

The *Devadasi* System: Temple Prostitution in India *

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ABSTRACT

India, the world's second most populous country, suffers from one of the highest rates of sexual exploitation of minors anywhere on the globe. While there has been a significant amount of research on child sexual exploitation in India and other countries in South Asia, legal scholarship on specific practices within the subcontinent are significantly more limited. This paper looks to fill that void by introducing, explaining, and attempting to provide solutions to the devadasi tradition. The devadasi practice is one in which low-caste girls, as young as five or six, are "married" to a Hindu goddess and sexually exploited by temple patrons and higher caste individuals. The term devadasi is a Sanskrit word which literally translates to "female servant of God." The practice is particularly interesting, and difficult to combat, as it arises out of a crossroads of religion, poverty, and societal norms. In addressing this practice, the paper does the following: it (i) discusses the devadasi system's historical and cultural underpinnings; (ii) addresses the evolution of the system to the modern day; (iii) focuses on why the devadasi practice violates both domestic and international law; and finally (iv) explains what judges can do, given India's current focus on

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sexual crimes and exploitation in the wake of the 2012 Delhi tragedies, to truly combat the devadasi practice.

Sexual exploitation, especially of children, is an international epidemic.¹ While it is difficult, given the clandestine nature of the practice, to arrive at accurate statistics regarding the problem, “it is estimated that approximately one million children (mainly girls) enter the multi-billion dollar commercial sex trade every year.”² Although child exploitation continues to persist, and in many instances thrive, the international community has, in recent decades, become increasingly aware and reactive to the issue.³ Thanks in large part to that increased focus, the root causes of sexual exploitation, especially of children, have become better understood.⁴

While the issue is certainly an international one, spanning nearly every country on the globe⁵, and is one that transcends “cultures, geography, and time,” sexual exploitation of minors is perhaps at its worst in India.⁶ India, the world’s second most populous country, suffers from one of the highest rates of sexual exploitation of minors anywhere on the globe.⁷ While there has been a significant amount of research on child sexual exploitation in India and other countries in

¹ *Press Release: UNICEF calls for eradication of commercial sexual exploitation of children*, UNICEF (Dec 12, 2001) available at <http://www.unicef.org/newsline/01pr97.htm>.

² *Id.*

³ See generally Karene Jullien, *The Recent International Efforts to End Commercial Sexual Exploitation of Children*, 31 *Denv. J. Int'l L. & Pol'y* 579, 580 (2003) (stating: “Commercial sexual exploitation of children is not a recent problem but it has gained more public interest over the last decade.”).

⁴ For example, according to UNICEF, the underlying causes of sexual exploitation are diverse, including “poverty, gender discrimination, war, organized crime, globalization, greed, traditions and beliefs, family dysfunction, and the drug trade,” among others. See *Press Release, supra* note 1.

⁵ The number of women and children who are sexually exploited for commercial reasons alone are as follows: “100,000 in the Philippines, 400,000 in India, 100,000 in Taiwan, 200,000 in Thailand, 244,000-325,000 in the United States, 100,000 in Brazil, 35,000 in West Africa, 175,000 in Eastern & Central Europe.” *Id.*

⁶ P.M. Nair, *Trafficking Women and Children for Sexual Exploitation: Handbook for Law Enforcement Agencies in India*, United Nations Office on Drugs and Crime (2007), available at http://www.unodc.org/documents/human-trafficking/India_Training_material/Handbook_for_Law_Enforcement_Agencies_in_India.pdf.

⁷ For example, End Child Prostitution, Child Pornography And Trafficking of Children for Sexual Purposes (“ECPAT”), an NGO specializing on the issue, reported that there were over three million children involved in prostitution in India. See Roz Prober and Mark Erik Hecht, *Child Advocates Unite Against a Global Rise in Child Exploitation*, *Human Rights Tribune*, Vol. 6, No.4 (Dec. 1999), available at <http://www.hri.ca/tribune/viewArticle.asp?ID=2531>.

South Asia⁸, legal scholarship on specific practices within the subcontinent are significantly more limited. This paper looks to fill that void by introducing, explaining, and attempting to provide solutions to the *devadasi* tradition.

The *devadasi*⁹ practice is one in which low-caste¹⁰ girls, as young as five or six, are “married” to a Hindu goddess and sexually exploited by temple patrons and higher caste individuals.¹¹ The term *devadasi* is a Sanskrit word which literally translates to “female servant of God.”¹² The practice is particularly interesting, and difficult to combat, as it arises out of a crossroads of religion, poverty, and societal norms. In addressing this practice, the paper does the following: it (i) discusses the *devadasi* system’s historical and cultural underpinnings; (ii) addresses the evolution of the system to the modern day; (iii) focuses on why the *devadasi* practice violates both domestic and international law; and finally (iv) explains what judges can do, given India’s current focus on sexual crimes and exploitation in the wake of the 2012 Delhi tragedies, to truly combat the *devadasi* practice.

I. The Historical *Devadasi* System

The historical account of the *devadasi* system is murky due to its early inception.¹³ The first confirmed reference to a *devadasi* was during the Keshari Dynasty in the 6th century A.D.

⁸ See e.g. Vandana Rastogi, *Preserving Children's Rights: The Challenges of Eradicating Child Sexual Exploitation in Thailand and India*, 22 Suffolk Transnat'l L. Rev. 259, 261 (1998).

⁹ It is important to note that the *devadasi* practice is known by different names in different places. For example, *devadasis* are known as *Muralis* in Maharashtra, *Basavis* and *Muralis* in Andhra Pradesh and *Jogatis* and *Basavis* in Karnataka. For the purposes of this paper, I refer to this collective group as *devadasis*.

¹⁰ The girls are usually of *Dalits*, a term used to refer to the lowest of the four castes in India. As is discussed in more detail in the following sections of the paper, *dalits* are usually confined to certain jobs in Indian society and often face intense discrimination. As such, many women in that caste are either forced, as in the case of the *devadasis*, or choose to become part of the sex trade. See *Who are Dalits?*, Navsarjan (2008), available at <http://navsarjan.org/navsarjan/dalits/whoaredalits>.

¹¹ See Hyun Jin Lee, *Temple Prostitutes: Devadasi Practice and Human Trafficking in India*, 8 Regent J. Int'l L. 1 (2011).

¹² *Id.*, at 2.

¹³ According to India’s National Human Rights Commission: “There is no substantial evidence of the origin of the culturally sanctioned practices in India, though it has been suggested by historians that the *devadasi* system was

in South India.¹⁴ The practice began when one of the great queens of the Dynasty decided, that in order to honor the gods, certain women, who were trained in classical dancing, should be married to the deities.¹⁵ The inception of the practice was one that was imbued with great respect as the women who were chosen to become *devadasi* were subject to two great honors: first, because they were literally married to the deity, they were to be treated as if they were the Goddess Lakshmi¹⁶ herself, and second, the women were honored because they were considered to be “those great women who [could] control natural human impulses, their five senses and [could] submit themselves completely to God.”¹⁷ As such, because they were married to the immortal, the women were considered to be auspicious. Their main duties, in addition to committing to a life without marriage, were to take care of a temple and learn classical Indian dances, usually *bharatnatyam*, that they would perform at temple rituals.¹⁸ Patrons were also considered to have higher status for their ability to financially sponsor *devadasis*.¹⁹

The esteemed status of the *devadasis* began to wane under Islamic and British rule. Following their successful invasion of north India²⁰, Islamic rulers began to destroy Hindu temples throughout the region.²¹ Once the Hindu temples in the northern part of the subcontinent

known in prehistoric cities in India...” Nat’l Human Rights Comm’n of India, *A Report on Trafficking in Women and Children in India* (2002-2003), available at <http://nhrc.nic.in/Documents/ReportonTrafficking.pdf>.

¹⁴ Aparimita Pramanik Sahoo, *A Brief history of Devadasi System*, OrissaDiary (July 18, 2006), available at <http://www.orissadiary.com/Showyournews.asp?id=26>. At the same time, other experts argue that the institution is “far older, and claim that what is arguably one of the most ancient extant pieces of Indian art, a small bronze naked dancing girl from Mohenjo-daro, dating to around 2500 B.C., could depict a *devadasi*.” See William Dalrymple, *Serving the Goddess: The dangerous life of a sacred sex worker*, *The New Yorker* (Aug. 4, 2008), available at http://www.newyorker.com/reporting/2008/08/04/080804fa_fact_dalrymple?currentPage=all.

¹⁵ See Sahoo *supra* note 14.

¹⁶ Goddess Lakshmi is held in the highest regard among Hindus not only because she is the goddess of wealth and prosperity, but also she is divinely married to Lord Vishnu, who is one of the great triumvirate and is the main god in charge of maintaining and preserving all life on earth and in the universe as a whole.

¹⁷ See Sahoo, *supra* note 14.

¹⁸ See Hyun Jin Lee, *supra* note 11, at 3.

¹⁹ *Id.*

²⁰ The Islamic Empire did not reach much of south India. As such, the practice continued to flourish in that part of the country. Even today, most *devadasi* communities exist in south India.

²¹ See Hyun Jin Lee, *supra* note 11, at 3.

were destroyed, the *devadasis*, who were effectively tied to the temples, were left to fend for themselves. With the destruction of temples, *devadasis* lost not only their patronage, but also their status in society, leading to the beginnings of exploitation.²² The result of the loss of patronage forced the *devadasis*, who previously danced at religious temple events, to dance at “wedding feasts or other private entertainments. Dancing and prostitution [became] inseparable in India [at this time].”²³ The system was further limited under British rule, which unlike the Islamic Empire, reached the entirety of the subcontinent.²⁴ Although academics dispute what the British thought about the custom specifically, many argue that the British reformists sought to distinguish the practice from religious and traditional customs.²⁵ Regardless of their view on the practice, the British hierarchy displaced patrons and rulers who were supportive of the traditional *devadasi* system, leading to the continued marginalization, and thus exploitation, of the *devadasi* group.²⁶

II. The *Devadasi* practice in the Modern Day

The modern iteration of the *devadasi* system, while not nearly as pervasive as in times in the past, is one that continues to promote the sexual exploitation of lower caste girls in India. The system is also, especially in its current form, inextricably linked to poverty and tradition. This section addresses three issues: first, how many *devadasis* there are in India today, second, what

²² *Id.* Another argument is that following the death of Aurangzeb, one of the most infamous Islamic rulers, the “anarchical period” that followed “became notorious because the standard of morality among the princes and the public men sank to the lowest level” which led to an increase in prostitution among the *devadasis*. See Nat’l Human Rights Comm’n Report, *supra* note 13, at 195.

²³ *Id.*, at 196.

²⁴ See e.g. Sahoo, *supra* note 14 (stating: “During the British rule, the number of Devadasis dwindled further. The Orissa Gazette of 1956 lists 9 Devadasis and 11 temple musicians. By 1980, only 4 Devadasis were left. . .”).

²⁵ Pamela Stiehl, *Bharata Natyam: A Dialogical Interrogation of Feminist Voices in Search of the Divine Dance*, *The Journal of Religion and Theatre*, 282 (2004), available at http://www.rjournal.org/vol_3/no_2/stiehl.html.

²⁶ Nash Colundalur, ‘*Devadasis are a cursed community*’, *The Guardian* (Jan. 20, 2011), available at <http://www.theguardian.com/lifeandstyle/2011/jan/21/devadasi-india-sex-work-religion>.

the practice currently looks like, and third, why girls are still being inducted into the *devadasi* system.

A. How many *Devadasis* are there in India today?

Given the disintegration of the *devadasi* system during Islamic and British rule, both the absolute number and geographic distribution of *devadasis* has become limited. Nevertheless, according to the Indian National Commission for Women (“NCW”), there are still more at least 48,000 active *devadasi* in India, with the NCW noting that the number could in fact be as high as 250,000.²⁷ Although the numbers are difficult to confirm, as the practice is not only underground but is also difficult to differentiate from non-religious prostitution in many cases, the practice is particularly concentrated in a few states. According to the NCW, the majority of active *devadasis* are in Karnataka (22,491 individuals), Andhra Pradesh (16,624), and Maharashtra (2,479).²⁸

While the geographic concentration of the institution may seem to be a promising fact, indicating that the tradition is failing elsewhere, the problem continues to be a national one, as many girls are trafficked from different parts of the country to become *devadasis*. In 2010, the International Labor Organization’s²⁹ Committee of Experts, during an extensive study on labor rights in India, noted that the “*devadasi* system was linked to the practice of trafficking girls for

²⁷ ‘Project Combat’ launched to eradicate ‘Devadasi’ system, *The Hindu* (Jan. 30, 2006), available at <http://www.hindu.com/2006/01/30/stories/200601302013020130300.htm>. The larger figure is supported by other sources also. See Dalymple, *supra* note 14 (stating: “There are estimated to be around a quarter of a million devadasis in Maharashtra and Karnataka, about half of them living around Belgaum.”).

²⁸ *Id.*

²⁹ The International Labour Organization (“ILO”) is a notable player in the labor-related human rights realm. The ILO is one of the chief organizations that work on behalf of laborers, including migrant workers, on the international stage. It has adopted nearly 190 international conventions, which upon adoption, are held to be international labor standards. The ILO boasts one of the widest memberships of any international organization, including nations from every region in the world. See *Regions*, International Labour Organization, available at <http://www.ilo.org/global/regions/lang--en/index.htm>

commercial exploitation...”³⁰ Other media outlets have also found that many *devadasis*, along with other prostitutes, “are trafficked to the red light districts of Mumbai, Pune, Bangalore and other large cities.”³¹ As such, despite not being at its historical peak, the *devadasi* practice continues to persist in India, even thriving in select states.

B. What does the practice look like today?

The modern iteration of the *devadasi* practice is significantly different from the historic institution, in terms of both its physical manifestation and underlying goals. Although the practice today is still about the honoring a deity, in most cases *Yellamma*³², the similarities between the historic and modern institution effectively end there. In its current form, the practice is not as much about temple worship or temple dancing, but rather is almost singularly related to the sex trade, prostitution, and exploitation of the lower caste. The difference between the *devadasis* of the past and those of today is perhaps best summarized by William Dalrymple of *The New Yorker*:

There is...an almost unimaginable gulf separating the devadasis of ancient poems and inscriptions and the lives lived by women [today]. In the Middle Ages, the devadasis were drawn from the grandest families in the realm—among them princesses of the Chola royal family—and possibly from slaves captured in war. Many were literate, and some were highly accomplished poets; indeed, at the time they seem to have been among the few literate women in the region. Today, the devadasis are drawn exclusively from the lowest castes—usually from the Dalit Madar caste—and

³⁰ Int'l Labour Org. [ILO], *Comm. of Experts on the Application of Conventions and Recommendations: Individual Direct Request concerning Forced Labour Convention, 1930 (No.29) India (ratification: 1954)*, ILOLEX Doc. No. 92010IND029 (Sept. 2010).

³¹ Kate Taylor, *Temple Prostitution still alive in India*, Asia Stories (Jan. 11, 2012), available at <http://www.commissionstories.com/asia/stories/view/temple-prostitution-still-alive-in-india>. The institution is able to persist outside of temples given the underground nature of the practice. *Id.* (stating: “Because the devadasis practice has gone underground, the women work mostly from their homes, only visiting the temple to beg money from worshippers.”).

³² *Yellamma*, considered to be the “Mother of the Universe” by many South Indians, is the patron goddess of Andhra Pradesh, Karnataka, and Maharashtra. See generally Arun Jaganathan V.R., *Yellamma Cult and Divine Prostitution: Its Historical and Cultural Background*, International Journal of Scientific and Research Publications 3(4) (2013). It is notable that those same states have the highest population of *devadasis*.

are almost entirely illiterate. The majority of modern devadasis in Karnataka are straightforward sex workers...³³

Despite the practice's honorable past, the *devadasi* system has devolved into institutionalized sexual exploitation of the poorest segments of Indian society.

At the same time, it is important to note that the practice is not exactly the same as any conventional system of sex workers. The notable difference is the fact that many *devadasis* are forced into the lifestyle at an extremely young age due to a combination of religion and social beliefs. Indeed, there are still thousands of girls who are devoted to the goddess on an annual basis that are between five and ten years old.³⁴ Chandra, a *devadasi* who was interviewed by the Wall Street Journal noted that “for the first *pattam* [the tying of the beads before the goddess], the girl is usually between six and thirteen. But the second *pattam* [the night of the girl virgin] takes place after a girl's first menses.”³⁵ The religious and societal undertones of the *devadasi* practice, despite its real-life manifestations, set the system apart from other such institutions.

C. Why does the system persist?

The *devadasi* system, despite not being as widespread as it once was, continues to thrive in many parts of Western and Southern India. Despite there being many reasons behind the continuing vitality of the system, a combination of religion pressure, economic necessity, and social construction form the basis of the institution.

1. Religious endorsement of the institution

From the religious perspective, there are at least three reasons that the institution continues to thrive. First, many who perpetuate the *devadasi* system believe that the younger a

³³ See Dalrymple, *supra* note 14.

³⁴ *Id.*

³⁵ Catherine Rubin Kermorgant, *Becoming a Devadasi*, The Wall Street Journal (Feb. 24, 2014), available at <http://blogs.wsj.com/indiarealtime/2014/02/24/becoming-a-devadasi/>.

girl is dedicated, the more she and her family will be blessed by the goddess.³⁶ Given that *devadasis* are usually only taken from the lowest caste, many of the women who are dedicated to the goddess believe that the only way that they can lead a blessed life is to marry the deity directly. A second cause is that many girls who willingly enter, or are forced to enter, the *devadasi* system view it as their only way to rise in India's rigid caste system. The caste system dictates not only the relationship between any two people, but also caps the ability of one person to move above one's birth caste.³⁷ Many *devadasis* and their families view marrying the deity as a way to rise in the otherwise strict caste system. This view is not entirely without support as many in and around the practice have noted that the *devadasis* are respected, "regarded as auspicious," and even "called to upper-caste weddings for [their] blessing" – all events that would normally be impossible for a lower-caste individual.³⁸ Third, and perhaps most worrying, is the fact that many Hindu priests seem to actively condone the practice. According to India's Human Rights Commission, there is a prevalent belief that "offering something to the deity [is] rewarded bountifully."³⁹ The report states that when individuals went to the temples with problems "such as bad health, poverty, barrenness, etc. the priests often interpreted these [problems] as the wrath of the deity and suggested that they should offer one of their daughters to the service of the deity."⁴⁰ Given that the physical manifestation of Hinduism, the priests themselves, perpetuate the system, it is unsurprising that the system continues to thrive.

³⁶ See Hyun Jin Lee, *supra* note 11, at 8 (stating "The tie between the caste system and forced prostitution has been proven by the exceedingly high percentage of prostitutes from the lower castes. The devadasi practice merely bestows a religious sanction or justification to this tie.").

³⁷ Tom O'Neill, *Untouchable*, NationalGeographic.com (2003), available at <http://ngm.nationalgeographic.com/ngm/0306/feature1/>.

³⁸ See Dalrymple, *supra* note 14.

³⁹ See Nat'l Human Rights Comm'n Report, *supra* note 13, at 195.

⁴⁰ *Id.*

2. Economic necessity

As lower-caste individuals, most potential *devadasis* have the choice of either entering the practice or taking part in a distinct number of menial occupations or “unclean work – work that involves physical contact with blood, excrement, and other ‘defilements as defined by Hindu law.’”⁴¹ Given the fact that most of those jobs do not pay enough to sustain an individual, much less an extended family⁴², many families pressure their young daughters to become *devadasi*. Indeed, the economic incentive is a strong one. As one *devadasi* noted, even though her job is insecure and dangerous, she has been able to “earn two hundred to three hundred rupees from a single client” which have allowed her to look after and marry off her sister, provide for her mother and son, and also own land, the latter of which is a rarity for lower-caste individuals.⁴³ Although the institution seems to be kind to some of the women involved, the sobering fact is that once of the *devadasi* is no longer able to earn money, her family usually either refuses to or is unable to provide for her as she had provided for them.⁴⁴

3. Societal pressure

There are a number of beliefs that pervade Indian society that perpetuate the *devadasi* practice. For example, many landlords, who are almost certainly from a higher caste, believe that it is prestigious to deflower as many young girls as possible.⁴⁵ The problem is only made worse by the fact that many within Indian society believe that intercourse with a young girl is a panacea for disease.⁴⁶ As with the economic underpinnings of the practice, the caste system is a key

⁴¹ See O’Neill, *supra* note 37 (stating: “Such work includes the cremation the dead, cleaning latrines, cutting umbilical cords, removing dead animals from the roads, tanning hides, and sweeping gutters.”).

⁴² It is common in India, especially for poorer families, to live with extended families in order to aggregate earnings.

⁴³ See Dalrymple, *supra* note 14.

⁴⁴ *Id.*

⁴⁵ See Kermorgant, *supra* note 35.

⁴⁶ See Kermorgant, *supra* note 35. This point is particularly interesting for two reasons. First, many women within the practice also believe that by having sex with a client, they pass their HIV/AIDS to that client thus curing

component of the social construction that preserves the practice. The effect of such custom cannot be overstated: according to a survey that was carried out by the Joint Women's Program, over 63.6 percent of "young girls were forced into the Devadasi system due to custom, while 38 percent reported that their families had a history of Devadasi's."⁴⁷ Another social ill that leads to the continued existence of the system is that much of the society that surrounds the *devadasi* practice is woefully ignorant of the law.⁴⁸ The following section addresses what those laws, both domestic and international, are and how they are applied to the practice.

III. The *Devadasi* system and its interaction with Domestic and International Law

The *devadasi* system is in violation of both Indian and international law. This section first discusses India's efforts to outlaw the practice followed by an analysis of India's obligation under international law.

A. Indian Domestic Law and the *Devadasi* System

The Indian government effectively outlawed the *devadasi* practice in 1924 when it made dedication of girls for the purpose of prostitution illegal.⁴⁹ Since then, various states in India, particularly those in the South, have passed various prohibitions targeted specifically at the system. The first of the targeted regulations was the Bombay Devadasi Protection Act, which was passed in 1934.⁵⁰ The Bombay Act declared that the practice was illegal, irrespective of

themselves. *Id.* Second, this idea of virginal sex acting as a panacea for venereal disease is one that exists in other parts of the globe, in particular in Africa.

⁴⁷ James Varghese, *Devadasi's: Young Indian Temple Prostitutes*, ChristianNewsToday.com, available at http://www.christiannewstoday.com/Christian_News_Report_76.html.

⁴⁸ See Hyun Jin Lee, *supra* note 11, at 23 (stating: "inadequate incentives coupled with ignorance of the Acts prohibiting the devadasi practice have resulted in passivity in governmental action at the law enforcement level.").

⁴⁹ Section 372 and 373 on the Indian Penal Code were amended to declare "the practice of dedicating girls for the ultimate purpose of engaging them in prostitution as illegal." Anil Chawla, *Devadasis – Sinners or Sinned Against: An attempt to look at the myth and reality of history and present status of Devadasis*, Samarthbharat, 25 (Aug. 28, 2002), available at <http://www.samarthbharat.com/files/devadasihistory.pdf>.

⁵⁰ Text of the act is available at this URL: <http://maharashtracivilservice.org/cms/downloads/515a978a94745.pdf>.

whether the girl was dedicated with her consent or not.⁵¹ Similar regional prohibitions were enacted in other parts of South India throughout the twentieth century, including the Madras Devadasi (Prevention of Dedication) Act of 1947, the Karnataka Devadasis (Prohibition of Dedication) Act of 1982, the Andhra Pradesh Devadasi (Prohibition of Dedication) Act of 1988, and, most recently, the Maharashtra Devadasi (Abolition) Bill of 2005.⁵² Based on these Acts, the *devadasi* practice is effectively outlawed throughout the entire country, and is especially targeted in those parts of the country where it continues to thrive.

Despite these numerous prohibitions, the application of Indian domestic law has been lacking at best, due to both underreporting and the underground nature of the practice. In 1990, the Indian Supreme Court in *Vishal Jeet vs. Union of India and others*,⁵³ noted that “in spite of stringent and rehabilitative provisions under the various acts, results were not as desired,” and called for evaluation of the existing measures by both the central and state governments.⁵⁴ Since that case, there have been a number of court cases and petitions in which both the Indian Supreme Court and other courts, notably the High Court of Mumbai, handed down rulings and decrees on the *devadasi* practice. Most recently, on February 13, 2014, in what is being hailed as an important victory for advocates of women’s rights, the Supreme Court directed the Karnataka Chief Secretary to “take all steps to prevent women from being forced to become ‘devadasis’ at a temple function” at the Uttarang Mala Durga temple in Karnataka.⁵⁵

⁵¹ See Chawla, *supra* note 49, at 25.

⁵² *Id.* at 25-26. See also Hyun Jin Lee, *supra* note 11, at 10-11 (provides a good summary of the Maharashtra Devadasi Act).

⁵³ (1990, 3 SCC 318), available at <http://indiankanoon.org/doc/653695>.

⁵⁴ Nat’l Human Rights Comm’n Report, *supra* note 13, at 283.

⁵⁵ *Supreme Court asks Karnataka Chief Secretary to take steps to stop ‘devadasi’ system*, The Times of India (Feb. 13, 2014), available at <http://timesofindia.indiatimes.com/india/Supreme-Court-asks-Karnataka-Chief-Secretary-to-take-steps-to-stop-devadasi-system/articleshow/30334077.cms>.

B. International Law Prohibitions

Along with the domestic laws, the *devadasi* practice, particularly because it adversely affects young girls, violates a wide range of international conventions and laws. In particular, the practice stands in stark violation of the Universal Declaration of Human Rights (“UDHR”)⁵⁶, the International Covenant on Civil and Political Rights⁵⁷, International Covenant on Economic, Social and Cultural Rights⁵⁸, Convention on the Elimination of All Forms of Discrimination Against Women⁵⁹, Convention on the Rights of the Child⁶⁰, and Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography⁶¹. Notably, India is a State Party to each of these conventions and protocols, indicating that the country as a whole is working towards putting an end to the practice. Chief among these protections are prohibitions against forced marriage, trafficking of individuals, particularly children and women, and the obligation to assure children a decent life.⁶²

Despite the existence of numerous international prohibitions, there are at least three issues with the application of international law to the *devadasi* practice. First, many of the aforementioned treaties and conventions do not have enforcement mechanisms for the hearing of individual complaints. For example, the UDHR, as a Declaration that was not originally meant to be *per se* binding, lacks any enforcement mechanism, which limits its practical applicability. As

⁵⁶ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948),

⁵⁷ U.N. Treaty Collection, List of State Parties to the ICCPR, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (last visited Oct. 3, 2008).

⁵⁸ U.N. Treaty Collection, List of State Parties to the ICESCR, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en (last visited Oct. 3, 2008).

⁵⁹ U.N. Treaty Collection, List of State Parties to the CEDAW, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited Oct. 3, 2008).

⁶⁰ U.N. Treaty Collection, List of State Parties to the CRC, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited Oct. 3, 2008).

⁶¹ U.N. Treaty Collection, List of State Parties to the CRC-OPII, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en (last visited Oct. 3, 2008).

⁶² This paper does not go into detail about the different subsections of each convention and how they can be applied to the *devadasi* practice. For a good summary of such application, see Hyun Jin Lee, *supra* note 11, at 14-19; See also Bina B. Hanchinamani, *Human Rights Abuses of Dalits in India*, 8 No. 2 Hum. Rts. Brief 15, 19-29 (2001). Rather, this paper focuses on why international law’s prohibitions have failed.

such, despite India's many international commitments, it is unlikely that the international community, or even individuals within India, will be able to hold the country accountable in an international forum. Second, given that the practice is entirely domestic, the international community must rely on Indian domestic courts to apply international law to the *devadasi* institution. Unfortunately, India suffers from a serious lack of enforcement of such laws.⁶³ Third, similar to the failure of domestic law, the underground nature of the *devadasi* system makes application of international law extremely difficult.

IV. Brighter Future? What the Law, and Judges, can do to combat the Practice

The *devadasi* practice continues to exist despite both domestic and international law. As discussed, the chief reasons for that persistence are economic, religious, and societal, each of which force women to take part in the practice while also silencing those in the community. While that culture seems to have deep roots in the Indian consciousness, recent events in India indicate that the populace is beginning to push for meaningful change. This section first discusses the reason for that change in the Indian mindset. It then argues that judges can capitalize on the moment and put the final nail in the *devadasi* practice's coffin.

A. India's Sexual Violence Revolution⁶⁴

India is in a moment of flux following the horrific 2012 Delhi rape incident.⁶⁵ The brutality and brazenness of the crime drummed up substantial domestic and international press⁶⁶

⁶³ See S.N. Al Habsy & Kishor Uprety, *Cooperation for Nominal Development or Politics for Actual Survival? South Asia in the Making of International Law*, 12 J. Transnat'l L. & Pol'y 19, 93 (2002) (stating that in terms of human trafficking laws, "[e]nforcement of laws is crucial. Indeed, in countries like India, Nepal, and Pakistan, 'there are impressive sounding laws . . . on the books, but they are rarely enforced.'").

⁶⁴ There have been many calls for a sexual revolution in India. See e.g. Shikha Dalmia, *India Needs a Sexual Revolution: How to stop the endless 'eve teasing'? Change the puritanical culture*, The Wall Street Journal (May 24, 2013), available at <http://online.wsj.com/news/articles/SB10001424127887324787004578497420867545326>.

⁶⁵ The 2012 incident involved a gang rape of a 23-year-old physiotherapy student on a public bus. She died of her injuries thirteen days later. Six men were arrested for the crime. One of those men committed suicide while in prison, and a second, a juvenile, was sentenced to three years of rehabilitation. See *Delhi gang rape: Death Penalty*

along with nation-wide protests⁶⁷. The increased focus on sexual violence against young women, largely due to that event, has continued, shedding light on a number of violent rapes and sexual assaults since the 2012 incident. For example, in reaction to a particularly heinous⁶⁸ 2014 rape and murder of a 16-year-old girl in Calcutta, thousands of protesters took the streets to demand more meaningful action from the government and police.⁶⁹

The frequent, unrelenting protests and media scrutiny have forced many within the Indian government to question both the vitality of the laws and their woeful application.⁷⁰ Within one month of the 2012 incident, on January 23, 2013, a committee headed by Justice J.S. Verma, former Chief Justice of the Indian Supreme Court, “was constituted to recommend amendments to the Criminal Law so as to provide for quicker trials and punishment for criminals accused of committing sexual assault against women.”⁷¹ The report culminated in wide-reaching policy reform that not only required the death penalty for a number of sexual crimes, but also criminalized “eve-teasing”, which has been described as “the coy and euphemistic name for sexual harassment – the stalking, groping and lewd comments – that every Indian women is

for two men put on hold, BBC News India (Mar 15, 2014), available at <http://www.bbc.com/news/world-asia-india-26593587>.

⁶⁶ See e.g. Mallica Joshi, *Delhi gang-rape: Last year’s protestors react to verdict*, Hindustan Times (Sept. 13, 2013), available at <http://www.hindustantimes.com/india-news/newdelhi/delhi-gang-rape-last-year-s-protestors-react-to-verdict/article1-1121797.aspx>; U.S. Embassy New Delhi, India, *Statement on the Death of New Delhi Assault Victim*, Embassy of the United States (Dec. 29, 2012), available at <http://newdelhi.usembassy.gov/pr122912.html>.

⁶⁷ Soutik Biswas, *Protests in India after Delhi gang-rape victim dies*, BBC News India (Dec 29, 2012), available at <http://www.bbc.com/news/world-asia-india-20863707>.

⁶⁸ The girl was gang raped, filed a police report the next day, and then was raped again by the same men. The assailants then set her on fire when she refused to withdraw the police complaint. See *Protests in India after police try to forcibly cremate body of twice raped, burnt 16yo girl*, RT (Jan. 4, 2014), available at <http://rt.com/news/india-rape-protests-killed-084/>.

⁶⁹ There have been a number of high profile sexual violence cases in the last couple of years. Many of these later incidents have been met with public protest.

⁷⁰ *Delhi bus gang rape: Uproar in Indian parliament*, BBC News India (Dec. 18, 2012), available at <http://www.bbc.com/news/world-asia-india-20765869>.

⁷¹ The full text of the Report is available at this URL: <http://www.prsindia.org/parliamenttrack/report-summaries/justice-verma-committee-report-summary-2628/>.

forced to navigate every time she walks out of her home.”⁷² The drastic change in policy and law reflects a change in the national mood and understanding of sexual rights of women and young girls. It is indeed this change that the judges must capitalize on.

B. How Judges can combat the *Devadasi* system

Given that Indian society is in the midst of a recalibration of its morality and is moving towards stronger laws to protect of young girls from their previously dangerous reality, there may be no better time for judges to pressure the *devadasi* system.⁷³ This section discusses two steps that judges, well within their power, should take to combat the practice.

1. Apply the laws vigorously

Perhaps judges’ most obvious power is to ensure that the law, as laid down by the legislator, is interpreted and applied in an effective manner. In the case of sexual exploitation in India, and particularly in regards to the *devadasi* practice, judges would do well to vigorously apply the newly created laws, which as noted above, create expedited causes of actions against those who commit or facilitate sexual exploitation. The Indian Supreme Court seems to be taking the lead on the issue by taking an active role in the prosecution of those involved in the practice. For example, the Court recently required various officials in India, in particular the Karnataka Chief Secretary, to take meaningful steps towards the protection of young girls who were going to be dedicated to the *devadasi* practice.⁷⁴ The court, in telling the Chief Secretary to enforce the

⁷² Lavanya Sankaran, *Can India’s new laws stop rape?*, The Guardian (Apr. 3, 2013), available at <http://www.theguardian.com/commentisfree/2013/apr/03/indias-new-laws-stop-rape>.

⁷³ This is not to say that judges have the ultimate power in ending the practice. Indeed, parents, police, and politicians may in fact have more power to effect change. For example, many have argued that the most effective way to combat the practice is to increase “the awareness of the *devadasis*” in local villages. See Maria Costanza Torri, *Abuse of Lower Castes in South India: The Institution of Devadasi*, *Journal of International Women’s Studies*, 11(2), 31, 44 (2009). However, this paper focuses on the judiciary as a vehicle through which the already enacted laws can be effectively applied to remedy the practice.

⁷⁴ See *Supreme Court asks Karnataka*, *supra* note 55.

law against the practice, set a standard in which the judiciary, more so in the past, required officials to take “all preventative measures” to ensure that the system was not perpetuated.⁷⁵

While this suggestion – one in which the judges are being told to do their job in a meaningful way – might seem plainly obvious, the fact that India’s judicial system is notoriously corrupt illustrates that such a recommendation might not be as easy to apply as it first seems. For example, while under reporting might be the biggest problem with enforcement of the laws, even in cases where the crime is reported, police officers do little or nothing to enforce the laws.⁷⁶ The problem is not limited to the police, but extends to a judiciary that is not only susceptible to bribes, but is one that is so slow and inefficient that the goal of deterrence is usually never met.⁷⁷ Given these problems, if Indian judges, following the lead of their Supreme Court, could begin to apply the laws rigorously and demand palpable action from state officials, the law may begin to cause pause amongst those who perpetuate the *devadasi* system.

2. Judges should create social pressure through their rulings

One of the largest obstacles facing those who want to eradicate the *devadasi* system is the fact that there seems to be an implicit acceptance, almost in the form of an unspoken law, among

⁷⁵ <http://timesofindia.indiatimes.com/city/bangalore/Check-devadasi-practice-Supreme-Court-tells-govt/articleshow/30364726.cms>

⁷⁶ *Check devadasi practice, Supreme Court tells govt*, The Times of India (Feb. 14, 2014), available at http://www.huffingtonpost.com/2012/12/27/india-gang-rape-suicide_n_2370859.html (stating: “A 17-year-old Indian girl who was gang-raped committed suicide after police pressured her to drop the case and marry one of her attackers, police and a relative said on Thursday.”).

⁷⁷ Swarna Rajagopalan, *One year afer Delhi rape case, the courage to change is in our hands*, DNA (Dec. 16, 2013) available at <http://www.dnaindia.com/analysis/standpoint-one-year-after-delhi-rape-case-the-courage-to-change-is-in-our-hands-1935841> (stating: “[m]oreover, if the judiciary would process cases more efficiently, and convict more accused, we are sure the laws would then work and exemplary punishment would deter criminals.”). One author went as far to say that Indian judicial system does nothing more to prove “over and over the axiom that justice delayed is justice denied.” See Sankaran, *supra* note 72.

those closest to the practice that allows it to perpetuate. Combatting that social acceptance is likely the first, and most important, fight for opponents of the practice.⁷⁸

For their part, judges have the ability to alter society's values based on their rulings, especially when those rulings are in line with the national will following a watershed moment, in this case, the 2012 Delhi incident. Indian judges would do well to, through their decisions and underlying rationale, to augment already existing social pressure against the practice. The Indian Supreme Court, again, provides a strong exemplar. In its order to the Karnataka Chief Secretary, the Supreme Court noted that the *devadasi* tradition was a "national shame," and required further that the Karnataka government provide guidelines on how it was going to curb the practice.⁷⁹ The Supreme Court, by expressing "shock over the proposed dedication of hundreds of Dalit girls as Devadasis"⁸⁰ sent a clear message to not only the Karnataka government, but also to individuals in and around that the practice that social mores are changing. While it is difficult to empirically measure the effect of a judge's opinion on societal values, the fact that numerous NGOs and governmental actors cite to such rulings is proof that they do have some significance when applied to a populace's collective consciousness.

V. Conclusion

The *devadasi* tradition, once an institution that bestowed honor on women who were chosen to take part, has devolved into a system of institutionalized sexual exploitation and

⁷⁸ The position that social, rather than legal, change is the most effective route is a popular one. This is particularly true given that India is wrought with corruption and that Indians have "a regrettable tendency to treat laws as mere suggestions, like worthy advice from a grandmother – to be followed in theory and ignored in practice." See Sankaran, *supra* note 72.

⁷⁹ *Supreme Court asks Karnataka Chief Secretary to take steps to stop 'devadasi' system*, DNA (Feb. 13, 2014), available at <http://www.dnaindia.com/india/report-supreme-court-asks-karnataka-chief-secretary-to-take-steps-to-stop-devadasi-system-1961718>.

⁸⁰ *Id.*

prostitution of young, lower-caste girls.⁸¹ Although the practice is no longer as prevalent as it once was, thanks in large part to being prohibited by both domestic and international law, thousands of girls are still dedicated to the practice on a yearly basis for economic, religious, and social reasons. Perhaps even more problematically, many of the dedicated girls do not see participation in the practice in a negative way since “[f]or the very poor, and the very pious, the devadasi system can still be seen as providing a way out of poverty while gaining access to the blessings of the gods, the two things that the most impoverished crave.”⁸²

Despite the continued existence of the practice, the advent of India’s sexual violence revolution has offered judges an opportunity to play their part in ringing the death knell of the *devadasi* institution. In particular, this paper argues that judges should take two steps: first, ensure that the newly-enacted laws are vigorously applied, and second, use their position of influence to create social pressure to end the practice. While these solutions are not comprehensive, they are simple steps that judges can take to end the *devadasi* practice – an institution that continues to subject thousands of girls, as young as five or six, annually to a lifetime of sexual exploitation and prostitution.

⁸¹ As Chakrain Jain eloquently stated: ““Present-day devadasis are not the descendants of courtesans, nor are they proficient in any arts... The only art they are conversant in is the art of submitting to any man who desires them and is willing to pay for their favours.” *Devadasis: Maids of God – and Men*, article in *Express Magazine*, June 9, 1985.

⁸² See Dalrymple, *supra* note 14.