasingly moving to cities like New Delhi and Mumbai to look for work.<sup>109</sup>

For many women, this means working in the illegal sex trade. And working in the illegal sex trade in India’s brothels makes for a hard life:

Trafficking victims in India are subjected to conditions tantamount to slavery and to serious physical abuse. Held in debt bondage for years at a time, they are raped and subjected to other forms of torture, to severe beatings, exposure to AIDS, and arbitrary imprisonment. Many are young women from remote hill villages and poor border

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103. *See infra* Part IV.A.

104. Svati P. Shah, *Distinguishing Poverty and Trafficking: Lessons from Field Research in Mumbai*, 14 GEO. J. ON POVERTY L. & POL’Y 441, 442–43, 451–54 (2007).

105. *Id.* at 453.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

communities of Nepal who are lured from their villages by local recruiters, relatives or neighbors promising jobs or marriage, and sold . . . to brothel owners in India . . . . This purchase price, plus interest (reported to be ten percent of the total), becomes the “debt” that the women must work to pay off—a process that can stretch on indefinitely. Only the brothel owner knows the terms of the debt, and most women have no idea how much they owe or the terms for repayment. Brothels are tightly controlled, and the girls are under constant surveillance. Escape is virtually impossible. Owners use threats and severe beatings to keep inmates in line. In addition, women fear capture by other brothel agents and arrest by the police . . . . Many of the girls and women are brought to India as virgins; many return to Nepal with the HIV virus.<sup>110</sup>

Despite this grim reality, the promise of work in India and the desperate situation at home are enough to make victims willing targets to traffickers.<sup>111</sup> Coercion and physical force bring them the rest of the way.<sup>112</sup> Like the United States, India is a destination country for victims because it holds the promise of a better life.

#### *E. Law Enforcement*

According to the TIPS report for India, “[s]ome public officials’ complicity in trafficking remained a major problem” in the 2010 reporting period.<sup>113</sup> According to Odanadi’s director Stanly, however, police corruption is not just *a* major problem but *the* major obstacle to eliminating sex trafficking in India.<sup>114</sup> According to Stanly, police officers often are customers in the Indian brothels, take bribes to allow the brothels to function, or cooperate in the trafficking of girls.<sup>115</sup> He spoke of one specific instance when Odanadi rescued fifteen women and girls from a brothel in Mysore:

We knew there were a lot of girls in there because we had undercover agents go in and pretend to be customers to make sure they were there. Then we had citizen volunteers standing in a perimeter around the place to make sure no

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110. HUMAN RIGHTS WATCH/ASIA, *supra* note 89, at 1–2.

111. Interview with Stanly K.V., *supra* note 86.

112. *See supra* Part III.C.

113. TIPS, *supra* note 1, at 172.

114. Interview with Stanly K.V., *supra* note 86.

115. *Id.*

one ran off between when the undercover went in and the police came. When the police got there, we searched the place but couldn't find any of the girls. The police wanted to give up, and we said no, because we knew they were in there. We started looking for trap doors and false ceilings, floors, or walls. When we found a place in the wall that sounded like it was hollow, we told the police and asked them to break it open. They refused, and they told us that if we did it and destroyed property, we would be arrested. We did it anyway. We found fifteen girls stuck inside this tiny little place. They were piled on top of each other, with sacks over them to hide them, and they had to lock the door from the inside. But there wasn't enough oxygen in there to keep them alive for much longer. If we hadn't gotten there when we did, the girls would have literally locked themselves in to die. When we pulled them out, some of them had already passed out. They were all covered in sweat. It was awful.<sup>116</sup>

In Stanly's experience, when the police were not actively complicit, they at least passively accepted the terrible predicament of the women in the brothel.<sup>117</sup>

Human Rights Watch Asia has also found a pattern of "police corruption and complicity" in India and Nepal.<sup>118</sup> In its report, Human Rights Watch Asia reiterated portions of a letter from an NGO to the Home Minister of India.<sup>119</sup> The letter "charged that police regularly extorted large sums of money in red-light areas in the name of protection—up to Rs.26,000

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116. *Id.* I am paraphrasing Stanly's story, as I could not transcribe it verbatim while he was telling it. For another account of this story, see Sarah Harris, *My First Brothel Raid*, VICE, <http://www.vice.com/read/my-first-brothel-raid> (last visited Feb. 29, 2012). Harris writes:

We came to a disused room with a small trapdoor set into the wall at knee-height. Outside a tangle of clothes lay amongst dirty plates, high-heeled shoes, and discarded condom boxes. We had just enough time to stick our heads into the dank six by four foot hole. It stank of human bodies, piss, and old food. Dark stains splashed up one wall and the odd, sad item of clothing lay on the floor. There would not have been enough room for more than [sic] one of them to lie down and sleep.

....

As the situation stands, the five Indian girls have had counseling and are being transferred to another rehabilitation center in Bangalore. Odanadi is still working for the release of eight Bangladeshi girls from jail, where they are currently being held by police for not having passports or the relevant immigration documents.

*Id.*

117. Interview with Stanly K.V., *supra* note 86.

118. HUMAN RIGHTS WATCH/ASIA, *supra* note 89, at 44–51.

119. *Id.* at 53.

[\$866] per day in Delhi alone.”<sup>120</sup> The president of that same NGO reported that “out of the Rs.55 [\$1.83] paid by the customer in one of the city’s better brothels, Rs.10 [.33] went to the police.”<sup>121</sup> This sum varied according to the officer’s rank, with a head constable receiving more per head than the sub-inspector.<sup>122</sup>

Additionally, the organization charged that “[i]n the case of recently trafficked girls and women . . . police were involved in the staged process called ‘registering’ the victims.”<sup>123</sup> During this process, the brothel owner “would notify the police of the arrival of a new victim in her establishment and pay a bribe for their silence . . . between Rs.5000 and Rs.25,000 [\$166–\$833].”<sup>124</sup> In the case of a minor, the police “kept the girl for a day in lock-up, and produced her in court the next day along with a falsified First Information Report (FIR) attesting to her adult status, thereby protecting the brothel owner from any future charges related to the prostitution of a minor.”<sup>125</sup> The police were paid between Rs.500 and Rs.1000 (\$16–\$33) for this service.<sup>126</sup>

In addition to the issue of police corruption, there are also problems with the Indian Supreme Court. According to Kumar Regmi, a professor at the Kathmandu School of Law in Nepal, the “Indian Supreme Court, known throughout the world for its judicial activism, could address this problem more effectively by adopting a less biased attitude than it has shown to date.”<sup>127</sup> As an example of this bias, Regmi quotes from Justice Broome’s opinion in *Kaushailiya v. State*, holding that “[i]f the magistrate finds that [the defendant] has worked as a prostitute in the past, he can expel her from the area controlled by him without further ado. Moreover, she may not only be removed from one town to another, but may be expelled from the whole district.”<sup>128</sup> Regmi insists that “the legally untenable and insensitive approach of the Indian Supreme Court has

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120. *Id.* (conversion in original).

121. *Id.* (conversions in original).

122. *Id.*

123. *Id.* at 54.

124. *Id.* (conversion in original).

125. *Id.*

126. *Id.*

127. Kumar Regmi, *Trafficking into Prostitution in India and the Indian Judiciary*, 1 INTERCULTURAL HUM. RTS. L. REV. 373, 374–75 (2006) (footnote omitted).

128. *Id.* at 383 (quoting *Kaushailiya v. State*, A.I.R. 1963 All. 71).

contributed to the marginalization of the problem of trafficking in women and girls.”<sup>129</sup> She also argues that this “prejudicial attitude toward the victims of prostitution[ ] and the discriminatory interpretation and application of existing laws needs to be changed.”<sup>130</sup> After discussing many of the trafficking and prostitution cases that have come before the Indian Supreme Court, Regmi explains a theme among them:

From the early 1960s, the highest court has worked quite discriminatorily, and has been overly protective of all people participating in prostitution except for the victims. This comes at a heavy price to the real victims of prostitution, and has considerably hampered the possibility of appropriate justice for this marginalized group of women.<sup>131</sup>

It is not only the police who must adjust their present practices if there is to be a successful campaign against sex trafficking in India. The country’s highest court must also change its attitude, analysis, and conclusions.

#### IV. DIFFERENCES AND SIMILARITIES BETWEEN THE UNITED STATES AND INDIA AS “DESTINATIONS”

##### A. *Differences*

There are several obvious differences between the United States and India that one would expect to affect the sex trafficking industry. First, the United States’ population is just over 300 million,<sup>132</sup> while India’s population is slightly over one billion.<sup>133</sup> In addition, the United States has a Gross Domestic Product (GDP) of \$15.1 trillion,<sup>134</sup> with a per-capita income of about \$48,100,<sup>135</sup> whereas India’s GDP hovers around \$1.8

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129. *Id.* at 375.

130. *Id.*

131. *Id.* at 405.

132. U.S. CENSUS BUREAU, <http://www.census.gov> (last visited May 2, 2011).

133. 2 LEGAL SYSTEMS OF THE WORLD: A POLITICAL, SOCIAL, AND CULTURAL ENCYCLOPEDIA 693 (Herbert M. Kritzer ed., 2002).

134. U.S. DEP’T OF COMMERCE, NEWS RELEASE: GROSS DOMESTIC PRODUCT, BUREAU ECON. ANALYSIS, <http://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm> (last visited Feb. 29, 2012).

135. *The World Factbook: United States*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> (click on “Economy”) (last visited Feb. 29, 2012).

trillion,<sup>136</sup> with a per-capita income of about \$3700.<sup>137</sup> Indians therefore live on about one-thirteenth the amount of money as Americans. The poverty in India is widespread and highly visible, whereas in the United States it is localized and less visible. Walking down the street in India, one can expect to regularly see someone relieving him/herself in public,<sup>138</sup> but such a thing is criminal (and actually punished) in America.<sup>139</sup> In addition to basic economic facts, India and the United States differ in their majority religions—Christianity in the United States<sup>140</sup> versus Hinduism in India.<sup>141</sup> India maintains a caste system that “place[s] people into a social and professional hierarchy on the basis of familial lineage,”<sup>142</sup> whereas in America “[w]e hold these truths to be self-evident—that all men are created equal.”<sup>143</sup> Finally, women in India are so undervalued that sex-selective abortions are a widespread problem,<sup>144</sup> while in the United States, women actually outnumber men.<sup>145</sup> All of these generalized and superficial differences between the two countries might lead one to conclude that there must be a correspondingly radical difference in the sex trade for each country.

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136. *The World Factbook: India*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/in.html> (click on “Economy”) (last visited Feb. 29, 2012).

137. *Id.*

138. My travel companions and I witnessed this often on our research trip to India.

139. *See, e.g.*, N.Y.C. ADMIN. CODE § 116-18(6) (2011).

140. *The World Factbook: United States*, *supra* note 135 (click on “People and Society”) (illustrating that the religious composition of U.S. citizens includes 51.3% Protestant, 23.9% Roman Catholic, 1.7% Mormon, and 1.6% other Christian).

141. LEGAL SYSTEMS OF THE WORLD, *supra* note 133, at 693 (illustrating that 82% of Indian citizens are Hindus).

142. *Id.*

143. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). I acknowledge that there are obviously problems with the idea of social mobility in America. *See, e.g.*, David Brooks, Op-Ed., *The Sticky Ladder*, N.Y. TIMES, Jan. 25, 2005, at A19; Alan B. Krueger, *The Apple Falls Close to the Tree, Even in the Land of Opportunity*, N.Y. TIMES, Nov. 14, 2002, at C2; Paul Krugman, Op-Ed., *The Sons Also Rise*, N.Y. TIMES, Nov. 22, 2002, at A27. I mean only to cite the principles at work, not all of the problems with their practical applications.

144. *See, e.g.*, Mallika Kaur Sarkaria, *Lessons from Punjab’s “Missing Girls”*: *Toward a Global Feminist Perspective on “Choice” in Abortion*, 97 CALIF. L. REV. 905, 906 (2009).

145. *See* Am. FactFinder, *Age Groups and Sex: 2010*, U.S. CENSUS BUREAU, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC\\_10\\_SF1\\_QTP1&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_SF1_QTP1&prodType=table) (last visited Feb. 29, 2012).



First, there is the obvious difference that the United States is a “Tier One” country, complying with the standards set out by the TIPS report, whereas India is a “Tier Two, Watch List” country that is not in compliance.<sup>146</sup> Second, there are differences in the source countries. The international trafficking victims who end up in India are almost all from Nepal.<sup>147</sup> The international trafficking victims who wind up in the United States, however, are mostly from Thailand, Mexico, the Philippines, Haiti, India, Guatemala, and the Dominican Republic.<sup>148</sup> Third, there are differences in the number of women trafficked to each country. In India, estimates of the women and children trafficked per year range wildly—between 10,000 total<sup>149</sup> and over 700,000 to Kolkata alone.<sup>150</sup> In the United States, the estimates are between 17,500 and 50,000 women and children annually.<sup>151</sup> This means that the number of women trafficked into India is, potentially, much larger than the number of women trafficked into the United States. Finally, and perhaps most importantly, the biggest difference between the two countries appears to be law enforcement practices. In India, corruption is the primary barrier to the fight against sex trafficking.<sup>152</sup> The corruption runs across all levels of society—political, social, and economic—but it is felt most acutely at the law enforcement level.<sup>153</sup> As discussed above, police in India are often not only tacit observers or passive participants in sex trafficking but very active members, receiving bribes, providing protection to the brothel owners or traffickers, and even purchasing the services of the victims.<sup>154</sup>

In the United States, there are certainly a myriad of problems with law enforcement,<sup>155</sup> and the arrest and prosecution process is not without its faults.<sup>156</sup> It is clear,

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146. TIPS, *supra* note 1, at 48.

147. HUMAN RIGHTS WATCH/ASIA, *supra* note 89, at 1.

148. TIPS, *supra* note 1, at 338.

149. NAIR & SEN, *supra* note 84, at 17.

150. *Id.*; *Traffickers Turn to Northeast India to Supply the Sex Trade*, *supra* note 85.

151. WYLER & SISKIN, *supra* note 20, at 24, 26.

152. Interview with Stanly K.V., *supra* note 86.

153. *Id.*

154. *Id.*; *see also* TIPS, *supra* note 1, at 174; HUMAN RIGHTS WATCH/ASIA, *supra* note 89, at 50–51.

155. One such example involves the so-called “blue wall of silence.” *See* Christopher Cooper, *Yes Virginia, There Is a Police Code of Silence: Prosecuting Police Officers and the Police Subculture*, 45 CRIM. L. BULL. 277, 280 (2009).

156. *See, e.g.*, PAUL BUTLER, *LET’S GET FREE: A HIP-HOP THEORY OF JUSTICE* 1–41 (2009).

however, that corruption in the United States does not compare to that of India.<sup>157</sup> The TIPS report for the United States<sup>158</sup> does recognize areas that need improvement, namely in training on a nationwide scale, but it also recognizes that, in general, arrests and prosecutions are proceeding adequately.<sup>159</sup> While there will always be more that can be done, the level of corruption and police complicity in sex trafficking is still the largest difference in the industry between the two countries.

### B. Similarities

Far more striking is the degree of similarity between the sex trafficking industry in India and in the United States. India and America may differ in their law enforcement responses to sex trafficking, but in every other subset of the problem explored in this Note—the johns, the pimps, and the victims—there are marked similarities.

The johns in both the United States and India share tastes. Although the exact demographic might be different—light-skinned versus dark-skinned, round face versus oval, etc.—the overall characteristics are the same: Johns want something new and other.<sup>160</sup> On the one hand, the johns in both India and the United States want women who look like their regional ideal of beauty, perhaps fostered by their own community and upbringing.<sup>161</sup> On the other hand, these women must be distant and other and therefore deserving of the abuse that sex workers endure from the johns.<sup>162</sup> The johns in both countries have an insatiable taste for “‘exotic’ foreign women.”<sup>163</sup> This desire, as long as it exists, will never be satisfied by even the largest population of vulnerable women in either country. As long as the johns’ demand for the exotic “other woman” exists, sex trafficking will exist to meet that need.<sup>164</sup> Thus, although the physical manifestations of what is

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157. Interview with Stanly K.V., *supra* note 86.

158. Problematically, the TIPS report is produced by the United States, so there is certainly cause for skepticism as to its self-aggrandizement.

159. TIPS, *supra* note 1, at 339.

160. See Yen, *supra* note 28, at 666.

161. Interview with Stanly K.V., *supra* note 86.

162. *Id.*

163. Yen, *supra* note 28, at 666.

164. For a fascinating discussion of what can and should be done to educate johns and change their behavior—and desires—and thus curb the demand for sex trafficking, see Adam Grush, Just “Boys Being Boys”: Transforming the Social

“exotic” may be different in each country, the desire for an other is there for both and cannot be satisfied by anything other than sex trafficking.

Pimps and brothel owners in both countries also share many of the same core characteristics, incentives, and tacit community approval. In both the United States and India, prostitution is illegal but prevalent, and in both countries there is a culture of complacency.<sup>165</sup> In America, this complacency manifests itself in the “Players’ Ball” and songs and videos sympathetic to the pimps.<sup>166</sup> In India, this manifests itself in a brothel culture with over one million sex workers<sup>167</sup> and open police corruption.<sup>168</sup> Most importantly, there is a lot of money to be made in both countries for someone who sells the sex of others. The sex trafficking industry generates around \$7 billion annually in the United States<sup>169</sup> and roughly 400 billion Rs. (\$9 billion) annually in India.<sup>170</sup> This is the most profitable criminal industry after guns and drugs,<sup>171</sup> offering those who traffic the chance to earn more with one victim than what they might otherwise earn in a year.<sup>172</sup> As long as there is this much money to be made, neither country is going to be able to stop the illegal trafficking of women.

Finally, and perhaps most importantly, there are the victims. Again, while by definition the physical locations and descriptions of the victims may differ for each country, they share some important characteristics. Both the victims who reach India and those who come to the United States are often brought under false pretenses, with the promise of a better life.<sup>173</sup> India and the United States both offer beacons of hope for a better future (when compared with most source countries), which allows traffickers to lure victims. Once these women become willing travelers, it is easy to victimize them—

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Norms That Fuel Sex Trafficking and Other Forms of Violence Against Women (May 4, 2011) (unpublished manuscript) (on file with the author).

165. See *100 Countries and Their Prostitution Policies*, PROCON.ORG, <http://prostitution.procon.org/view.resource.php?resourceID=000772> (last visited Mar. 23, 2012).

166. See *supra* notes 48–55 and accompanying text.

167. See NAIR & SEN, *supra* note 84, at 17.

168. See *supra* Part IV.A.

169. Diep, *supra* note 42, at 311.

170. *Traffickers Turn to Northeast India to Supply the Sex Trade*, *supra* note 85.

171. See *supra* note 46 and accompanying text.

172. See *supra* notes 98–102 and accompanying text.

173. See *supra* Parts II.D, III.D.

away from all their friends, family, and connections, in a new place, where they are usually illegal immigrants. The victims in both countries are then kept in similarly miserable conditions until they are no longer useful to the brothel owner or pimp.<sup>174</sup> These victims all feel shame and lack the tools to make a dependable wage in other ways, often causing them to turn back to the sex trade even after they have been arrested by the police, “rescued” by an NGO, or pushed out by a brothel owner.<sup>175</sup> These women are thus similarly vulnerable, despite their different situations and countries of origin.

#### CONCLUSIONS AND RECOMMENDATIONS

One of the most disturbing things about comparing sex trafficking in India and the United States is that, despite the differences between the two countries, both have very high levels of sex trafficking.<sup>176</sup> This is true despite the very great differences in the law enforcement of both countries,<sup>177</sup> which seems to negate the argument that stepping up law enforcement alone would be enough to solve (or at least mitigate) the problem. The United States already has better law enforcement than India, yet the problem is still rampant in America.<sup>178</sup> The United States also has a higher standard of living, a larger female population, and a number of other differences that a developing country—like India—might see as potential solutions.<sup>179</sup> If these basic differences cannot change the fact that sex trafficking exists and thrives, then what will change it?

Mary Crawford maintains that sex trafficking is not uniform across social, cultural, and political contexts but is instead highly situation-specific.<sup>180</sup> If correct, she adds another layer to the problem of solving sex trafficking globally. Rather than striving for a global solution, we would have to look to local governments—especially those in developing countries that are already struggling with strained resources—to solve the problem for themselves. Should we not try to combat this problem as a global community?

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174. See *supra* Parts II.D, III.D.

175. Interview with Stanly K.V., *supra* note 86.

176. See *supra* Part III.A.

177. See *supra* Parts III.D, III.E.

178. See *supra* Parts III.D, III.E.

179. See *supra* Part III.A.

180. CRAWFORD, *supra* note 15, at 8–9.

In comparing India with the United States, at least a few answers emerge. While it is true that there are differences between the sex trafficking industries in India and the United States, there are also some very important similarities. Certain universal causes of sex trafficking may present themselves.<sup>181</sup> There are similarities between the johns, the pimps, and the victims in both of these countries.<sup>182</sup> These similarities exist despite vast social, political, economic, and religious differences.<sup>183</sup> This highlights some of the root causes of sex trafficking: First, the basic sexual demands of the johns are not being met by the local population of women, however vulnerable they may be. Second, sex trafficking is good business and is usually more profitable than legal alternatives. Third, the victims, wherever they come from, are vulnerable to the dream of a better life offered by these traffickers and therefore often consent to trade with them until it is too late. If these three truths apply in these two countries, despite their differences, perhaps they apply in other countries as well. This undercuts Crawford's thesis that sex trafficking is a local and not a global problem.<sup>184</sup> If these three basic truths about sex trafficking exist across national, cultural, and ethnic boundaries, then perhaps they point to some global issues we should address as an international community.

How should we do this? For the johns, there are educational programs, known as "john schools," that have been shown to address some of the more fundamental psychological and cultural causes of men's demand for prostitutes.<sup>185</sup> Given the similar needs of the johns for the exotic other, despite their variant definitions of what that other might look like, the global community could certainly benefit from a closer look at the psyche of johns and what causes the sexual deviations that are fed by sex trafficking. If these exist universally, then perhaps there is some universal problem, or symptom, that needs to be addressed in order to satiate or eliminate the johns' need for a certain type of victim. Despite cultural differences, the overarching desire for the other could be addressed through

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181. See *supra* Part IV.B.

182. See *supra* Part IV.B

183. See *supra* Part IV.A

184. CRAWFORD, *supra* note 15, at 8–9.

185. Moira Heiges, *From the Inside-Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428, 461 (2009); see also Grush, *supra* note 164.

international education and awareness campaigns targeted specifically at the johns across the world.

For the pimps, the global community certainly needs to address the profitability of sex trafficking. It must be made cost-prohibitive to traffic humans. To do this, all aspects of the business must be targeted, from the consumers to the providers (although not the victims) of the service. International financial institutions must freeze any available assets of those found to be trafficking and connect anti-trafficking organizations with organized crime units, financial crime units, banks, and government organizations. If the flow of money stops and the business becomes impractical, then we can stop sex trafficking. But that alone is not enough. We must also work globally to offer men and women other, more legitimate employment that can provide equal salaries. This is obviously a much larger effort that would benefit much more than anti-sex trafficking movements, but it would certainly have a direct effect on the number of men and women who are incentivized to enter the trafficking trade.

For both the pimps and the johns, a comprehensive tracking system might ensure both treatment and prevention.<sup>186</sup> Professor Geneva Brown of Valparaiso University of Law argues that those convicted of trafficking offenses should be required to register through an international database, much like the U.S. Sex Offender Registry.<sup>187</sup> She asserts that creating an international registry of traffickers would increase awareness of the problem and “create a social stigma for traffickers and trafficking crimes that will lead to increased public desire to combat trafficking.”<sup>188</sup> She also maintains that restricting the travel and occupations of former traffickers would help reduce recidivism.<sup>189</sup>

Finally, for the victims, we must work internationally to educate women on the dangers of traveling with strangers with nothing more than a promise. This is not to say that we need to “fright[en] women into staying home”<sup>190</sup> but rather that we need to adequately inform them and their families so that they

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186. See, e.g., Geneva Brown, *Women and Children Last: The Prosecution of Sex Traffickers as Sex Offenders and the Need for a Sex Trafficker Registry*, 31 B.C. THIRD WORLD L.J. 1 (2011).

187. *Id.* at 3–4.

188. *Id.* at 39–40.

189. *Id.* at 2–4.

190. CRAWFORD, *supra* note 15, at 144.

can make informed choices without being easy prey. We also must make an international effort to offer vulnerable women legal immigration alternatives into destination countries. Because many women are lured into these countries under the pretense of a better life, and because we can identify the countries from which these women are drawn, we can specifically target immigration rules toward vulnerable women in those areas. Until there are legal immigration alternatives into countries like America and India, which feature a different standard of living from the source countries (like Thailand and Nepal), women will be vulnerable to traffickers with an alluring ruse. There also must be efforts to raise the economic independence of women in the source countries, so that their value—to themselves and their families—can be realized at home, doing safe, legal work rather than being prostituted in a brothel abroad.<sup>191</sup>

Although none of these ideas is easily implemented, they are all imperative. And, while it may seem daunting, it is at least somewhat reassuring that something can be done on a global level. There are similarities that transcend national borders, and by focusing on those, we can pool our resources as an international community and target those areas that are universal. Local governments can do wonderful work, tailoring every program to their specific area, but there are at least a few commonalities that the global community can focus on to develop programs that can successfully travel from one area to another, with equal impact. Despite the vast amount of negative information that comes out of studying sex trafficking, this is an uplifting thought, for working together we can do more than working alone.

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191. For a very good example of one such effort by ABC/Nepal, see *id.* at 60–61; see also LITTLE SISTERS FUND, <http://www.littlesistersfund.org> (last visited May 5, 2012).