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SEXUAL VIOLENCE AND HUMAN TRAFFICKING IN INDIA: LEGISLATION, ENFORCEMENT, AND RECOMMENDATIONS

Shivani Rishi

Abstract

Violence against women in India is a deeply rooted issue that has been perpetuated for decades due to misguided legislation, beliefs, and oppression. When examining this pervasive concern, a closer look into the existing infrastructure, legislation, and guidelines is necessary. This is the first step in order to drive the crucial transformation that needs to occur throughout India. The most recent major change to legislation surrounding violence against women came after the Delhi Gang Rape of 2012. This attack became a driving force for legal reform and acted as a wake-up call to the Indian Government. As a result of this attack, the Justice Verma Committee was created to gather recommendations around new legislation and country-wide recourses for sexual violence victims. The Criminal Law Amendment Act of 2013 was a major product of this committee and incited revolutionary legislative changes in India. Regrettably, while this was a great step forward, India still has a long road ahead in regard to enforcement of these new laws and transformations of societal mindsets.

Though India banned caste discrimination in 1950, the idea of social stratification remains prevalent throughout the country, especially in rural areas. Because of this, certain subsets of women seem to be at a higher risk. India is also a party to several international covenants including the International Covenant on Civil and Political Rights, The International Covenant on Economic, Social, and Cultural Rights, and a signatory of the U.N. treaty on the Convention on the Elimination of All Forms of Discrimination Against Women. As a party to these treaties, India has an obligation to take all measures necessary to ensure that women’s rights are being upheld.

1. Introduction

Violence against women in India is a widespread concern stemming from a lack of judicial enforcement, mistaken mindsets perpetuated by centuries of cultural norms, and pervasive coercion amongst legal entities. In an effort to better understand the steps that need to be taken in order to minimize sexual violence and human trafficking in India, we must examine the laws, international treaties, and infrastructure that are in place. By doing so, we can gain a more comprehensive scope of what has been done and the changes that need to be made moving forward.
A. Violence Against Women in India By the Numbers

The National Crime Records Bureau (hereinafter “NCRB”) reported 23,117 rescued victims of trafficking in 2016.\(^1\) Of those individuals, 10,509 victims were exploited in forced labor, 4,980 were victims of sexual exploitation by prostitution, 2,590 were exploited through an unspecified manner of sexual exploitation, and there were a reported 349 victims exploited through forced marriage.\(^2\) That same year, NCRB reported only 15,379 trafficked victims. The disparity in these numbers stems from flawed estimation methods, as well as the various types of trafficking that exist. From debt bondage and domestic servitude to sex trafficking and forced prostitution, trafficking can take many forms. While India abolished bonded labor in 1976, those that relied on this form of trafficking now use forced labor methods where they promise large sums of money to those who live in extreme poverty in exchange for work.\(^3\) Without workplace protections in place, these individuals are often forced to work without protective equipment in a variety of industries such as rice mills, embroidery factories, and horticulture.\(^4\) Human Resources Without Borders reported one victim sustained chemical burns on her skin but was unable to receive any medical care in excess of four U.S. dollars.\(^5\) Unfortunately, forced labor practices are just one category of violence against women in India.

Bride trafficking, the act of purchasing and selling girls and women into domestic slavery, is also extremely prevalent in India. Many blame the disproportionate sex ratio as the cause.\(^6\) This disproportionate sex ratio is due to the gender imbalance seen across the country.\(^7\) According to the most recent census, the Indian population had 37 million more males than females.\(^8\) This disparity has been attributed to bride trafficking and unfortunately, the true scale of bride trafficking continues to be overwhelmingly inaccurate due to low reporting rates.\(^9\) The statistic from the 2016 NCRB report of 349 forced marriage victims is entirely contrary to the findings of other organizations. The Borgen Project, a non-


\(^2\) Id. at 517.

\(^3\) Crime in India, supra note 1.


\(^5\) Id.


\(^8\) Id.

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profit organization whose mission is centered around fighting poverty, found that more than 90 percent of married women in the rural Northern states of India were sold into marriage, many of whom become brides as early as age eleven and twelve. Underreporting is a significant issue in human trafficking as many victims do not self-identify as victims. Unfortunately, data reporting on human trafficking often fails to encompass the magnitude of the global problem. Underreporting occurs because victims don’t self-identify as victims. Many girls who are sold into marriages fail to realize help is available to them, as literacy and education levels among these girls are critically low. Victims often suppress their emotions in order to protect themselves from trauma. They frequently feel as though they aren’t worth being rescued and believing they brought it upon themselves.

2. Background

To fully understand the scope of this problem in India, it is important to take a look at the laws, regulations, and international policies currently in place within the country and the evolution of sexual violence and trafficking legislation. With some similarities to the United States, the Indian Constitution is the foundational law throughout the country with other laws enacted by Parliament and additional legislation that is passed individually by each state.

A. Legislative History in India

The Indian Constitution and the Indian Penal Code ("IPC") are key in understanding existing legislation around sexual violence against women. Exploitation and human trafficking are prohibited under Articles 23 and 24 of the Indian Constitution. Article 23 of the Indian Constitution contains a “right against exploitation,” which prohibits human trafficking, including by states. Article 24 protects children age 14 and under from hazardous working conditions. The IPC also has various provisions focused on trafficking issues. For example, Section 36 prohibits inducing or kidnapping a woman into marriage. Section 374

10 Denyer & Gowen, supra note 7.
11 Kendall, supra note 9.
12 Id.
13 Id.
15 Id.
16 Gupta, supra note 14.
17 INDIA CONST. art. 23-24.
18 Id.
19 INDIA CONST. art. 24.
21 Id. at 366.
of the IPC states that any person found guilty of compelling another person to labor against their will can be punished.\textsuperscript{22} Finally, the Immoral Traffic (Prevention) Act of 1956 was the first legislation related specifically to the sexual exploitation of women and girls but does not specifically highlight trafficking as an offense.\textsuperscript{23}

Prior to 2012, sexual violence laws in India only took acts of penile-vaginal intercourse into account when determining whether a rape occurred.\textsuperscript{24} Additionally, the law had no explicit provision stating that the absence of physical violence does not equal consent.\textsuperscript{25} The first paramount change to the IPC in regard to sexual violence came after 1972 when a brutal and publicized rape took place in a small rural Indian town.\textsuperscript{26} Mathura, a young teenage girl, was raped by two policemen in March of 1972.\textsuperscript{27} Despite the oppressive landscape that she faced, Mathura decided to take her case to court; an unprecedented decision at the time.\textsuperscript{28} Her case rose to the Supreme Court where the Court overturned the ruling from the Bombay High Court, and Mathura’s attackers were acquitted.\textsuperscript{29} In his opinion, Supreme Court Justice Koshal stated that the Court refused “to take the girl at her word,” as she did not show fear of “death or hurt.” The Supreme Court held that, because there were no physical marks on her body, and because she had sexual intercourse prior to the attack, there was a possibility that she might have incited the cops to have intercourse with her.\textsuperscript{30} This outrageous decision led to protests and marches across the country where activist groups demanded changes in the law. As a result, the Criminal Law Amendment Act of 1983 was enacted; making custodial rape punishable by law.\textsuperscript{31} This amendment offered protections to victims by banning the publication of a victim’s identity.\textsuperscript{32} Additionally, a more recent amendment in 2002 was enacted to prohibit the cross-examination of a rape victim after women came forward stating that this tactic often prevented them from coming forward out of fear that they would be publicly shamed.\textsuperscript{33}

\textsuperscript{22} Id. at 374.


\textsuperscript{25} Id.


\textsuperscript{27} The Evolution of Anti-Rape Laws in India Since 1860, supra note 24.

\textsuperscript{28} Id.

\textsuperscript{29} Tuka Ram and ANR v. State of Maharashtra, (1978), 1 SCR 810 (India).

\textsuperscript{30} The Evolution of Anti-Rape Laws in India Since 1860, supra note 24.

\textsuperscript{31} Id.

\textsuperscript{32} Id.

\textsuperscript{33} Id.
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B. Delhi Gang Rape of 2012

The most recent driving force for legal reform around violence against women came following the Delhi Gang Rape of 2012; a tragedy that prompted the Indian Government to consider making necessary changes. In 2012, Jyoti Singh, a 23-year-old medical student in Delhi, was brutally gang-raped for over an hour on a private bus. Singh’s attackers used an iron bar on her; causing extreme internal injuries that resulted in her death two weeks after the attack. This assault sparked huge public outcries to change the system and as a result, the government formed the Justice Verma Committee. The Justice Verma Committee’s intended purpose was to take public suggestions for possible amendments. By studying and considering these public suggestions, the judicial committee’s principal focus was to discern how the country could best change existing laws, as well as how to provide quicker investigation and prosecution of sex offenders. The Justice Verma Committee received approximately 80,000 recommendations, held wide consultations with subject-matter experts, and referred to laws around the world related to violence against women. As a result of this Committee, the Indian Parliament passed the Criminal Law Amendment Act of 2013. The Act expanded the definition of rape to explicitly state that the absence of physical violence does not equal consent.

The Criminal Law Amendment Act, 2013; Section 375:

“Consent means an unequivocal voluntary agreement when the woman by words, gestures, or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.”

The law also considered rape beyond penile-vaginal intercourse by including forcible acts of penetration of the vagina, mouth, or anus of a woman or forcing her to do the above acts with another person without her consent. The amendment increased the length of prison sentences and introduced the death penalty. Additionally, the government created fast-track courts for pending rape cases.

34 INDIA’S DAUGHTER (Assassin Films 2015).
35 Id.
36 Id.
38 Id.
40 Id.
42 WTD News, supra note 24.
43 Id.
44 Id.
The government also introduced a minimum mandatory sentencing of seven years for rape and included new offenses in the Act, such as stalking, sexual harassment, and forcible disrobing. The right of victims of rape and acid attacks to receive medical treatment was recognized through a statutory obligation on doctors to provide free and immediate medical treatment, and doctors' refusal to comply was made a punishable offense. The Ministry of Health and Family Welfare issued guidelines for medico-legal care for survivors of sexual violence to standardize examinations and treatment of victims. While the Act is primarily focused on sexual violence and expanding the definition of rape, Section 370 also expands the definition of "trafficking." The new legislation reads:

[W]hoever for the purpose of exploitation, recruits, transports, transfer receives a person by using threat or force or by fraud or deception or by abuse of power and by inducement, including the giving or the receiving of payment or benefit in order to achieved the consent of any person having control over the person, recruited transport harbored transferor receiver, commit trafficking.

The United States Department of State, however, declared that this new provision differs from international law insofar as it requires a demonstration of force, fraud, or coercion to constitute an offense of child sex trafficking. The new provision did, nevertheless, criminalize child exploitation through prostitution without the use of force, which can address this concern by the State Department. Despite this new provision, there has been minimal progress related to human trafficking in India. While reporting rates are higher, the government has failed to report any sentences for convictions and the data that has been provided fails to reflect the true severity of the problem throughout the country.

3. Discussion

Gender discrimination in India is painfully apparent. While there has been improvement in bridging the gap of gender discrimination across the country, the mindsets of individuals have been engrained in society for centuries. In 2011, the Thomas Reuters foundation conducted a study to find the five most dangerous countries for women, with Afghanistan, Congo, and Pakistan at the top of the list. In an effort to determine whether the situation for women had changed, the foundation led a subsequent study in 2018 where India moved from the fourth

45 Everyone Blames Me, supra note 39.
46 INDIA CODE, supra note 41.
47 Id.
50 TRAFFICKING IN PERSONS REPORT, supra note 48.
51 Id.
most dangerous country to the first. The foundation interviewed policymakers, journalists, health workers, academics, and other development professionals in an effort to obtain a broad representative sample of people based on their expertise. In the study, the researchers asked questions focused on six key areas: healthcare, discrimination, cultural traditions, sexual violence, non-sexual violence, and human trafficking. India ranked the most dangerous in three areas: the risk of sexual violence and harassment against women; the danger women face from cultural, tribal, and traditional practices; and the country where women are most in danger of human trafficking including forced labor, sex slavery, and domestic servitude. It is vital that victims of sexual violence and human trafficking have knowledge of the legal assistance available to them, as well as the ability to navigate the system in order to protect their rights. Larger cities have programs like the Delhi Commission for Women where they operate rape crisis centers and coordinate with police stations and offer legal assistance; however, that system fails due to corrupt police forces and a lack of uniformity across departments. India has not seen examinations like the “two-finger test”; a vaginal medical test used to determine if a victim is sexually active, be fully eradicated due to the fact that healthcare remains a state matter meaning state and local governments are not required to adopt the central government’s guidelines.

A. The Caste System

While sexual violence can affect all individuals, one specific subset of victims seems to be at a higher risk in India. Although India banned caste discrimination in 1950, social stratification remains prevalent throughout the country, especially in rural areas. Dalit women are regarded by many as the lowest caste in India; they were formerly referred to as “untouchable” and are still regarded as such in many areas of the country to this day. They are the most susceptible to human trafficking, with approximately 80 percent of Dalit women living below the poverty line and a vast majority of these women are forced into trafficking rings. “98[percent] of those forced into the dehumanizing work of manual scavenging, removing human waste by hand, are also Dalit women.” Additionally, Rashida Manjoo, the U.N. Special Rapporteur on violence against women, has stated that

53 Id; Everyone Blames Me, supra note 39.
54 The World’s Most Dangerous Countries for Women, supra note 52.
55 Id.
56 Id.
57 Id.
58 Everyone Blames Me, supra note 39.
60 Id.
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Dalit women face rape by state actors and powerful members of dominant cases to inflict political lessons within the community. Police forces often deny Dalit women their right to legal aid and often harass these victims as a method of intimidation. As a consequence of the caste system “[v]iolence and inhuman treatment, such as sexual assault, rape, and naked parading, serve as a social mechanism to maintain Dalit women’s subordinate position in society. They are targeted by dominant castes as a way of humiliating entire Dalit communities.”

Many Dalit women do not come forward due to fear of retaliation by higher caste members. While the Prevention of Atrocities Act was introduced in order to stop the commission of offenses against members of Scheduled Tribes and Scheduled Castes, the law is not frequently upheld. In fact, just last year, the Supreme Court ruled that no immediate arrests would be made for any complaints against those who have committed an atrocity against the Dalits. They now require that an extrajudicial trial occur before a complaint can be acted on, making it all the more difficult for Dalit women to take action against their assailants.

B. Devadasi Women

Dalit women are often forced into sex trafficking as a “Devadasi.” The Devadasi tradition dates back to the 6th century A.D. When the practice was first originated, Devadasi girls were viewed as a high-class group who played an important role in the temple. Devadasi translates to “Servant of God” and these women and girls were considered to be married to God. Many of these women never engaged in any domestic partnership outside of their “marriage” and their primary duty was to be present at sacred religious rituals in Hindu temples across the country. They performed traditional dances and participated in music celebrations; Devadasis were viewed as high-class individuals and sex played no part

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63 Id.
64 Id.
66 Hanchinamani, supra note 59.
69 Id.
70 Umeshwari Dkhar, Devadasi: A Sex Trafficking (Nov. 30, 2015) (PhD, North Eastern Hill University) (on file with SSRN).
71 Id.
72 Id.
74 Kumar, supra note 68.
in their role.\textsuperscript{75} Although this traditional practice was made formally illegal in 1988, the Devadasi system still exists in India.\textsuperscript{76} Today, however, Devadasis are simply viewed as child prostitutes and sex slaves.\textsuperscript{77} Many of these girls are forced into this practice from a young age as the only source of income for their families.\textsuperscript{78} One article referred to them as "Prostitutes of God."\textsuperscript{79} There is little religious link to the practice today and despite the laws in place to prohibit the system, a reported 450,000 women in India identified as a Devadasi in 2013.\textsuperscript{80} One of the first bills prohibiting the buying, hiring, or obtaining possession of a minor for purposes of prostitution was introduced in 1860.\textsuperscript{81} In the early 1920s, the city of Mysore enacted a law that criminalized the Devadasi system; this was the first city to do this.\textsuperscript{82} Other states followed Mysore's lead, by enacting provisions that criminalized the dedication of women and girls to temples.\textsuperscript{83} Although there is legislation preventing this abuse, the culture and mentality around these issues won't begin to change if those in positions of power continue to ignore the existence of this legislation.

4. Analysis

The Palermo Protocol was adopted by the U.N. General Assembly as a supplement to the Convention against Transnational Organized Crime in 2000.\textsuperscript{84} The Convention, also known as the Palermo Convention, is the primary international mechanism created to combat transnational organized crime.\textsuperscript{85} By fostering international cooperation through ratification of the instrument, the U.N. requires all Member States that ratify the Convention to adopt new measures that would (i) establish human trafficking as a crime within their domestic law, (ii) create frameworks for extradition, (iii) promote law enforcement cooperation, and (iv) advance training for national authorities on the matter.\textsuperscript{86} To create a culture of accountability, the U.S. Department of State ("Department") designed a ranking tool, with four tiers, to rate countries by their progress in collaboration with the Trafficking Victims Protection Act (TVPA).\textsuperscript{87} A country that is designated at the

\begin{footnotes}
\item[75] Id.
\item[76] Id.
\item[77] Id.
\item[80] Kumar, \textit{supra} note 68.
\item[81] Id.
\item[82] Id.
\item[83] Id.
\item[85] Id.
\item[87] TRAFFICKING IN PERSONS REPORT, \textit{supra} note 48.
\end{footnotes}
highest tier, "Tier 1" signifies that a country made significant efforts to address its trafficking problem to meet the TVPA's standards. The TVPA standards are generally in line with the Palermo Protocol. Each country's annual Trafficking in Persons Report determines whether the country enforced its newly enacted statutes and prosecuted those who violated them. All signatories to the Palermo Protocol are required to inform their citizens of their sexual violence laws, educate law enforcement on the agreement, and most importantly, protect victims and document how they are working to do so. In 2018, the Department stated that India remained a “Tier 2” country on their Trafficking In Persons Report. The U.N. Refugee Agency noted that, while India did not meet the minimum requirements necessary to eliminate trafficking, they have made substantial strides in doing so. They increased their budget to help women and child trafficking victims obtain shelter and the Indian border force held numerous awareness events on trafficking victims within the communities they live. It should be noted that this report referenced the previously discussed NCRB report from 2016. The report praised the government for increasing its efforts, noting that it identified three times the number of victims identified in 2016. Despite the important changes India has made, efforts towards increased victim protection and higher conviction rates for forced labor remain stagnant. The Thomas Reuters Foundation reported that fewer than two in five trafficking cases in India end in a conviction. The statement came after a report of a rare success in 2017 where an Indian court sentenced 39 people to 10 years in prison for the trafficking of girls in the state of Karnataka. 

A. Trafficking of Persons Bill of 2018

India's highly contentious Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill (“Bill”) of 2018 was approved by the Indian Parliament on July 26, 2019. While the Bill attempts to address trafficking using mechanisms to rescue, protect, and rehabilitate victims, it has been subject to criticisms.

88 Id.
89 Id.
90 Id.
91 Id. at 221-22.
92 Id.
93 Id. at 222.
94 Id.
95 Id.
97 Id.
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U.N. Special Rapporteur on Trafficking in Persons, Maria Giammarinaro, and the U.N. Special Rapporteur on Contemporary Forms of Slavery Urmila Boola, released a statement expressing their tremendous shared concern.\(^{100}\) They criticized the language of the Bill as "over-broad and vague."\(^{101}\) Specifically, the Special Rapporteurs stated that any legal framework centered around the trafficking of persons should be consistent with a human rights approach in order to ensure victims are correctly identified and given appropriate aid and protection services.\(^{102}\) The Oxford Human Rights Hub notes that the Bill fails to incorporate a victim-centered approach—a shortcoming that could potentially harm these individuals further.\(^{103}\)

While the Bill provides immunity to victims for crimes committed under coercion, the Hub notes that the burden of proof falls on the victim, and petty crimes are afforded no immunity.\(^{104}\) Essentially, the Bill only protects victims where the punishment equals ten years of imprisonment or more.\(^{105}\) The Bill also does not consider consent to be material to the definition of sex trafficking (an outdated definition from Section 370 of the Indian Penal Code), which creates a problem that could lead to police punishing unconsenting sex workers as if they themselves were traffickers. This is especially concerning when one considers the high rates of official corruption in India.\(^{106}\)

While there is certainly strong opposition to the Bill, there are aspects of the legislation that have the potential to influence positive change around the issue of human trafficking in India. For instance, the passage of the Bill creates a national anti-trafficking bureau, formed specifically to serve as an investigative agency for trafficking issues throughout the country.\(^{107}\) This centralized body will serve as a structured solution to combat trafficking on a higher level.\(^{108}\) Those who supported the Bill state that, instead of criminalizing voluntary sex work, it will safeguard sex workers against possible prosecution and provide long term support for the victims.\(^{109}\)

Even with the benefits created with the passage of the Bill, the system needs major reforms, as evidenced by corrupt law enforcement and inconsistencies across departments.\(^{110}\) As a result of such inconsistencies, state and local governments are not required to adopt the central government’s guidelines.\(^{111}\)

\[^{101}\text{Id.}\]
\[^{102}\text{Id.}\]
\[^{103}\text{Sharama, supra at 99.}\]
\[^{104}\text{Id.}\]
\[^{105}\text{Id.}\]
\[^{106}\text{TRAFFICKING IN PERSONS REPORT, supra note 48, at 223.}\]
\[^{107}\text{Gandhi, supra note 98.}\]
\[^{108}\text{Id.}\]
\[^{109}\text{Id.}\]
\[^{110}\text{TRAFFICKING IN PERSONS REPORT supra note 48, at 222-23.}\]
\[^{111}\text{UN News, supra note 90.}\]
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adding to the difficulty, the number of government officials who are complicit in crimes across the country is alarming. The Crime in India report in 2016 stated that 4,764 individuals were charged under the corruption act.\textsuperscript{112} Officials were sometimes complicit in trafficking and sex trafficking schemes by protecting brothel owners, receiving sexual services, and informing traffickers of any upcoming raids.\textsuperscript{113} The culture and mentality around these issues will not begin to change if those in positions of power continue to be allowed to ignore the existence of these laws.

B. International Covenants

India is also a party to several relevant international agreements. It is a signatory to the International Covenant on Civil and Political Rights, which states that no person can be subjected to cruel, inhuman, or degrading treatment;\textsuperscript{114} it is a signatory to the International Covenant on Economic, Social, and Cultural Rights, which guarantees the right to the highest attainable standard of health;\textsuperscript{115} and it is a party to the U.N. Convention on the Elimination of All Forms of Discrimination Against Women.\textsuperscript{116} While contracting States to international covenants are legally bound to their agreements, there are no concrete enforcement methods in place.\textsuperscript{117} As a party to these treaties, India still has an obligation to take all measures necessary to ensure that women's rights are being upheld.\textsuperscript{118} In 2017, 33 U.N. member countries raised concerns over violence against women in India.\textsuperscript{119} The Indian government responded by citing specific laws and policies addressing this violence.\textsuperscript{120} While it is important to recognize the progress India has made by creating and passing this legislation, the government needs to take all measures necessary — through actual enforcement of new amendments and legislation—\textsuperscript{121} to ensure that they are upholding their commitments as a signatory to these treaties.

C. Developments and Progress

While the Indian Government has enacted great initiatives that are surely a step in the right direction, there has been little progress towards implementation

\textsuperscript{112} \textit{Trafﬁcking in Persons Report, supra} note 48, at 223.
\textsuperscript{113} \textit{Id.}
\textsuperscript{118} \textit{Id.}
\textsuperscript{119} Everyone Blames Me, \textit{supra} note 39.
\textsuperscript{120} \textit{Id.}
\textsuperscript{121} \textit{Id.}
and enforcement. The Delhi Gang Rape was the only case out of the 706 filed in New Delhi to lead to a conviction in 2012. In 2013, the Indian Supreme Court ruled that the “two-finger test”, an archaic and ineffective medical examination, was an invasion of the right to privacy. As a result, in 2014, the Ministry of Health and Welfare declared the test both irrelevant and inaccurate to identify cases of rape. Nevertheless, a 2018 report revealed that as of November 2017, only nine out of the 29 Indian states had adopted these 2014 guidelines and the majority of states were still using this test when examining victims of sexual violence.

The Delhi Commission for Women (“DCW”) is one initiative focused on human trafficking that is already in effect. Created in 1994, the Commission is a statutory body dedicated to the safety of women in the city. DCW maintains a dedicated helpline for women and girls, and over the past few years, there have been reports of drastically increased call numbers. This is a positive sign of increased awareness and serves as a step in the right direction. One report told the story of a 13-year-old girl who called the helpline because her grandparents were forcing her into a marriage with an older man. The DCW was able to remove the girl from this toxic environment and place her in a women’s shelter. One major concern, however, is whether the shelters are truly safe. Often times, women and girls are kidnapped from the shelters specifically for purposes of human trafficking. In December of last year, nine girls went missing from Sanskar Ashram, a shelter home in Delhi. These girls had been placed in the home after being rescued from the red-light district just one year


123 Everyone Blames Me, supra note 39

124 Id.

125 Roli Srivastava, Indian Rape Survivors Still rape survivors still subjected to Intrusive, Illegal intrusive, illegal tests, THOMAS REUTERS FOUND. (January 10, 2018), https://www.reuters.com/article/us-india-sexcrimes-justice/indian-rape-survivors-still-subJECTED-to-intrusive-illegal-tests-idUSKBN1EZ0PX.


127 Id.


129 Id.

130 Preksha Malu, How Did Shelter Homes in India Become Criminal hotspots?, SABRANG (October 1, 2018), https://sabrangindia.in/article/how-did-shelter-homes-india-become-criminal-hotspots.

131 Id.

prior. This is unacceptable; training and safety measures should already be in place to prevent this type of kidnapping from occurring.

Over the last five years, there has been monumental development around sexual violence initiatives in India. In January 2020, a court in New Delhi ordered the execution of the four men convicted in the 2012 Delhi Gang Rape. Because capital punishment is rare in India, this will mark the first execution in the country since 2015. Although it is increasingly evident that India is making an effort to address human trafficking concerns, widespread transformation has yet to occur. Despite the changes to legislation and policies, sexual violence in India is still a pervasive issue. The Hyderabad Gang-Rape from November 2019 is the most recent example of this endemic. The case involves a horrific gang-rape and murder of a 27-year-old woman in Hyderabad, Telangana, which is the capital of the southern Indian state. The victim’s body was set ablaze and sparked major protests across the country and the world in hopes of swift justice against her rapists. While this attack comes nearly seven years after the Delhi Gang Rape, it is clear that the changes included in the 2012 sexual violence legislation have yet to prove effective.

D. The Nirbhaya Fund

Examining recent changes and implementation efforts across the country can be helpful when formulating targeted recommendations around human trafficking and sexual violence. The government introduced a minimum mandatory sentencing of seven years for rape, and the Act included new offenses such as stalking, sexual harassment, and forcible disrobing. Rape and acid attack victims now have a right to free and immediate medical treatment; and if a doctor refuses to comply, it is a punishable offense. In addition, the Ministry of Health and Family Welfare issued guidelines for medico-legal care for survivors of sexual violence to standardize examinations and treatments of victims.

As a result of the Delhi Gang Rape, the government established The Nirbhaya Fund, which allocated about $450 million US dollars to programs aimed at
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preventing, protecting, and rehabilitating victims.\textsuperscript{142} The programs created approximately 151 one-stop centers across the country in order to provide legal and medical aid, as well as counseling services for sexual assault survivors.\textsuperscript{143} A news report from April 2020 stated that thirteen states are currently being set up for both DNA testing facilities and cyber forensic laboratories to accommodate the growing number of reported crimes against women.\textsuperscript{144} The project is being implemented thanks to the Nirbhaya fund, and the report states that a total of 3,664 personnel, including 410 public prosecutors and judicial officers, have been trained for this project.\textsuperscript{145} Another recent report stated that 16 states have joined the network of a single emergency helpline number “112” for anyone who may be in distress.\textsuperscript{146} This Emergency Response Support System will be integrating three separate numbers that are used for police, fire, and women, and it is also being implemented under the Nirbhaya fund.\textsuperscript{147} Additionally, the Investigation Tracking System for Sexual Offenses (“ITSSO”) is currently being implemented in eight states as the first phase of the project.\textsuperscript{148} The ITSSO is an online module available to law enforcement at all levels in an effort to investigate and prosecute rape cases in a more timely manner across the country.\textsuperscript{149} The hope is that these “safe city implementation monitoring portals” will create a sense of security for women in cities throughout India.\textsuperscript{150} These initiatives serve as important steps towards combatting sexual violence against women, and moving forward, they should be extended to include training for human trafficking focused victim identification and aid.

5. Proposal

The Palermo Protocol ("The Protocol") was created with the intention of reforming society’s perspective on human trafficking on a large scale.\textsuperscript{151} The Protocol was designed to prevent, suppress, and punish the trafficking of persons, specifically women, and children, through the United Nations Convention.\textsuperscript{152} By creating an internationally accepted definition of human trafficking, the Palermo

\begin{footnotes}
\textsuperscript{142} Id.
\textsuperscript{143} Id.
\textsuperscript{145} Id.
\textsuperscript{147} Id.
\textsuperscript{148} Id.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
\textsuperscript{151} KENDALL ET AL., supra note 9.
\end{footnotes}
Protocol obliged India, as a signatory to the Convention, to create and implement safeguards that protect their women and children from human trafficking and sexual violence. The psychological control that trafficking victims endure is extensive, and the staff at the 151 one-stop centers around the country need to be trained to provide support for women and girls who have been identified as trafficking victims. These centers should be equipped to recognize signs of coercion and intimidation. Unfortunately, the Human Rights Watch reported that a lack of both coordination and public awareness of the existence of such centers makes it difficult to streamline internal processes.\textsuperscript{153} In spite of the difficulties, Emergency Helpline Response teams should be prepared to intake information on trafficking rings, and the ITSSO should be further developed to investigate human trafficking.

Human Rights Watch has also proposed a standard operating procedure that is statutorily binding for the police, forensic experts, and the judiciary.\textsuperscript{154} This would help ensure uniformity in the application of existing laws and policies around sexual violence. The operating procedure could also be reformed to specifically target both human trafficking and sexual violence—it has the potential to make a difference for Dalit women who face harassment by their local police when they choose to come forward.\textsuperscript{155} Additionally, in their 2018 Trafficking of Persons report, the Department suggested that India establish anti-human trafficking units across the country and provide funding for states to establish fast-track courts exclusively for trafficking cases.\textsuperscript{156} Fast-track courts have already been established in India for sexual violence cases and funding should be allocated for victims of trafficking as well.\textsuperscript{157} India must create a national plan of action to combat trafficking and sexual violence, as a whole, throughout the country.\textsuperscript{158} Although some states throughout the country have established their own action plans with task forces and awareness strategies, these plans must be initiated and enforced on a greater scale.\textsuperscript{159}

The issue of sexual violence in India is widespread and extensive; change must begin somewhere. From violence prevention to victim protection, we must not draw attention to India’s pattern of response only after a publicized attack. When looking at the legislative history of sexual violence laws in India, improvements and advancements have certainly been made; however, new legislation needs to be drafted before the public outcry at the expense of yet another victim of sexual violence. The central, state, and local governments need to begin enforcing the Criminal Law Amendment Act of 2013. Although these laws are in place, the culture and mentality around these issues will not begin to change if

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{153}] Everyone Blames Me, supra. note 39.
\item[\textsuperscript{154}] KENDALL ET AL., supra note 9.
\item[\textsuperscript{155}] Id.
\item[\textsuperscript{156}] TRAFFICKING IN PERSONS REPORT, supra note 48.
\item[\textsuperscript{157}] WTD News, supra note 24.
\item[\textsuperscript{158}] Everyone Blames Me, supra note 39.
\item[\textsuperscript{159}] TRAFFICKING IN PERSONS REPORT, supra note 48.
\end{enumerate}
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those in positions of power continue to ignore the existence of these amendments.

6. Conclusion

From an international perspective, the U.N. has voiced concerns regarding the issues of sexual violence and human trafficking in India but more can be done—members of the U.N. need to come forward and ensure that India meets its obligations under international treaties. While much of the problem is in the implementation of these laws, countries can voice their concerns through media in order to shine a light on the issues facing victims. The conversation around sexual violence, and the power dynamic between men and women in India, has certainly improved over the years; but in order to see this improvement reflected in statistics, we need to raise awareness on the prevalence of this issue. Although the creation of protective legislation was a necessary phase in ensuring the safety of all women in India, recent publicized attacks such as the Bangalore Gang-Rape prove that the mindsets of many individuals across the country have yet to improve. India’s Central Government has made great strides in the amendment and introduction of laws in order to help victims of trafficking and violence, but ensuring enforcement of these laws is the most important next step.