A comparative study of child trafficking in India and the United States

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Abstract: Trafficking in children has become a global concern. It is a worldwide phenomenon affecting possibly millions of girls and boys around the world. Trafficked children are exposed to unprecedented vulnerabilities. Commercial exploitation of these vulnerabilities has become a massive organized crime and a multimillion dollar business. Nations are attempting to combat this trade in human misery through legislative, executive, judicial, and social action. In this paper, the authors offer a comparative analysis of the trafficking of children in India and the United States related to organized crime and legislation. Coined the epicenter of trafficking in the world, India is compared to the United States. The United States formally monitors and ranks nations around the globe for their anti-trafficking efforts. Both countries, despite their progress, continue to struggle with its own human trafficking challenges. The USA and India must work harder to bring all states and districts in line with the tenets of the protocol for uniformity purposes.

Keywords: human trafficking; organized crime; child trafficking; India; USA; trafficking victims protection act

Introduction

In India, children and their families are often lured into trafficking scenarios by the promise of employment, education, additional income, and a more prosperous life far away from their homes. Some are kidnapped and sold (Logan, Walker & Hunt, 2009; Sen & Nair, 2004). In the United States, trafficked children, specifically teenage girls are oftentimes lured into a trafficking situation through deception, which includes gifts, romance, temporary housing, and attention from an older male (Marcus, Horning, Curtis, Sanson & Thompson, 2014; Reid & Jones, 2011). In both countries, trafficking violates a child’s right to grow up with their biological families and in their natural environments. It also exposes them to a range of dangers, including violence and sexual abuse.

No one knows for certain the actual numbers of human trafficking victims around the world. Due to the clandestine nature of human trafficking, researchers rely on estimates and proxies when determining the prevalence of human trafficking. The International Labor Organization estimates that there are at least 12.3 million people who are enslaved in some form worldwide – more than at any time in history (Nguyen, 2010). The majority are said to be women and children. India is considered to be the epicenter of human trafficking around the world with estimates as high as 5 to 12 million enslaved persons in that country alone. For instance, Mumbai in India reportedly has more than 2 million commercial sex workers with 20 percent of them being below 18 years of age (Sen & Nair, 2004). In the United States, researchers estimate that between 500,000 to 10 million children are believed to be partaking in forced prostitution activities (Boxill & Richardson, 2007). Another 300,000 to 800,000 are estimated to be vulnerable to commercial sex activities (Reid & Jones, 2011). In India, every day about 200 girls and women enter into prostitution mostly against their will (Sen & Nair, 2004). The
HIV/AIDS threat has fuelled the demand for younger girls because of the popular myth that virgins are a cure for HIV/AIDS and that they increase the male potency. Every year over 22,000 women and 44,000 children are reported missing in India. Of these, more than 5,000 women and 11,000 children are not traced. In 2004, approximately 60% of rescued girls in India reported that they were deceived into the sex trade while 11% reported that poverty was the reason (Sen & Nair, 2004). In this paper, the authors offer a comparative analysis of the trafficking of children in India and the United States related to organized crime and legislation.

In India, a large number of children are trafficked not only for the sex ‘trade’ but also for other forms of non-sex based exploitation that includes servitude-like work such as domestic labor, industrial labor, agricultural labor, begging, organ trade, and false marriages (Sen & Nair, 2004). In the United States, identified trafficked children tend to be female teenagers who are forced or deceived into engaging in commercial sex activities that include prostitution and pornography (Boxill & Richardson, 2007). Identification of male trafficking victims remains a challenge in the USA (Office to Monitor and Combat Trafficking in Persons, 2013). Therefore, little information is known about trafficked males (adult or children) in the United States. Overall, however, 7 out of 10 children are forced into the sex trade (Nguyen, 2010).

Trafficking in children is on the rise, and nearly 60% of the victims of trafficking in India are said to be below 18 years of age (Sen & Nair, 2004). In the United States, the average girl enters into forced prostitution between the ages 12 and 14 (Boxill & Richardson, 2007). In India, researchers estimate that nearly 15% of commercial sex works began sex work when they were below 15; and 25% entered between 15 and 18 years (Sen & Nair, 2004). Bajpai (2006) reports that some child trafficking is known to present with religious or community approval among the Bassani, Joginis, Bhogam Vandhis, and Venkatesinis in Andhra Pradesh; the Muralis, Aradhinis, and Tamasha girls in Maharashtra; the Thevadiyars in Tamil Nadu; the Bedia, Bachhda and Sansi communities in Madhya Pradesh; and the Nat community in Uttar Pradesh. Tribal Kolta women and girls from Garhwal hills are also compelled to become prostitutes to rescue their families from debt bondage (Sen & Nair, 2004).

As previously stated, although the specific number of child trafficking victims in the United States is unknown, there are reportedly hundreds of thousands of American youth at risk for and/or are engaging in exploitation activities (Estes & Weiner, 2001) due to their homeless statuses as throwaways and runaways. In the United States, one in three teens on the street will be lured into prostitution within 48 hours of leaving home (National Network for Youth, 2011). It is estimated that minors, in general, compose 50 percent of those who are trafficked in the USA. In the United States, more than half of all victims (54%; n=248) involved in 460 confirmed human trafficking cases between 2008 and 2010 were minor sex trafficking victims (Banks & Kyckelhahn, 2011). As a destination country, it is estimated that 14,500 to 18,500 foreign nationals are trafficked into the United States annually according to the US Department of Justice (2006) while George’s (2012) estimates are much higher at 50,000 annually. For an extensive period of time, emphasis has been on foreign victims, resulting in little attention to domestic minor sex trafficking victims, including lawful permanent residents (LPR) of the United States. It was a long held belief that trafficking was only a developing country’s problem – like India and Nigeria – a transnational organized crime and those individuals from other countries were the only victims of human trafficking in the USA. The USA now knows that human trafficking victims are very diverse in the USA and include undocumented immigrants and Americans as well as adults and children. The government also knows that victims are trafficked via large organized networks, small networks, and by single persons.

Economics of Trafficking as Organized Crimes
It is estimated that revenue as low as 9.5 billion and as high as 31.7 billion is generated worldwide from trafficking-related crimes (Kara, 2009). Human trafficking today is reported as one of the largest and most profitable organized crimes in the world – third only to drug trafficking and weapon traf-
ficking (George, 2012; Hodge, 2008; Kara, 2009). Oftentimes, it takes place through organized criminal groups. According to the United Nations, an organized criminal group is "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences,... in order to obtain, directly or indirectly, a financial or other material benefit" (United Nations Office on Drugs and Crime, 2004, p. 5). Pullat (2009) asserts that organized crime manifests itself through cooperation between criminals and criminal groups in different combinations. He argues that professional skills, the organized character, and the long-term nature of the organized crime activities distinguish organized crime from other forms of crime (Viuhko & Jokinen, 2009). At times, child trafficking activities in both India and the USA is carried out through organized criminal groups when it involves a broad range of activities between persons with the goal of financial and material benefit. Large networks that spread between cities and countries that include multiple traffickers, transporters, immigration officials, the police, brothel owners, as well as small networks that are limited to a few associates, neighbors, and relatives have been found among traffickers in both India and the United States (Hendrix, 2010; Kara, 2009; Rieger, 2007; Sen & Nair, 2004).

The following are common activities used by traffickers in both small and large organized networks in India and the United States. According to researchers (Hendrix, 2010; Hodge, 2008; Kara, 2009; Rieger, 2007; Sen & Nair, 2004) organized criminal activities performed by traffickers include:

- Enforcing orders and rules
- Locating and recruiting the victim
- Luring the victim into a trafficking trap including kidnapping
- Transporting the victim from place to place or location to location
- Collecting fees from victims or third parties
- Making arrangements for the "sale" in local places (i.e., brothels, hotels, truck stops, bars, etc.)
- Keeping the victims safe from clients
- Providing logistical support for sustaining of victims – food, housing, clothing, etc.
- Collection of the payments for providing the victims so that they are re-sold or transferred to another trafficker
- Watching the movement/activity of law enforcement (the police) and immigration authorities who have not been bought off
- Disciplining/torturing victims
- Accessing drugs to induce dependence, cooperation, and submission
- Paying off doctors to perform abortions or treat minor ailments including STIs

Child trafficking oftentimes includes sex trafficking (Nguyen, 2010). Sex trafficking always includes acquisition, movement, and exploitation (Sarkar, 2014a; Sarkar, 2014b). These same components are also always present when organized crime involves sex trafficking as evidenced by common activities of traffickers (Kara, 2009). The previously stated activities as organized crime components vary based on the number of partners in the group, number of victims involved, movement/distance of travel for victims, kinds of services demanded of victims, and fees/expenditures associated with the trafficking. As an organized crime, human trafficking is a business based on the principle of supply and demand (Kara, 2009).

Human trafficking is a crime against the State as well as the person. It is a crime against the State because it involves corruption, money laundering, tax evasion, forgery of documents, bribery, etc. It is a crime against the Person because it involves illegal detention, bonded labor, kidnapping, murder, physical injuries, sexual assault (rape), torture, cruelty, forced abortions, forced marriages, and a host of interpersonal crimes towards another person. Human trafficking is crime that is recognized by the United Nations, India, the United States, and over 100 nations around the world (United Nations, 2000).

As part of their organized network, traffickers in India and the United States deliberately confuse their victims geographically. This is accomplished by moving them around for long periods of time
or over great distances so that they lose their bearings. Traffickers, through various modus operandi, take children through unknown and unfamiliar routes to make retracing practically impossible. Sometimes the child is blindfolded. Other times the child is placed in a trunk or moved around in a van, truck, or some sort of vehicle over such long distances that they lose track of where they have traveled from. They also cut off children from their roots – their homes, cities, neighborhoods, and villages in an effort to alienate and isolate them (Bajpai, 2006). Subsequently, they displace them by moving them around as they prepare to exploit them via trafficking activities.

In the United States, high trafficking areas include truck stops off state and national highways, motels, male-catered sporting events (football, soccer, golf, body building, etc.), entertainment clubs, popular prostitution streets/rows, escort services, massage parlors, and casino areas (Nguyen, 2010; Sager, 2012). In India, high trafficking areas also include state and national highways, as well as cinema halls, bus stops, railway stations, residential schools, child care institutions, jails where children are illegally detained, beauty parlors, massage homes, casinos, industries involving child labor; and the coastal belt, especially at tourism resorts (Sen & Nair, 2004). As seen here, there are some striking similarities between India and the United States related to child trafficking practices, especially when organized criminal groups are involved. Research confirms that the factors influencing the level of development and the nature of organized criminal groups are the same across the world (Pullat, 2009).

Child Sex Trafficking
Child sex trafficking is referred to as severe human trafficking (Public Law 106-386, 2000), Child Sex Trafficking Victims (CSTV) (Reid & Jones, 2011), Domestic Minor Sex Trafficking (DMST) (Shared Hope International, 2009); Trafficking in Persons (United Nations, 2000), child/juvenile/teen prostitution (Reid & Jones, 2011), and Commercial Sexual Exploitation of Children (CSEC) (Marcus, Horning, Curtis, Sanson & Thompson, 2014). The most comprehensive definition of trafficking, however, is the one adopted by the UN Office of Drugs and Crime in 2000, which is known as the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. This Convention has been signed by both governments of India and the United States (Hendrix, 2010).

Article 3 of the said Convention reads 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 of receiving of payments or benefits to achieve the consent of a person having control over another persons, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour services, slavery or practices similar to slavery, servitude or the removal of organs;

b) The consent of a victim of trafficking in persons to the intended exploitation set forth in sub paragraph (a) of this article shall be irrelevant where any of the means set forth in sub paragraph (a) have been used;

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 involve any of the means set forth in sub paragraph (a) of the article;

d) Child shall mean any person under eighteen years of age.

According to this definition, human trafficking includes the following elements: The act of recruitment, transportation, transfer, harbouring, or reception of persons by means of threat, use of force, coercion, abduction, fraud, deception, abuse of power, or other weakness of victim.

In order to meet the legal definition here, one element from letters A to C must be present. If all three elements are not present, then the activity is not recognized as human trafficking.
Trafficking activities primarily fall into two categories – sex trafficking and labor trafficking (Public Law 106-386, 2000). Sex trafficking involves the inducement of others into commercial sex activities that include prostitution activities in brothels, private homes, dancing bars, strip clubs, and massage parlors, to name a few. It also includes pornography. Unlike adults engaging in commercial sex acts, trafficked children do not have to prove force, fraud, or coercion according to the Trafficking Victims Protection Act (TVPA) of 2000 (Public Law 106-386, 2000). Labor trafficking through the use of force, fraud, and coercion involves making a person provide labor services for free or far less than what was agreed upon (Public Law 106-386, 2000). It includes a wide range of activities that include sweatshop and other factory work, agriculture work, childcare/housekeeping, construction, mine work, begging, and forced athleticism, just to name a few (International Labor Organization, 2014). Children are trafficked for both sex and labor purposes.

Tier Placements and Trafficking in Persons

The Trafficking in Persons (TIP) report comes out of the Office to Monitor and Combat Trafficking in Persons (US Department of State, 2014). This office releases annual ratings of nations around the world. The ratings are based on a country’s adherence to the USA’s recommendations for eradicating trafficking. Countries are rated as being a country of source/origin, transit, or destination. The distinctions here recognize that there is a protocol among some traffickers that include a systematic approach to trafficking activities – securing the victim (source/origin), transit (moving the victim from one place to another), and destination (transporting her or him to a specific location). When fully implemented in all three dimensions, trafficking is usually carried out through organized criminal networks for efficiency purposes. It would be inefficient for traffickers to singlehandedly carry out each step of this process. Assigning members to specific roles yield more benefits.

A source/origin country is one where the victims usually come from or where the trafficking starts. A transit country serves as a throughway or stop where trafficking victims are exploited temporarily. It may include set-ups for temporary shelters through a series of “safe houses” or places that are used to transport the victim from one place to another. A country of destination is a place where the trafficking victim is intended to be taken to forcibly render her or his services (US Department of State, 2014). India is a source, transit and destination country for victims trafficked for sexual and economic exploitation (US Department of State, 2014). For instance, children are often trafficked into India from Bangladesh and Nepal en-route to the Middle East nations. About 89 percent of trafficking in India is inter-state. Victims are also trafficked within India. The United States is also a source, transit and destination country for international and domestic victims trafficked for sexual and economic exploitation (US Department of State, 2014). It is well documented that international trafficking victims are herded like animals between criminals as they negotiate borders, transit locations, and then their destination – the USA.

The TIP Report also ranks nations as Tier I, Tier II, Tier II Watch List, and Tier III based on their attention and efforts to address human trafficking as set by the minimum standards of the Trafficking Victims Protection Act. These standards address the three P’s: Punishment of traffickers, Protection of its victims, and Prevention efforts related to trafficking (US Department of State, 2014). Tier I countries fully comply with the minimum standards of the TVPA). Tier II countries do not fully comply with the minimum standards of the TVPA but are making significant efforts to do so. Tier II Watch List countries do not fully comply with the minimum standards of the TVPA but are making progress towards being in compliance but have additional barriers to address related to high numbers or increasing number of victims; failure to prove increasing efforts to address severity of trafficking; or a prior commitment to make great improvements has not been upheld. Last, Tier III countries do not fully comply with the minimum standards of the TVPA and are not making progress towards such goals. In 2014, India ranked as Tier II while the USA is ranked Tier I (US Department of State, 2014).
At-Risk Factors

Many researchers attempt to explain human trafficking and persons most vulnerable to being trafficked. The following table lists at-risk factors for women and child trafficking victims in India and the United States. These at-risk factors, sometimes referred to as push and pull factors, place children and women in vulnerable positions that make them susceptible to being trafficked, especially by organized criminal groups. Push factors are those variables that make people inherently vulnerable to being preyed on. They may include preventing a person from accessing opportunities or blocking a person from achieving their fullest potential (Hodge, 2008). Pull factors are those misperceptions, false securities, and in-experiences that lead people to believe that the impossible is possible; the realization of “the dream” is accessible to them; and that entering into “shady” or questionable contracts outweigh the perceived possible risks (Logan Walker & Hunt, 2009).

Table 1. Push and pull factors of human trafficking

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<thead>
<tr>
<th>Push Factors</th>
<th>India</th>
<th>United States</th>
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</thead>
<tbody>
<tr>
<td>Poverty and economic hardship</td>
<td>Low socio-economic factors</td>
<td></td>
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<tr>
<td>Growth of criminal networks</td>
<td>Drug use in the home</td>
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<tr>
<td>Un-ending demand for prostitution</td>
<td>Mental illness</td>
<td></td>
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<tr>
<td>Lack of education</td>
<td>Lack of stable housing</td>
<td></td>
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<tr>
<td>Low status of women</td>
<td>Poor academic performances</td>
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<tr>
<td>Breakup of joint family resulting in absence of social safety net</td>
<td>Limited peer relations</td>
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<tr>
<td>Harsh / abnormal family environment including breakdown of marriage</td>
<td>Sexism and patriarchy</td>
<td></td>
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<tr>
<td>Extraneous reasons like natural disasters (e.g., drought, famine, earthquake, war, etc.)</td>
<td>Lack of maturation</td>
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<table>
<thead>
<tr>
<th>Pull Factors</th>
<th>India</th>
<th>United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Potential employment</td>
<td>Love and attention</td>
<td></td>
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<tr>
<td>Increased opportunity to travel</td>
<td>Temporary housing, food &amp; gifts</td>
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<tr>
<td>Sexual ‘revolution/freedom’ resulting in casual attitude towards exchanging sex for money</td>
<td>False reality of the dangers in exchanging sex for money</td>
<td></td>
</tr>
<tr>
<td>Marriage and other false promises</td>
<td>False promises</td>
<td></td>
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Sources: Boxill & Richardson, 2007; George, 2012; Hendrix, 2010; Reid & Jones, 2011; Nguyen, 2019; Rieger, 2007; Sen & Nair, 2004

Legal Framework

Despite being countries deeply affected by trafficking activities, both India and the United States lack effective and consistent enforcement of laws designed to punish traffickers associated with organized criminal networks or not associated with organized criminal networks. Trafficking in the Indian context has largely been studied and reported mainly for the purpose of commercial sexual exploitation with the country witnessing cross-border as well as internal trafficking. India's record of prevention of trafficking in persons remains abysmally poor. Andhra Pradesh, West Bengal, Maharashtra, Tamil Nadu, Karnataka, Bihar, Orissa and Delhi are said to have been identified as the most affected states. At the cross-border level, the major victims trafficked into India for the purposes of commercial sexual exploitation are from Nepal and Bangladesh (Sen & Nair, 2005). In the United States, California, Texas, New York, and Ohio are states with staggering high numbers related to trafficking (George, 2012; Nguyen, 2010). Toledo, Ohio is ranked #4 in the country for its human trafficking activities, especially as it relates to child sex trafficking (Sager, 2012).

International laws lay down standards that have been agreed upon by all countries. By ratifying an international law or convention or a covenant, a country agrees to implement the same. To ensure compatibility and implementation, the standards set forth in these international conventions are to be reflected in domestic law. Implementing procedures are to be put in place as needed and the treaties must be properly enforced.

The following are some of the most important international conventions regarding trafficking of women and children that relate to India and the United States (Nguyen, 2010; Sen & Nair (2004).
These international conventions around trafficking and slavery indicate that the issue is widespread, transnational, a violation of human rights, and criminal in nature.

- International Agreement for the Suppression of the White Slave Trade 1904
- The Convention for the Suppression of the Trafficking of Women and Children 1921
- The Convention for the Suppression of the Traffic in Persons and of Exploitation of Prostitution of Others 1949
- The Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW) 1979
- The Tourism Bill of Rights and the Tourist Code 1985
- Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, 1986
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000
- SAARC Convention on Regional Arrangement for the Promotion of Child Welfare, 2002

A Stand of Judiciary for Trafficking in India and the United States

In this section, the authors discuss trafficking cases and major pieces of domestic legislation in India and the USA. As previously discussed, trafficking oftentimes do include three or more perpetrators, but it also takes place on a smaller scale at times as in the cases of these trafficking victims who were trafficked by a single individual.

**Trafficking Case in India: Bala**

Bala, a 15 year old girl, belonged to a village in Nadia district of Bengal. She was the youngest member of a poor Bengali family and had studied up to 2nd class. Her father used to beat her mother, but later left the mother with two sons and a daughter. Bala’s eldest brother was unemployed and the other brother worked in a hotel. Her mother worked as a domestic maid in other people’s homes and earned about Rs.400 per month. A close neighbor from her village, Krishna didi, told her mother that she would get Bala a job in Delhi which would fetch her about Rs. 3000 per month. Her mother allowed her to travel to Delhi with Krishna and some other relatives. They stayed in Delhi in a Jhuggi belonging to Krishna’s relative for 10 days after which they went to Rewari. Krishna was married to a local carpenter in a village in Rewari whereby she had a daughter and a son from the marriage. She owned a pucca house of her own. She informed Bala that she would marry her off to a man in the village and proceeded to force her to do so. Bala was confined for a month by Krishna in an attempt to pressure her to get married to the selected man. Previously, Krishna had sold two other girls into forced marriages in Haryana. After the marriage, Bala managed to escape to visit a nearby Hanuman temple and narrated her story of confinement and marriage to the priest, who then informed the police. The police raided the place and arrested Krishna and lodged her in jail. Bala was rescued and shifted to Nari Niketan, Karnal by order of the Court on January 28, 2004. After her rescue, Bala became discouraged about her future and did not want to return home. Her mother failed to respond to official letters sent by the Nari Niketan authorities informing her of Bala’s whereabouts.

**Trafficking Cases in the United States**

Marcus, Horning, Curtis, Sanson, and Thompson (2014) describe situations of minors being trafficked into commercialized sex work activities. The first involves a 14 year old mixed-race girl in New York who tried to leave her trafficker. The second involves a 17 year old Latina girl who is being trafficked by her mother’s ex-boyfriend. Last, the third case involves an 18 year homeless, White female who appears to be developmentally delayed and made to prostitute for a man to support his drug habit.
Case #1: ‘He saw me with my friend and he told me to get in the care or he’ll kill me in front of my friend. So I got in the car and he took me to his house….I told him that I had to see my probation officer in the morning, and he said, “No, you’re not going anywhere.” So that night, he forced me to have sex with him…’ (p.236).

Case #2: ‘I go get the money and then I try and stay away from him after that. Some days we get along, some days we don’t. I’ve tried to leave him, but he always finds me’ (p.236).

Case #3: ‘I follow him wherever he goes….I love him to death…..he proposed to me.’ Her pimp (trafficker) admits that ‘sometimes it all gets too much for her and her grandparents come to get her’ (p.235).

In case #1, the victim leaves her trafficker. When he later locates her, he boldly threatens to kill her in front of a witness before he takes her to his place and rapes her while refusing her pleas to use a condom. In case #2, the victim is always eventually located by her trafficker although he no longer lives with her and her mother. Still he demands the profit from her work. She was first trafficked at age 11 by this perpetrator. Last, the victim in case #3 shows signs of trauma bonding as evidenced by loving and leaving and then returning to her trafficker whom she identifies as her lover and fiancé. All of these teenagers are/were trafficked children who do not appear to be receiving the protection legally afforded to them as trafficking victims. This appears to be attributed, at least in part, to the fact that they do not self-recognize as trafficking victims (Nguyen, 2010).

Legal Cases in India

In India, two widely mentioned Supreme Court judgments, Vishal Jeet v. Union of India in 1990 and Gaurav Jain v. Union of India in 1997 are considered instrumental in initiating government action related to commercial sexual exploitation (Sen & Nair, 2004). The legal system is perceived to be formidable by the victims rather than being a deterrent to those who commit offences. Depending on the sensitivity of the judges, judgments range from supporting the victims to aggravating their harassment. The judiciary is accused of playing a role in secondary victimization through its mode of questioning during court procedures and the long and tedious processes involved. Generally, Indian courts send rescued girls who are foreign nationals, for example, Nepalese or Bangladeshis back to their countries with the help of NGOs. Sometimes they are sent to government homes. Beyond that, there is hardly any activism or inquiry. It is reported that very little action is taken by the police or the judiciary against traffickers and those who are initially responsible for the violation of the rights of these women. As victims of organized crime, these women and children are extremely vulnerable and in fear for their lives as a result (Sen & Nair, 2004).

While trafficking in women is rampant in many parts of the country and also across its borders, it is Kerala that the sexual exploitation of women and trafficking has been exposed while the accused have been brought to trial and conviction. The Surinelli case serves as an undiluted narrative of such sexual exploitation. In the Surinelli case, 40 persons, including prominent political figures and persons from the establishment among them were convicted of trafficking related offenses after a prolonged trial in 2000 (Sen & Nair, 2004).

Legal Cases in the USA

In the Roper v. Simmons case in 2005, the US Supreme Court made a clear stand against treating adults and children alike. This ruling articulated that persons less than age of 18, 1) needed unique safeguards since they were susceptible to immature and irresponsible behaviors, 2) that they have less control over their environments therefore making it very difficult to escape negative influences, and 3) that their identities were not fully formed (Roper v. Simmons, 543 US 551, 2005). This supports the argument that children cannot make adult decisions and therefore must be treated differently than adults. As this relates to child sex trafficking victims, the inference is that children cannot legally consent to commercial sex activities even when they say, “yes” or agree to such activities. In Holbrook v. Commonwealth (1984), the Kentucky court ruled that the statute was put in place to protect all minors – including those who voluntarily participated in the recording of sexually explicit material (Holbrook v. Commonwealth, 662 SW2d 484, Ky App, 1984). In other words, minors were
safeguarded by this ruling even in the cases where the minor felt that he or she was mature and independent enough to make such decisions. Last, in the New York v. Ferber case of 1982, the Supreme Court held that the government must serve the interest of the welfare of children who engage in live performances and photographic reproductions of themselves while engaging in lewd exhibitions by ‘recognizing and classifying child pornography as a category of material outside the First Amendment’s protection’ (Reid & Jones, 2011, p. 213; New York v. Ferber, 458 U.S. 747, 1982). The court found that child porn behaviors were ‘harmful to the physiological, emotional, and mental health’ of the said child (Reid & Jones, 2011, p.213). These cases have served as a precedent for the Trafficking Victims Protection Act (TVPA) and its subsequent reauthorizations in an effort to protect minors.

**Human Trafficking Related Laws in India**

Human trafficking is basically dealt with by six major laws in India. They include the Indian Penal Code (IPC), 1861; the Child Marriage Restraint Act, 1929; the Immoral Traffic (Prevention) Act, 1956; the Bonded Labour System (Abolition) Act, 1976; the Juvenile Justice (Care and Protection of Children) Act, 2000; and more recently, the Criminal Law (Amendment) Act, 2013. The following codes make up the Indian Penal Code: Section 292 & 293 Obscene material – sale, distribution etc.; Section 341 Punishment for Wrongful Restraint; Section 342-Punishment for Wrongful Confine-ment; Section 361 Kidnapping a minor from lawful guardianship; Section 362 Abducting any person; Section 363 Punishment for Kidnapping; Section 363A Kidnapping or maiming a minor for purposes of begging; Section 365 Kidnapping or Abducting with Intent Secretly and Wrongfully to Confine Person; Section 366 Kidnapping, abducting or Inducing Woman to compel her for Marriage, illicit intercourse, etc.; Section 366A Procuration of Minor Girl; Section 366B Importation of Girl from Foreign Country; Section 367 Kidnapping or Abducting In Order To Subject Person To griev-ous Hurt, Slavery, etc.; Section 368 Wrongfully Concealing or Keeping in Confinement, Kidnapped or Abducted Person; Section 369 Kidnapping or Abducting Child Under Ten Years with intent to steal from its Person; Section 370 Buying or Disposing of Any Person as a Slave; Section 371 Habitual Dealing in Slaves; Section 372 Selling Minor for purposes of Prostitution, etc.’ Section 373 Buying Minor for purposes of prostitution, etc., Section 374 Unlawful compulsory labour; Section 376 Punishment for rape; Section 376 Rape of woman under 12 years of age; and Section 377 Unnatural offences. The Child Marriage Restraint Act of 1929 sets the appropriate age of marriage at 21 for males and 18 for females. This act outlaws child marriages. The Immoral Traffic (Prevention) Act of 1956 is the most important law to curb trafficking and has been dealt with separately. The Bonded Labour System (Abolition) Act of 1976 prohibits forced or bonded labour. The National Human Rights Commission of India monitors its implementation. The Juvenile Justice (Care and Protection of Children) Act of 2000 explicitly provides for effective social rehabilitation and reintegration of all juveniles in need of care and protection and makes explicit provisions to punish those who force juveniles or children to beg, ingest intoxicating liquor, narcotic drugs, or psychotropic substances, or exploit juvenile or child employees (Singh, 2014). The Indian Parliament recently enacted the Criminal Law (Amendment) Act in 2013. It primarily targets victims of rape and other sexual assaults. Other offenses include a range of violent acts perpetrated against women that are not included in the initial Indian Penal Code in the late 1800s. Trafficking is one such act. Specifically, the new Section 370 defines trafficking and replaces the prior Section 370, which dealt with the buying or disposing of any person as a slave. Section 370 of the Criminal Law Amendment criminalizes anyone who recruits, transports, harbors, transfers or receives a person using certain means (including threats, force, coercion, fraud, deception, abduction, abuse of power, or inducement) for purposes of exploitation. Punishment ranges from 7 to 10 years of imprisonment with a fine. Penalties are further enhanced if the victim is a minor vs. an adult; if more than one person or minor is trafficked; if the trafficker is a repeat offender; and whether the trafficker is a police officer or public servant. Attention to the demand side of trafficking, especially in India where corrupt policemen are rampant, is a critical step in the fight against trafficking. Moreover, Section 370A criminalizes anyone who engages a trafficked minor or adult for sexual exploitation (Kotiswaran, 2013).
Human Trafficking Related Laws in the USA

The Trafficking Victims Protection Act (TVPA) of 2000 and its subsequent reauthorizations in 2003, 2005, 2008, and 2013 were implemented to combat trafficking in persons (H R 972, 2005; H R 2620, 2003; HR 2620, 2008; HR 898, 2013; Public Law 106-386, 2000). Initially, it primarily focused on trafficking as a transnational organized crime but later grew to include and focus on domestic victims as well. It is a seminal piece of federal legislation and the first ever of its kind in the United States of America. Specific to minors, the Act definitively stipulates that any person less than 18 years of age who is induced to perform a commercial sex act is a victim of a severe form of sex trafficking (Public Law 106-386, 2000). The TVPA’s stance on minors’ involvement with the commercial sex industry sets the tone for victim-centered policies and procedures when a minor entangled in the commercial sex industry comes into contact with law enforcement. The problem is that many law enforcement personnel do not recognize child trafficking when they encroach upon them. This oftentimes results in minors being adjudicated through the legal system instead of being processed as protected victims under the TVPA. The fact that victims often do not self-identify as trafficking victims themselves only serve to fuel law enforcement’s view of their complicity.

Before the landmark Trafficking Victims Protection Act (TVPA) in 2000, however, there was the Thirteenth Amendment in 1865 that abolished the slavery of Africans and their descendants. Since then several other pieces of major legislation have emerged to address various forms of slavery and trafficking among diverse groups of people from a range of racial and ethnic backgrounds. The TVPA now attempts to prevent and protect all victims of modern day slavery by offering severe punishment of perpetrators. The TVPA operationalizes sex trafficking as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act (CSA) while labor trafficking includes the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion. The purpose of such activities must be for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery (Public Law 106-386, 2000). Child trafficking victims are victims of both forms of trafficking although some would argue that they are overwhelmingly exploited for sex trafficking purposes (Nguyen, 2010).

Conclusion

Human trafficking is intolerable and tragic. It is even more deplorable when the victim is a powerless child. Every nation faced with child trafficking activities must be aggressive and punitive towards traffickers and proactive in preventing and protecting the vulnerable from being trafficked. As a first step, the presence of a strong and far reaching legal framework in India and the United States is necessary. For instance, as signatories to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, both countries must continue to work with the United Nations to stop human trafficking and to continue to develop national or district laws that are consistent with the principles of the United Nations. For instance, the United States government developed the Trafficking Victims Protection Act (TVPA) in 2000 at the federal (or national) level, which is in concert with the United Nations protocol. India recently enacted the Criminal Law (Amendment) Act in 2013. It defines traffickers as anyone who recruits, transports, harbors, transfers or receives a person using certain means (including threats, force, coercion, fraud, deception, abduction, abuse of power, or inducement) for purposes of exploitation. It is also especially harsh towards traffickers who commercialize children. Its definition is almost identical to the United Nations Protocol to Prevent, Suppress and Punish Trafficking Against Persons, Especially Women and Children. Both the USA and India use virtually identical language to the United Nations protocol in their national anti-trafficking acts. Many US states, however, have failed to use the exact language as the TVPA in their respective anti-trafficking laws. India has yet to seriously enforce its new legislation – even in part. This results in a
lack of uniformity and the implementation of different policies and practices between states. Victims are falling through the cracks.

The USA and India must work harder to bring all states and districts in line with the tenets of the protocol for uniformity purposes. Agreeing to an international protocol, creating a similar national protocol, but allowing for the development of diverse and conflicting state and district level protocols those are not in uniform with the original decree only leads to confusion and the under-serving of human trafficking victims. Human trafficking must be curbed by a highly coordinated and concerted effort – internationally and nationally by multiple governments and in tandem with the United Nations. Anti-trafficking legislators and enforcers must become savvier and more persistent than the transnational organized crime networks that they are attempting to break up. India and the United States must combat human trafficking comprehensively and swiftly through new and established partnerships.

References


