

# Slavery in India and the False Hope of Universal Jurisdiction

Ashley V. Tomlinson\*

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## I. INTRODUCTION

On International Slavery Day, December 2, 2008, the United Nations Special Rapporteur on contemporary forms of slavery lamented the international community’s “insufficient” efforts to eradicate modern-day slavery.<sup>1</sup> Indeed, there is still a disturbingly large number of slaves living throughout the world today. Estimates of the number of modern-day slaves vary from source to source.<sup>2</sup> However, regardless of the exact

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\* © 2009 Ashley V. Tomlinson. J.D. candidate 2010, Tulane University School of Law; B.A. 2005, *magna cum laude*, Hollins University. The author would like to thank her parents for their unwavering support and Fernando for his endless love and patience throughout this experience. In addition, this Comment would not have been possible without the invaluable guidance of Professor Herbert Larson.

1. Press Release, Gulnara Shahinian, “SLAVERY IS NOT HISTORY,” Warns U.N. Special Rapporteur (Nov. 27, 2008), *available at* <http://www.unhchr.ch/hurricane/hurricane.nsf/0/FE8192C24CB4BA77C125750E004DB973?opendocument>.

2. *See, e.g.*, KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL Economy 9 (2004) (estimating 27 million slaves worldwide, with 15 to 20 million on the Indian subcontinent); Press Release, Gulnara Shahinian, *supra* note 1 (reporting a similar figure of 27 million slaves worldwide); U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm’n on the

number reported, India consistently draws the attention of the international community as home to a staggeringly large percentage of the number of slaves worldwide.

Sadly, expressions of international condemnation have failed to curb India's growing population of slaves. The international community must, therefore, find another solution to this ancient problem. One such solution is the assertion of universal jurisdiction by willing states to prosecute slavery violations. Contemporary forms of slavery, such as those prevalent in India, are violations of customary international law and *jus cogens* norms.<sup>3</sup> Accordingly, slavery is a crime that any state may theoretically prosecute under universal jurisdiction.

Indeed, there are indications of growing support for the prosecution of *jus cogens* violations under the universal jurisdiction of states. Recently, Belgium attempted to prosecute *jus cogens* violations under its national universal jurisdiction statute.<sup>4</sup> U.S. courts have also recognized the ability to assert universal jurisdiction under the Alien Tort Claims Act for the prosecution of international crimes, including slavery.<sup>5</sup> This Comment will address whether such assertion of universal jurisdiction by Western industrialized nations is the proper tool with which to address individual practices of modern slavery in India. With the possibility of 100 million people enslaved in India, there may seem no better argument for states to seek prosecution using universal jurisdiction. Yet while this approach may satiate initial retributive impulses, it will likely do little to alleviate the problem of modern slavery in India, and will also likely increase tensions between India and the prosecuting states. Societal and cultural factors will likely counteract the effectiveness of any efforts to try modern day slavery as a *jus cogens* violation. In fact, the assertion of universal jurisdiction by Western nations may prove counterproductive.

This Comment will explore the legal history of slavery in its traditional and contemporary forms, and the historical and modern-day role of slavery in India. The Comment will also consider the multiple

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Promotion & Protection of Human Rights, Comm'n on Human Rights, *Working Group Report: Contemporary Forms of Slavery*, ¶ 21, U.N. Doc. E/CN.4/Sub.2/2000/23 (July 21, 2000) [hereinafter *U.N. Report*] (reporting estimates from 44 to 100 million people subject to contemporary forms of slavery in India alone); HUMAN RIGHTS WATCH, SMALL CHANGE: BONDED CHILD LABOR IN INDIA'S SILK INDUSTRY 18 (2003), available at <http://www.hrw.org/sites/default/files/reports/india0103.pdf> (estimating between 60 and 115 million child laborers in India, of which at least 15 million are modern-day slaves).

3. M. Cherif Bassiouni, *Enslavement as an International Crime*, 23 N.Y.U. J. INT'L L. & POL. 445, 445 (1991).

4. See Case Concerning the Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), 2002 I.C.J. 3 (Feb. 14).

5. See *Doe v. Unocal Corp.*, 963 F. Supp. 880, 889, 891 (C.D. Cal. 1997).

causes of modern slavery in India, the enforcement efforts that have thus far failed, and why universal jurisdiction will not serve as a better solution.

## II. A SHORT LEGAL HISTORY OF SLAVERY

By the end of the twentieth century, there were at least seventy-nine major international instruments that address slavery, slavery-related practices, forced labor, and the slave trade.<sup>6</sup> Consequently, the international community generally identifies both traditional and modern forms of slavery as *jus cogens* violations.<sup>7</sup> Indeed, the international instruments on slavery show a steady, chronological progression in defining the international crime of slavery—from those instruments addressing traditional forms of slavery equated with piracy to those enacting prohibitions of modern forms of slavery, such as bonded labor and trafficking.

Slavery, in its traditional meaning, is historically linked to piracy.<sup>8</sup> In fact, the slave trade's association with the crime of piracy is often cited as a premise for the universal condemnation of slavery.<sup>9</sup> The earlier instruments regarding slavery include a series of treaties that established international tribunals in which member states could try both slave traders and pirates who were nationals of any of the parties.<sup>10</sup> In 1926, the League of Nations Slavery Convention (Slavery Convention) adopted the purpose of eradicating slavery “in all its forms.”<sup>11</sup> Unlike previous conventions, the scope of the Slavery Convention encompassed both the traditional forms of slavery and the slave trade, as well as modern forms of slavery.<sup>12</sup> The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (Supplementary Convention) expanded the scope of prohibition even

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6. Bassiouni, *supra* note 3, at 454.

7. See DAVID WEISSBRODT, ANTI-SLAVERY INT'L, OFFICE OF U.N. HIGH COMM'R FOR HUMAN RIGHTS, ABOLISHING SLAVERY AND ITS CONTEMPORARY FORMS 3 (2002), available at <http://www.ohchr.org/Documents/Publications/slaveryen.pdf>; see also Bassiouni, *supra* note 3, at 445.

8. M. Cherif Bassiouni, *The History of Universal Jurisdiction and Its Place in International Law*, in UNIVERSAL JURISDICTION 39, 49 (Stephen Macedo ed., 2004).

9. *Id.*

10. Eugene Kontorovich, *The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation*, 45 HARV. INT'L L.J. 183, 193 (2004). These early treaties treated slave trading as analogous to piracy. *Id.* at 183 n.59. The 1815 Vienna Declaration, for example, did so. Bassiouni, *supra* note 8, at 49.

11. Slavery Convention of 1926, art. 2, Mar. 9, 1927, 60 L.N.T.S. 253.

12. See *id.* The language in article 1 abolishing slavery in “all its forms” is based on recommendations of the Temporary Slave Commission to prohibit all practices in the restriction of liberty, such as debt bondage. WEISSBRODT, *supra* note 7, at 4-5.

further, with the intention of filling in the gaps of the Slavery Convention.<sup>13</sup> The Supplementary Convention explicitly prohibited debt bondage and child labor for the purpose of economic exploitation, as well as any such “servile status.”<sup>14</sup>

Since the Supplementary Convention, many other instruments that prohibit practices of modern slavery have come into force. Some of those instruments include the Universal Declaration of Human Rights;<sup>15</sup> the International Convention on Economic, Social and Cultural Rights (ICESCR);<sup>16</sup> the International Covenant on Civil and Political Rights (ICCPR);<sup>17</sup> the Convention on the Rights of the Child;<sup>18</sup> the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children;<sup>19</sup> and the Rome Statute.<sup>20</sup> In addition, the International Labour Organization (ILO) has 187 of its own conventions relating to labor practices, several of which specifically address contemporary slavery.<sup>21</sup> There are also various regional agreements prohibiting slavery and its contemporary forms, such as the European Convention on Human Rights and the African Charter on Human and Peoples’ Rights.<sup>22</sup>

The legal history of slavery clearly illustrates an expanding definition of the crime. Yet while scholars may consider all forms of slavery as *jus cogens* violations, there are distinct differences between

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13. WEISSBRODT, *supra* note 7, at 5-6.

14. *Id.* at 6.

15. Universal Declaration of Human Rights, art. 4, Apr. 30, 1956, 226 U.N.T.S. 3 (“No one shall be held in slavery or servitude and the slave trade shall be prohibited in all their forms.”).

16. International Covenant on Economic, Social and Cultural Rights, art. 6(1), Dec. 6, 1966, 993 U.N.T.S. 3 (“[T]he right to work . . . includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.”).

17. International Covenant on Civil and Political Rights, art. 8(1), Dec. 19, 1966, 999 U.N.T.S. 171 (“No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.”); *id.* art. 8(3)(a) (“No one shall be required to perform forced or compulsory labour.”).

18. Convention on the Rights of the Child, art. 34, Nov. 20, 1989, 1577 U.N.T.S. 3 (prohibiting the sexual and economic exploitation of children).

19. Protocol To Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, art. 5, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

20. Rome Statute of the International Criminal Court, art. 7(1), July 17, 1998, 2187 U.N.T.S. 3 [hereinafter Rome Statute] (listing “enslavement” and “sexual slavery” as crimes against humanity).

21. INT’L LABOUR ORG., OFFICIAL TITLES OF CONVENTIONS ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE (2006), *available at* <http://www.ilo.org/ilolex/english/conventions.pdf>. Four of the ILO’s “core conventions” include the Forced Labour Convention, the Abolition of Forced Labour Convention, the Elimination of the Worst Forms of Child Labour Convention, and the Minimum Age Convention. INT’L LABOUR ORG., RATIFICATION OF CONVENTIONS BY COUNTRY IN THE ASIAN REGION, <http://www.ilo.org/public/english/region/asro/bangkok/arm/conventions.htm> (last visited Feb. 12, 2009).

22. WEISSBRODT, *supra* note 7, at 14.

traditional chattel slavery and modern bonded labor, for example.<sup>23</sup> Indeed, if the international community is to pursue the eradication of contemporary forms of slavery, it is vital to fully comprehend its distinguishing characteristics.

### III. THE CHARACTERISTICS OF MODERN SLAVERY

A critical difference between traditional chattel slavery and modern slavery is the element of *ownership*. Whereas the element of outright ownership defines traditional slavery, modern slavery is based instead on a critical level of control over slaves.<sup>24</sup> Slavery, modern slavery-related practices, and forced labor are all international crimes and *jus cogens* violations.<sup>25</sup> Yet, even though modern slavery may be analogous to traditional chattel slavery as a *jus cogens* violation, the distinction between ownership and control is significant and requires consideration.

The practice of traditional chattel slavery, as defined by the element of ownership, is becoming increasingly rare.<sup>26</sup> Therefore, as modern slavery is now more prevalent, it is necessary to explore the control and ownership paradigms in order to determine whether a practice constitutes the international crime of slavery. The element of ownership should not eclipse the complete control exercised over victims of traditional and modern slavery.<sup>27</sup> In fact, the element necessary for a practice to qualify as the *jus cogens* crime of slavery is arguably the presence of complete control, as opposed to ownership.

Scholars have tried to determine exactly what types and degrees of control over individuals fall within the category of slavery. In a 2002 report, the Office of the High Commissioner for Human Rights (OHCHR) identified three factors relevant to determining whether a certain practice constitutes a form of slavery: (1) “the degree of restriction of the individual’s inherent right to freedom of movement,” (2) “the degree of control of the individual’s personal belongings,” and (3) “the existence of informed consent and full understanding of the nature of the relationship between the parties.”<sup>28</sup> The language of the OHCHR report suggests that ownership is not necessary in order to label a practice a form of slavery. Instead, the practice must attain a threshold level of control over a person who has not offered informed consent.

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23. See discussion *infra* Part III.

24. See BALES, *supra* note 2, at 5.

25. Bassiouni, *supra* note 3, at 445.

26. WEISSBRODT, *supra* note 7, at 7.

27. See *id.*

28. *Id.*

Kevin Bales describes the distinction between control and ownership as manifest in a phenomenon peculiar to modern forms of slavery—"disposable" people.<sup>29</sup> Bales asserts that chattel slavery in the nineteenth century was not nearly as cost efficient as contemporary forms of slavery.<sup>30</sup> A single slave in the nineteenth century cost the equivalent of between \$40,000 and 80,000, adjusted for inflation, and yielded a profit margin of about 5%.<sup>31</sup> Today, a bonded agricultural laborer, for example, may fall into a lifetime of servitude for taking a loan of INR\$500 (less than US\$12).<sup>32</sup> The profit margin for bonded labor is thus around 50% for agricultural laborers.<sup>33</sup> Slaves in forced prostitution cost significantly higher than agricultural laborers, but a single sex slave can yield a profit margin of 800%.<sup>34</sup> With bountiful, cheap human labor, Bales asserts that modern slaveholders can attain total control of individual slaves without the liability of ownership.<sup>35</sup> Most importantly, under Bales' description, modern slaves are disposable and easily replaceable.<sup>36</sup>

It is possible to categorize both modern and traditional forms of slavery as practices that reach a critical level of control. As the element of ownership in slavery becomes increasingly rare, it is no longer practical to define the *jus cogens* crime of slavery within the limited context of ownership. Ownership remains the bright line between traditional and contemporary slavery. However, it is no longer the proper line with which to define the crime of slavery as a whole, as distinguished from simple acts of economic exploitation. In order to address the modern forms of slavery that plague the international community, it is necessary to define the international crime of slavery as those practices that attain a critical level of control over the victims, rather than ownership. Therefore, it is important to understand the prevalent forms of slavery in India and whether these practices fall within levels of control that constitute *jus cogens* violations.

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29. See BALES, *supra* note 2, at 14.

30. See *id.* at 16-18.

31. *Id.* at 16.

32. See *id.*

33. *Id.* at 17.

34. *Id.* at 16, 18.

35. *Id.* at 15-17.

36. *Id.* at 14. Whereas slave owners in the nineteenth century may have expended great effort to track down and retrieve a runaway slave that cost \$40,000, modern slaveholders have little reason to pursue escaped slaves, let alone ensure their well being. See *id.*

## IV. CONTEMPORARY FORMS OF SLAVERY IN INDIA

Slavery has been in existence in “all periods of Indian history”—from the time of customary rule under Hindu and Muslim empires to the era of slave trade regulation by the British Colonial Government to modern-day slavery.<sup>37</sup> Today, there are four related types of contemporary slaves that are most prevalent in India: bonded laborers, child laborers, sexual slaves, and victims of trafficking.

A. *Bonded Labor*

*We are slaves. We just give birth to children and then leave them to work for the moneylenders. We can ask no questions. We have to follow them like slaves. Husband, children and grand-children all work in this way. All are slaves.*<sup>38</sup>

The ILO identifies India as home to the largest number of bonded laborers in the world.<sup>39</sup> However, the estimates of the United Nations and Nongovernmental Organizations (NGOs) vary, and the actual number of bonded laborers remains unclear. The Working Group on Contemporary Forms of Slavery estimates 44 to 100 million persons in bondage, and possibly 65 million bonded child laborers alone.<sup>40</sup> Human Rights Watch estimates that there are 15 million children in bonded labor.<sup>41</sup> Another U.N. official estimates the number of *all* kinds of slaves to be over 27 million worldwide.<sup>42</sup>

Furthermore, official statistics compiled by the central and state governments of India are notoriously low and inaccurate.<sup>43</sup> In the past, the state governments have issued statistics that are significantly lower than those reported by NGOs.<sup>44</sup> The central government is equally guilty

37. Manjari Dingwaney, *Unredeemed Promises: The Law and Servitude*, in CHAINS OF BONDAGE 283, 283 (Utsa Patnaik & Manjari Dingwaney eds., 1985).

38. Neera Burra, *Born To Work: Child Labour in India*, in MYRON WEINER, MEERA BURRA & ASHA BAJPAI, BORN UNFREE 1, 17 (2006).

39. INT'L LABOUR ORG. (ILO), STOPPING FORCED LABOUR 35 (2001), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_088490.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_088490.pdf).

40. *U.N. Report*, *supra* note 2, ¶ 21.

41. HUMAN RIGHTS WATCH, *supra* note 2, at 18.

42. Press Release, Gulnara Shahinian, *supra* note 1.

43. See ANTI-SLAVERY INT'L, DEBT BONDAGE IN INDIA, NEPAL AND PAKISTAN (2000), available at <http://web.archive.org/web/20010701114955/http://www.antislavery.org/archive/submission/submission2000-BondLabour.htm>; ANTI-SLAVERY INT'L, INDIA—BONDED LABOUR: THE GAP BETWEEN ILLUSION AND REALITY (1997), available at <http://web.archive.org/web/20010701105344/http://www.antislavery.org/archive/submission/submission1997-08India.htm>.

44. See ILO, *supra* note 39, at 36 (reporting that in “states including Andhra Pradesh, Bihar, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, and Uttar Pradesh” the figures compiled by state governments were less than 15% of those reported by NGO figures).

of “gross underrepresentation of the problem.”<sup>45</sup> A survey of bonded laborers, for example, will only cover male bonded workers, when it is often an entire family working as bonded laborers; the government excludes family members from the statistics.<sup>46</sup>

Until recently, bonded labor in India existed almost entirely in the agricultural sector. Today, nonagricultural sectors are starting to catch up.<sup>47</sup> Laborers throughout India work for much less than minimum wage and are forced to borrow money from landlords and moneylenders to survive.<sup>48</sup> In order to secure the loan, laborers enter into oppressive contracts in which they promise their labor as repayment of the debt.<sup>49</sup> Subsequently, families find themselves caught in a vicious cycle of growing debt that they are never able to pay back because of exorbitant interest rates and sham fees that are regularly added to the initial balance.<sup>50</sup> Therefore, families often have to offer their children’s labor as well, thus trapping endless generations in a status of servitude.<sup>51</sup> Frequently, parents will take advance loans from employers against children still in the womb or only a few years old.<sup>52</sup> The employers frequently anticipate that the parents will never be able to pay off the debt and retrieve their children.<sup>53</sup>

The bonded labor system keeps many Indian families on the brink of starvation and under the complete control of moneylenders and landlords, who provide barely enough food, shelter, and clothing for their slaves to survive.<sup>54</sup> In a perpetual state of dependence, bonded laborers

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45. HUMAN RIGHTS WATCH, *supra* note 2, at 7. For example, in 1998 representatives of India to the ILO reported to the Committee of Experts that, nationally, “251,000 bonded labourers had been identified, of whom approximately 231,000 had been rehabilitated.” ANTI-SLAVERY INT’L, THE ENSLAVEMENT OF DALIT AND INDIGENOUS COMMUNITIES IN INDIA, NEPAL AND PAKISTAN THROUGH DEBT BONDAGE 2-3 (2001), *available at* <http://www.antislavery.org/homepage/resources/goonesekere.pdf>.

46. ANTI-SLAVERY INT’L, *supra* note 45, at 2.

47. Ravi S. Srivastava, *Bonded Labour in India: Its Incidence and Pattern* (Int’l Lab. Off. Working Paper No. WP43, 2005).

48. *U.N. Report*, *supra* note 2, ¶ 23.

49. *Id.*

50. ANTI-SLAVERY INT’L, CONTEMPORARY FORMS OF SLAVERY RELATED TO AND GENERATED BY DISCRIMINATION: FORCED AND BONDED LABOUR IN INDIA, NEPAL AND PAKISTAN (2003), *available at* <http://web.archive.org/2003/701174628/http://www.antislavery.org/archive/submission/submission2003-discrimBL.htm>.

51. *U.N. Report*, *supra* note 2, ¶ 23; Burra, *supra* note 38, at 17; KEVIN BALES, UNDERSTANDING GLOBAL SLAVERY 33 (2005); A. Yasmine Rassam, *International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach*, 23 PENN ST. INT’L L. REV. 809, 821 (2005).

52. Burra, *supra* note 38, at 15, 18.

53. *Id.* at 18.

54. BALES, *supra* note 51, at 33.



have no choice but to return to the landlord or moneylender again and again. The landlord in turn maintains tight control over their labor, shelter, and movement.<sup>55</sup> Bales describes this cycle as resulting in an extremely high level of control over the bonded laborers, through which the landlord is able to subdivide the fundamental rights of the laborers—basic rights to food and shelter are met through bondage and the status rights of freedom of movement and expression are offered up as payment for the support provided.<sup>56</sup>

### B. Child Labor

*Adults will be conscious of [the] hours [they] work, but children will work until the employer releases them. And they are nimble.*<sup>57</sup>

Child laborers in India exist in several capacities. Some estimate the number of child laborers as ranging from 13 million to 115 million,<sup>58</sup> while others cite between 15 and 65 million bonded child laborers.<sup>59</sup> While children are widely employed throughout India, there are certain industries that especially rely on child labor: agriculture, brickmaking, stone quarrying, carpet weaving, bidi rolling (hand-rolled cigarettes), rearing of silk cocoons, sari work, gem and diamond cutting, leather production, and silver jewelry making.<sup>60</sup> One survey found that children constitute 42% of the labor force in the match production industry; 33% in the bidi, glass, and bangle industries; and 25% in the brassware industry.<sup>61</sup>

In these industries, children suffer horrible conditions and are often bought and sold as property.<sup>62</sup> In fact, many children who are sent to work as young as the age of three are not working voluntarily, but are

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55. *Id.* at 33-34. One landlord described his relationship with his bonded laborers: “I keep them and their families, and they work for me. . . . After all, they are from the Kol caste; that’s what they do, work for Vasyas . . . . They’ve also borrowed money, so I have to make sure that they stay on my land till it is paid back. They will work on my farm till it is all paid back.” *Id.* at 33. The bonded laborers’ debt to that landlord existed from at least three generations ago, but the family had lost track of exactly how far back it went. *Id.*

56. *Id.* at 33-34.

57. Myron Weiner, *The Child and the State in India: Child Labor and Education Policy in Comparative Perspective*, in WEINER, BURRA & BAJPAI, *supra* note 38, at 45-46 (quoting an official at a labor institute run by the Indian Department of Labour, who described why unions are not concerned with child labor).

58. *Id.* at 3.

59. HUMAN RIGHTS WATCH, *supra* note 2, at 6.

60. SRIVASTAVA, *supra* note 47, at 29.

61. Weiner, *supra* note 57, at 10.

62. *See id.* at 43.

trafficked by labor agents, kidnapped, abandoned, or sold to employers.<sup>63</sup> One such employer spoke of a boy whose mother placed him into bondage to make saris, declaring that the boy will never leave “until someone else comes to buy him . . . . He will never do anything else but this.”<sup>64</sup> Indeed, employers have complete control over child laborers. In some of the most exploitative forms of child labor, employers gain control as soon they remove children from their normal environments.<sup>65</sup> As children depend on adults for their essential needs, they rapidly become obedient to adults that supply even the most basic necessities.<sup>66</sup>

### C. *Forced Prostitution and Human Trafficking*

The Working Group on Contemporary Forms of Slavery estimates that there are twenty-four million trafficking victims enslaved in India as prostitutes.<sup>67</sup> Like many other modern slaves, victims of sexual slavery often fall prey to traffickers who offer false promises of safe and well-paid employment.<sup>68</sup> Instead, the traffickers deliver these victims, mostly women and children, to brothels where they are forced into prostitution.<sup>69</sup> In other cases, relatives or husbands simply sell women directly to brothel owners.<sup>70</sup> If the victims resist upon their arrival to the brothel, the owners often torture, rape, and starve them into subservience.<sup>71</sup> Because these victims usually cannot return to their communities due to shame, they become dependent on the brothel owners to provide the bare necessities. In return, many brothel owners have absolute control over the movement and expression of the slaves. A brothel owner may

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63. See *id.* at 19; see also Neha Dixit, *The Nowhere Children*, TEHELKA MAG. (India), Nov. 1, 2008, available at [http://www.tehelka.com/story\\_main40.asp?filename=Ne011108cover\\_story.asp](http://www.tehelka.com/story_main40.asp?filename=Ne011108cover_story.asp).

64. Damian Grammaticas, *Bonded to the Sari Loom*, BBC NEWS, Mar. 29, 2007, available at [http://news.bbc.co.uk/2/hi/south\\_asia/6505961.stm](http://news.bbc.co.uk/2/hi/south_asia/6505961.stm).

65. BALES, *supra* note 51, at 146.

66. *Id.*

67. *U.N. Report*, *supra* note 2, ¶ 92. The 52 million children born to these prostitutes face similar futures as prostitutes. See *id.*

68. Dixit, *supra* note 63. The traffickers offer vague descriptions of employment opportunities to individuals who are often desperate for money or eager to find a better life elsewhere. *Id.*

69. See Robert I. Friedman, *India's Shame: Sexual Slavery and Political Corruption Are Leading to an AIDS Catastrophe*, THE NATION, Apr. 8, 1996, at 12.

70. See, e.g., SIDDHARTH KARA, SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY 49 (2009) (describing a sixteen-year-old girl married to her uncle, who eventually sold her to a brothel; another girl was sold to a brothel by her parents for INR\$20,000, which is equivalent to approximately US\$444).

71. See, e.g., Friedman, *supra* note 69, at 12 (describing the process of “breaking in” new girls); see also KARA, *supra* note 70, at 49 (recounting the story of a girl sold to a brothel who had her arm broken when she refused to have sex with the brothel owner).

forcibly hold a slave until she repays the sum for which she was purchased from the trafficker.<sup>72</sup> Even if the woman or child is ever actually able to repay this debt, she will likely remain in prostitution.

#### V. THE CAUSES OF CONTEMPORARY SLAVERY IN INDIA

As demonstrated in Part IV, the prevalence of slavery in India is closely related to widespread poverty. However, poverty is but one of multiple related causes. In addition to the dire economic conditions facing the poor, market competitiveness and traditional beliefs of the caste system also perpetuate modern slavery in India.

The ILO estimates that 40% of India's population lives in "abject poverty."<sup>73</sup> Such destitution is fertile ground for systems of bonded labor, child labor, and other slavery-related practices. For example, impoverished families barely surviving on subsistence farming may enter into bonded labor for countless generations. Such families often rely on the small, supplemental income earned by their children in order to survive.<sup>74</sup> Yet while it is evident that there is a relationship between poverty and contemporary forms of slavery, it is crucial to acknowledge that it is not the sole contributing factor.<sup>75</sup>

Many employers and officials argue that certain forms of modern slavery are necessary to maintain India's competitive edge against developed nations.<sup>76</sup> Developing nations struggling to compete with the West can offer lower labor costs by using bonded workers and child labor.<sup>77</sup> Accordingly, employers and proponents of child and bonded

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72. See Friedman, *supra* note 69, at 12.

73. Rajyasri Rao, *India 'Losing' Child-Labour Battle*, BBC NEWS, May 6, 2002, [http://news.bbc.co.uk/2/hi/south\\_asia/1970708.stm](http://news.bbc.co.uk/2/hi/south_asia/1970708.stm).

74. Katherine Cox, *The Inevitability of Nimble Fingers? Law, Development, and Child Labor*, 32 VAND. J. TRANSNAT'L L. 115, 154 (1999); *U.N. Report*, *supra* note 2, ¶ 23; Rao, *supra* note 73.

75. The Indian Government is frequently criticized for its reliance on poverty as a catchall explanation for child labor and other slavery-related practices in India. Arguably, this is indicative of a "lack of political will" to implement those regulations already in place and to effect changes that may not evoke wide support. Rao, *supra* note 73. For example, in the Ministry of Labour and Employment's "Action Plan and Present Strategy" for combating child labor, the Ministry declared that "poverty is the root cause of child labour" and specifically focuses its strategy on alleviating poverty, stating that "enforcement alone cannot help solve it." Ministry of Labour & Employment, Initiatives Towards Elimination of Child Labor—Action Plan and Present Strategy, <http://labour.nic.in/cwl/ChildLabour.htm> (last visited Feb. 12, 2009).

76. BALES, *supra* note 2, at 9-10.

77. *Id.*

labor argue that India's industry could not possibly compete without the advantage of cheap production costs.<sup>78</sup>

Children are an especially easy target of this competitive spirit due to many industries' reliance on the nimble fingers of children, which allow for higher production at a lower cost.<sup>79</sup> In fact, some scholars assert that child labor is simply a "fundamental evolutionary stage in the development of a country," which countries should be allowed to outgrow at their own pace.<sup>80</sup> As some scholars observe, the use of child labor carried many Western nations through industrialization until they reached a point where radical labor reform was possible and beneficial.<sup>81</sup>

On the contrary, empirical studies indicate that it is a completely erroneous belief that modern slavery is necessary to maintain a competitive advantage and advance economic development. For example, a study sponsored by the ILO reveals that child laborers are not essential to the survival of loom owners.<sup>82</sup> Loom owners' businesses could still survive even without the use of child labor.<sup>83</sup> Yet another study did not find any evidence that the match industry could not survive if forced to hire adults instead of children.<sup>84</sup> "If children were removed from the work force there would be more jobs for adults"<sup>85</sup> and widespread unemployment would no longer threaten the survival of families across India. Those unemployed adults who would replace millions of children at higher wages would be less likely to fall prey to debt bondage.

Adherence to the traditional caste system, however, is perhaps the most daunting obstacle to the eradication of modern slavery in India. The ILO identifies the caste system as the "bedrock of social hierarchy and discrimination" that feeds modern day slavery.<sup>86</sup> Without a doubt, members of tribal or Dalit ("untouchable") communities constitute the

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78. See Grammaticas, *supra* note 64. One employer of a child bonded laborer argued that if he could not rely on children bonded to him by their parents, "it would not be possible for [the] industry to survive." *Id.* Indeed, this argument has been popular since British colonial occupation. See *id.*; see also *Mehta v. State of Tamil Nadu*, A.I.R. 1991 S.C. 417, para. 6 (stating that a minimum age requirement would severely damage the ability of the textile industry to operate and compete).

79. Cox, *supra* note 74, at 155; Grammaticas, *supra* note 64.

80. Cox, *supra* note 74, at 129 (quoting Faraaz Siddiqi & Harry Antony Patrinos, *Child Labor: Issues Causes and Interventions* 10 (Human Capital Dev. & Operations Policy, Working Paper No. HCOWP 56, 1995)).

81. *Id.*

82. *Id.* at 154.

83. *Id.*

84. Weiner, *supra* note 57, at 50.

85. *Id.*

86. SRIVASTAVA, *supra* note 47, at 9.

vast majority of slaves in India.<sup>87</sup> An estimated 80-98% of bonded laborers in India are Dalits.<sup>88</sup> This derives in large part from Hindu doctrine, under which upper castes expect Dalits to perform demeaning, compulsory work.<sup>89</sup> The Supreme Court of India has already declared that this caste-based obligation, known as *begar* (or *begaar*), is a “form of forced labour under which a person is compelled to work without receiving any remuneration.”<sup>90</sup> Quite simply, there are those who are born to “work with their bodies” and those born for education.<sup>91</sup> This belief system creates a vulnerable population of workers often paid well below the minimum wage (if at all), who must resort to servitude as bonded laborers in order to survive. The caste system also feeds directly into the practice of child labor. Parents either bond their children out of survival or force them to work due the belief that labor, not education, is their delegated role in life.<sup>92</sup>

#### VI. ANTISLAVERY LAWS IN INDIA

Fortunately, there are already many laws in place intended to free those living in modern slavery and protect those at risk of falling into slavery. Specifically, there are three general sources of antislavery laws in India: the Indian Constitution, the Indian Penal Code (IPC), and individual pieces of legislation.

Since Indian independence from Great Britain, the government of India has sought to eradicate traditional and contemporary forms of slavery. In fact, there are several constitutional provisions that specifically address contemporary forms of slavery:<sup>93</sup> (1) article 23 prohibits the trafficking in human beings and other types of forced labor;<sup>94</sup> (2) article 24 prohibits employment of children below the age of fourteen in factories;<sup>95</sup> (3) article 39(e) ensures “that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter

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87. ANTI-SLAVERY INT’L, FORCED LABOUR IN THE 21ST CENTURY 9 (2000), *available at* <http://www.antislavery.org/homepage/resources/forcedlabour.pdf>. The ILO also identified membership in ethnic or racial minorities in India as a primary determinant of vulnerability to slavery. ILO, *supra* note 39, at 2.

88. ANTI-SLAVERY INT’L, *supra* note 45, at 1.

89. *See id.*

90. People’s Union for Democratic Rights v. Union of India, (1982) A.I.R. 1473, para. 16.

91. Cox, *supra* note 74, at 155.

92. *See id.*

93. Articles 12 to 35 of the Indian Constitution are the Fundamental Rights provisions. INDIA CONST. arts. 12-35.

94. *Id.* art. 23.

95. *Id.* art. 24.

avocations unsuited to their age or strength”;<sup>96</sup> and (4) article 39(f) requires that children be given opportunities to develop in healthy conditions of freedom and dignity, and be protected from exploitation.<sup>97</sup>

The IPC also contains multiple sections criminalizing certain acts of slavery and slavery-related practices: Section 363A prohibits the kidnapping or maiming of a minor for the purposes of begging,<sup>98</sup> section 367 prohibits kidnapping or abduction to subject a person to slavery,<sup>99</sup> section 370 prohibits buying or disposing of any person as a slave,<sup>100</sup> section 371 prohibits the habitual dealing in slaves,<sup>101</sup> and section 374 prohibits unlawful compulsory labor.<sup>102</sup>

Finally, there are numerous pieces of legislation concerning slavery, some of which predate Indian independence in 1947. For example, the Scheduled Castes and Scheduled Tribes Act 1989 prohibits acts of discrimination against scheduled castes and scheduled tribes (SCs/STs), such as compelling or enticing members of SCs/STs to perform *begar*.<sup>103</sup> Yet in general, most of the legislation relates to bonded labor and child labor. The following Paragraphs are a brief introduction to existing legislation, highlighting the prohibited actions, the punishments available, the enforcement mechanisms, and the rehabilitative elements.

The Bonded Labour System (Abolition) Act 1976 (BLA) mandates the identification, release, and rehabilitation of all bonded laborers.<sup>104</sup> Not only does the BLA order the physical release of bonded laborers, it also releases the laborers from all outstanding debts.<sup>105</sup> In addition, the BLA requires all state governments to facilitate the economic and social rehabilitation of freed laborers.<sup>106</sup> The BLA relies upon state “vigilance committees” composed of local leaders to enforce both the release and rehabilitation of freed laborers, in addition to monitoring and conducting

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96. *Id.* art. 39(e).

97. *Id.* art. 39(f).

98. INDIA PEN. CODE § 363.

99. *Id.* § 367.

100. *Id.* § 370.

101. *Id.* § 371.

102. *Id.* § 374.

103. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989; India Code (1993), art. 3(vi), *available at* <http://www.socialjustice.nic.in/poa-act.pdf>.

104. The Bonded Labour System (Abolition) Act, No. 19 of 1976; India Code (1997), art. 4, *available at* [http://ncpcr.gov.in/Acts/Abolition\\_of\\_Bonded\\_Labour\\_System\\_Act\\_1976.pdf](http://ncpcr.gov.in/Acts/Abolition_of_Bonded_Labour_System_Act_1976.pdf).

105. *Id.* art. 6(1).

106. *Id.* arts. 13-14.

surveys.<sup>107</sup> A violation of the BLA is punishable by up to three years, incarceration, and an INR\$2000 fine.<sup>108</sup>

In regard to child labor, there are several key pieces of legislation, each targeting different aspects of child exploitation. The Children (Pledging of Labour) Act prohibits the pledging of children by parents in return for cash advances.<sup>109</sup> The Juvenile Justice (Care and Protection) Act prohibits the procurement of child labor for the purpose of any hazardous employment, keeping children in bondage, and withholding the child's earnings.<sup>110</sup> The Factories Act specifically regulates the minimum age and hours of labor for children working in factories.<sup>111</sup>

The most frequently invoked child labor legislation is the Child Labour (Prohibition and Regulation) Act 1986 (CLA).<sup>112</sup> The CLA identifies which occupations are permissible for all children and which are hazardous occupations, in which only children over the age of fourteen may work.<sup>113</sup> Under the CLA, the employment of children in an illegal occupation is punishable by a fine of INR\$10,000 to 20,000 and imprisonment for no less than three months to one year.<sup>114</sup> The Supreme Court also ordered a fine of INR\$25,000 per child to be paid by employers in violation of the CLA and placed into a welfare fund for children released from labor.<sup>115</sup> Finally, the National Child Labour Project, which also operates under the CLA, is designed to alleviate some of the socioeconomic causes of child labor.<sup>116</sup> This program encompasses education, health, nutrition, integrated child development, and employment.<sup>117</sup>

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107. *Id.*; ILO, *supra* note 39, at 34.

108. Bonded Labour System (Abolition) Act, No. 19 of 1976 (1993); India Code, art. 18, available at <http://indiacode.nic.in/fullact1.asp?tfnm=197619>.

109. The Children (Pledging of Labour) Act, No. 2 of 1933 (1933); India Code, art. 2, available at <http://indiacode.nic.in/fullact1.asp?tfnm=193302>.

110. The Juvenile Justice (Care and Prevention) Act, No. 56 of 2000; India Code, art. 26, available at <http://indiacode.nic.in/fullact1.asp?tfnm=200056>.

111. The Factories Act, No. 63 of 1948; India Code (1993), arts. 67, 71, available at [http://www.labour.delhigovt.nic.in/act/html\\_ifa/fa1948\\_index.html](http://www.labour.delhigovt.nic.in/act/html_ifa/fa1948_index.html).

112. The Child Labour (Prohibition and Regulation) Act, No. 61 of 1987; India Code (1993), sched. A, available at <http://www.bba.org.in/resourcecentre/clprohibition&regulationact.php>.

113. *Id.* scheds. A-B.

114. *Id.* art. 14.

115. *Mehta v. State of Tamil Nadu*, A.I.R. 1996 S.C. para. 30; Ministry of Labour & Employment, Directions of the Supreme Court, <http://labour.nic.in/cwl/ScDirections.htm> (last visited Feb. 12, 2009).

116. Asha Bajpai, 'Right Against Economic Exploitation—Child Labour,' *Child Rights in India*, in WEINER, BURRA & BAJPAI, *supra* note 38, at 1, 21; Ministry of Labour & Employment, *supra* note 75.

117. Ministry of Labour & Employment, *supra* note 75.

Clearly, there are many laws in India that prohibit and regulate contemporary forms of slavery. Yet in addition to its own domestic laws, India is also party to several important international instruments related to slavery. Therefore, it is necessary to explore the international obligations that supplement India's existing domestic laws.

## VII. INDIA'S INTERNATIONAL OBLIGATIONS

Every treaty regarding slavery and slavery-related practices imposes an obligation on all member states to take effective steps to criminalize, punish, extradite, and provide mutual legal assistance.<sup>118</sup> India is a party to at least ten such treaties.<sup>119</sup> Therefore, India has an obligation to enforce and punish the multitude of domestic laws currently in place, as well as to facilitate international cooperation in the prosecution of slavery related crimes.

One such source of India's obligations is the U.N. Supplementary Convention on the Abolition of Slavery. Article 1 requires the Indian government to "take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment" of those practices enumerated in the 1926 Slavery Convention, as well as debt bondage, serfdom, and the delivery of women and children for payment or for exploitation.<sup>120</sup> Article 2 of the ICCPR similarly prohibits all forms of slavery and requires each party to respect all rights recognized in the covenant; provide legislative measures, effective remedy, and legal recourse; and enforce those remedies.<sup>121</sup>

Moreover, India is a member of the ILO and is a signatory to many of its conventions. Of the eight ILO "Core Conventions," India has ratified four, including the Convention on Forced Labour and the Convention on the Abolition of Forced Labour.<sup>122</sup> However, India has not ratified two of the crucial core conventions: the Minimum Age

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118. Bassiouni, *supra* note 8, at 50. The principle of *aut dedere aut judicare* requires states to "either extradite or prosecute." *Id.*

119. Bhandary M. Leeladhara, *India's Position on Multilateral Treaties Deposited with the UN Secretary General, Status as of 31 December 2004*, in *INDIA AND INTERNATIONAL LAW* 345 (Bimal N. Patel ed., 2005).

120. M. CHERIF BASSIOUNI & EDWARD M. WISE, *AUT DEDERE AUT JUDICARE: THE DUTY TO EXTRADITE OR PROSECUTE IN INTERNATIONAL LAW* 152-53 (1995). Article 8 also requires all parties to "undertake to co-operate with each other and with the United Nations to give effect to the foregoing provisions." U.N. Supplementary Convention on the Abolition of Slavery, art. 8, Apr. 30, 1956, 226 U.N.T.S. 3.

121. Art. 2, Dec. 19, 1966, 999 U.N.T.S. 171.

122. Int'l Labour Org., *Ratifications of the Fundamental Human Rights Conventions by Country*, <http://ilo.org/ilolex/english/docs/declworld.htm> (last visited Nov. 18, 2009).



Convention and the Convention on the Elimination on the Worst Forms of Child Labour.<sup>123</sup> Despite not being a signatory to those core conventions specifically relating to child labor, member states of the ILO are still required to promote the fundamental rights enumerated by the ILO.<sup>124</sup> Those protections for fundamental rights include “[t]he elimination of forms of forced or compulsory labour” and “[t]he effective abolition of child labour.”<sup>125</sup>

#### VIII. INDIA’S FAILURE TO ENFORCE AND PUNISH

Despite numerous domestic laws and international obligations, the Indian central and state governments have failed to successfully implement and enforce many of the prohibitions on modern slavery. Much of the failure is due in part to what Anti-Slavery International describes as a system of slavery perpetuated by a network of elites and a deeply entrenched belief in the caste system.<sup>126</sup> This ubiquitous culture of bias, corruption, and apathy amongst officials severely hinders genuine reform efforts. Most notably, there is a general failure at all levels to implement and enforce the BLA and CLA. India’s unique adjudicatory model of public interest litigation also fails to provide the necessary impetus for the enforcement of such legislation.

Under the BLA, the government has achieved little more than abysmal results. Despite the volume of laws regarding debt bondage, there is an endemic failure of enforcement.<sup>127</sup> The central Indian government states that the difficulties enforcing the BLA are due to a lack of sensitivity and will to tackle the problem, “particularly at the lower levels of public administration.”<sup>128</sup> Likewise, the ILO has also confirmed a “certain reluctance” amongst state governments to implement and enforce the BLA.<sup>129</sup>

The BLA specifically mandated the creation of district Vigilance Committees to implement and enforce the Act locally.<sup>130</sup> Upon its adoption, the central government charged the National Human Rights Commission with monitoring the implementation of the Vigilance

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123. *Id.*

124. WEISSBRODT, *supra* note 7, at 51.

125. *Id.*

126. ANTI-SLAVERY INT’L, *supra* note 87, at 9.

127. SRIVASTAVA, *supra* note 47, at 35.

128. ILO, *supra* note 39, at 38.

129. ANTI-SLAVERY INT’L, *supra* note 50.

130. The Bonded Labour System (Abolition) Act, No. 19 of 1976; India Code, art. 13, available at [http://www.ncpcr.gov.in/Acts/Abolition\\_of\\_Bonded\\_Labour\\_System\\_Act\\_1976.pdf](http://www.ncpcr.gov.in/Acts/Abolition_of_Bonded_Labour_System_Act_1976.pdf) (last visited Feb. 12, 2009).

Committees in the thirteen states most prone to debt bondage.<sup>131</sup> According to the Commission, the state Vigilance Committees only identified a small number of bonded laborers and completely failed to implement rehabilitation efforts.<sup>132</sup> In the majority of the states, especially those with the most widespread practices of debt bondage, the state governments simply neglected to activate the Vigilance Committees at all.<sup>133</sup> Furthermore, funds allocated by the central government to the Vigilance Committees' rehabilitative services have not been used for rehabilitation. An investigation by a Parliamentary Committee discovered that of the funds allocated for rehabilitation in 1996, only 38.39% had actually been used for that purpose.<sup>134</sup> Without the social and economic rehabilitation that Vigilance Committees are supposed to facilitate, released bonded laborers frequently fall back into slavery.

The failure to enforce and implement the BLA on the state level is the result of apathy and corruption amongst officials, fueled by discrimination and greed. Indeed, corruption exists from the highest state officials to the lower-levels of inspectors and collectors. In the states of Gujarat and Rajasthan (states that both suffer from some of the highest rates of debt bondage), the top labor officials claimed that bonded labor did not in fact exist in these states.<sup>135</sup> Bihar, another state crippled by debt bondage, avoided the tasks set forth in the BLA by simply redefining bonded labor under state law.<sup>136</sup> Under the newly crafted definition, the government of Bihar could not claim any incidents of bonded labor.<sup>137</sup> At lower levels, the local collectors who are in charge of distributing rehabilitation funds to freed workers are often too busy profiting from their positions to actually distribute the funds. Collectors may receive INR\$100,000 from the central government to distribute locally, but disperse a mere INR\$10,000.<sup>138</sup> Landlords and moneylenders also collude with the collectors to steal rehabilitation funds.<sup>139</sup>

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131. SRIVASTAVA, *supra* note 47, at 32.

132. *Id.* at 33.

133. ILO, *supra* note 39, at 38-39.

134. HUMAN RIGHTS WATCH, THE SMALL HANDS OF SLAVERY: BONDED CHILD LABOR IN INDIA 193 (1996), available at <http://www.hrw.org/sites/default/files/reports/india969.pdf>. Yet despite the states' poor record, in 2000 the central government still increased the allocation per worker for the rehabilitation program from INR\$4000 to INR\$20,000. SRIVASTAVA, *supra* note 47, at 33.

135. HUMAN RIGHTS WATCH, *supra* note 134, at 182.

136. *Id.* They called it an "attached labour system." *Id.*

137. *Id.*

138. *Id.* at 194.

139. BALES, *supra* note 2, at 214. It is common for landlords to coerce bonded laborers or have others pose as bonded laborers to file the necessary paperwork for rehabilitation, but to let

Furthermore, there is a lack of effective legal remedies for bonded laborers. As observed by the former Secretary of Labour, there is a practice amongst magistrates to simply refuse to “issue a release certificate even after all the ingredients of [a] bonded labour system have been proved beyond doubt.”<sup>140</sup> In a 2002 case, a district magistrate refused to issue orders for the release of a family of bonded laborers, declaring that because they had borrowed money from the landowners, they were ordered to remain in the village until the debt was repaid.<sup>141</sup>

This widespread failure is largely a reflection of a system of elites who have bonded laborers of their own, who readily subscribe to the those discriminatory beliefs grounded in the caste system, or who simply accept this as the way things work.<sup>142</sup> The “historical and economic relationships based on the caste hierarchy” and discrimination against Dalits outside the caste system have clearly contributed to a collective failure to enforce the BLA.<sup>143</sup> Anti-Slavery International cites caste discrimination as a primary motivation for officials’ failure to enforce the BLA.<sup>144</sup>

Like the BLA, the CLA has not been a successful vehicle for the eradication of contemporary forms of slavery in India. Again, failure stems from corruption, apathy, and discrimination, compounded by the inadequacy of the CLA itself. In fact, even if the provisions of the CLA are strictly enforced, the legislation leaves much to be desired. The fatal flaw of the CLA is that it does not ban child labor; it is merely testimony to the common acceptance of child labor in India. The limited scope of protection under the CLA seems to only further codify the belief that for certain children, education is a waste of time and instead they must work to supplement the paltry wages of their parents.<sup>145</sup>

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the landlord keep the money for himself. *See id.* The landlord pays the collector a small cut to release the money directly to him, rather than the individual who filed for rehabilitation. *See id.*

140. ANTI-SLAVERY INT’L, *supra* note 50.

141. *Id.*

142. HUMAN RIGHTS WATCH, *supra* note 134, at 200; *see* Bajpai, *supra* note 116, at 33 (describing the corrupt officials of the state Vigilance Committees, who often have their own bonded laborers).

143. Asha Krishnakumar, *Out of Bondage*, FRONTLINE, June 21, 2003, available at <http://www.hinduonnet.com/fline/fl2103/stories/20030704003109700.htm>; *see* ANTI-SLAVERY INT’L, *supra* note 45, at 6.

144. ANTI-SLAVERY INT’L, *supra* note 50 (“Many local officials continue to show a reluctance to implement legislation which prohibits bonded labour . . . because the individuals and institutions themselves are inherently discriminatory and sympathise with the idea that *dalits* owe a duty of labour to landlords.”).

145. *See* HUMAN RIGHTS WATCH, *supra* note 2, at 7.

As a result of gaping holes in the legislation, the CLA only covers about 10% of working children.<sup>146</sup> The CLA defines a child as less than fourteen years old.<sup>147</sup> Therefore, children of fourteen years can legally work in any occupation (hazardous and nonhazardous), and children below fourteen can work in any of the nonhazardous occupations, such as cottage industries (small factories).<sup>148</sup> In fact, the loopholes in the legislation have caused factories and other large enterprises to relocate to informal cottage or family-run operations, which are outside the purview of the CLA and its inspectors.<sup>149</sup>

In addition to inadequate legislation, there is a systematic failure at all levels of the government. The Ministry of Labour, for instance, identified the reasons for the failure of the CLA as “lack of complete awareness, sometimes apathy” amongst officials, as well as lengthy waits for prosecutions.<sup>150</sup> Human Rights Watch also reported extensive caste bias, corruption, and blatant denial amongst many government officials, even by a former Secretary of Labour.<sup>151</sup> At the state level, Vigilance Committees are congregations of apathetic, corrupt officials that openly embrace caste-bias and discriminatory practices.<sup>152</sup> Members of the district Vigilance Committees that are supposed to enforce the CLA are “totally pro-employer”<sup>153</sup> in regard to child labor and are often masters to adult and child bonded laborers themselves.<sup>154</sup>

Furthermore, the few local inspectors are overburdened and very susceptible to corruption.<sup>155</sup> The Secretary of Labour in Uttar Pradesh reported that there were only forty inspectors in the state to inspect 10,000 factories.<sup>156</sup> From 1997 through 2006, among all 35 states and

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146. Bajpai, *supra* note 116, at 26.

147. The Child Labour (Prohibition and Regulation) Act, No. 61 of 1986; India Code, art. 2.

148. *See id.* art. 3.

149. Bajpai, *supra* note 116, at 33.

150. Ministry of Labour & Employment, Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked & Migrant Child Labour 7 (2008), *available at* <http://labour.nic.in/cwl/DraftProtocolPreventionMigrantChildLabour.pdf>.

151. HUMAN RIGHTS WATCH, *supra* note 2, at 7. In a 2002 interview with Labour Secretary Vinod Vaish, the Secretary offered the correction that “child labor,” not “bonded child labor,” is the accurate term, stating, “I don’t think that we have many cases of bonded child labor. This is not a widespread problem.” *Id.*

152. *See* Bajpai, *supra* note 116, at 33.

153. HUMAN RIGHTS WATCH, *supra* note 2, at 47 (quoting a member of the Varanasi Vigilance Committee in Uttar Pradesh, discussing his colleagues on the Committee).

154. HUMAN RIGHTS WATCH, *supra* note 134, at 200; Weiner, *supra* note 57, at 54.

155. Bajpai, *supra* note 116, at 33.

156. Weiner, *supra* note 57, at 54.

union territories, there were 2,344,628 inspections under the CLA,<sup>157</sup> equaling roughly 20 inspections per day per state. Two million inspections over a nine-year time span yielded only 143,804 detected violations.<sup>158</sup> Importantly, the factories that officials are supposed to inspect do not include those operations in the unorganized sectors that slip through the CLA loopholes.<sup>159</sup>

Unfortunately, the judiciary does not perform much better than state government officials. In *Mehta v. State of Tamil Nadu*, the Supreme Court confirmed the obligations of the state governments under the CLA and clearly enumerated the remedies available to victims and the sanctions for offenders.<sup>160</sup> Yet, even years after the passage of the CLA and *Mehta*, the lower courts still failed to uphold the provisions of the CLA. Of the approximately 143,000 detected violations from 1997 to 2006, 21,436 resulted in actual convictions in the state courts.<sup>161</sup> And for those that are actually convicted, the state courts generally favor light sentences.<sup>162</sup> For example, failure to keep a registry of child workers should draw a fine of up to INR\$10,000, but the courts may only fine employers INR\$50 to 100.<sup>163</sup> Punishment for offenders in violation of article 3 of the CLA (employment of a child in a hazardous occupation) should result in imprisonment, yet jail time for CLA violations is rarely heard of.<sup>164</sup>

Unfortunately, even the unique system of public interest litigation in India fails to compel enforcement of these modern antislavery laws. Public interest litigation (PIL) is a distinctive model of adjudication that arose out of the need to provide impoverished members of society with access to the courts.<sup>165</sup> In fact, the whole emphasis of the PIL model is providing a forum through which individuals can shed light on “state repression, governmental lawlessness, administrative deviance, and exploitation of disadvantaged groups and denial to them of their

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157. Ministry of Labour & Employment, Figures on Child Labor, <http://labour.nic.in/cwl/EnforcementFiguresonchildLabour.pdf> (last visited Feb. 12, 2009).

158. *Id.*

159. Weiner, *supra* note 57, at 54.

160. A.I.R. 1996 S.C. para. 31.

161. Ministry of Labour & Employment, *supra* note 157.

162. Bajpai, *supra* note 116, at 33.

163. The Child Labour (Prohibition and Regulation) Act, No. 61 of 1987; India Code, art. 14, available at <http://www.bba.org.in/resourcecentre/clprohibition&regulationact.php> (last visited Feb. 12, 2009); Weiner, *supra* note 57, at 46.

164. Bajpai, *supra* note 116, at 31-32. Similarly, the fines under article 3 are supposed to range from INR\$10,000 to 20,000, yet often amount to only a few hundred rupees. HUMAN RIGHTS WATCH, *supra* note 134, at 186.

165. Ranjan K. Agarwal, *The Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India*, 21 ARIZ. J. INT’L & COMP. L. 663, 691 (2004).

rights.”<sup>166</sup> The system is unique for its relaxed requirements for standing and joinder of parties, thus allowing any individual, journalist, NGO, or activist to file a PIL.<sup>167</sup> Any of these parties may commence an action by writing an informal letter or even sending a newspaper clipping to the courts.<sup>168</sup> The system also lends itself to judicial activism in the creation of remedies.

Despite the noble effort to open the courts to the most vulnerable members of society, this model has produced few practical improvements in the enforcement of antislavery laws. Child labor PILs, for example, are illustrative of the failure of this revolutionary model of adjudication to instigate wide reforms. In the definitive child labor case following the enactment of the CLA, *Mehta v. State of Tamil Nadu*, the Supreme Court declared match and fireworks manufacturing as hazardous, thus making child labor illegal in these industries.<sup>169</sup> The Court did find, however, that children can be employed to pack matches and fireworks in areas removed from the manufacturing, especially because the “tender hands of the young workers are more suited to sorting out the manufactured product and process it for purposes of packing.”<sup>170</sup> The Court ordered their wages be set at 60% of those for adult employees, given their “special adaptability” to this task.<sup>171</sup> The Court also created a welfare fund for child laborers in Tamil Nadu to pay for their “education and recreation.”<sup>172</sup>

In a 1996 *suo moto* action subsequent to the initial 1991 case, the Court again took cognizance of the match and firework manufacturing industries in Tamil Nadu.<sup>173</sup> Like many scholars, the Court questioned why child labor perseveres despite the various child labor regulations, concluding that poverty is the basic reason.<sup>174</sup> The Court therefore ordered the States to implement extensive enforcement efforts and economic rehabilitation for victims.<sup>175</sup>

The *Mehta* cases highlight the flawed efforts to eradicate modern forms of slavery in India. Not only does the Court endorse antiquated

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166. *Id.* at 690 (internal quotes omitted).

167. *Id.* at 693-94. A proper PIL action is “something in which the public, the community at large, has some pecuniary interest or some interest by which their legal rights or liabilities are affected.” *Id.* at 688.

168. *Id.* at 693-94.

169. *Mehta v. State of Tamil Nadu*, A.I.R. 1991 S.C. para. 5.

170. *Id.* para. 7.

171. *Id.*

172. *Id.* para. 9.

173. *Id.* para. 5.

174. *Id.* paras. 25-26.

175. *Id.* para. 31.

beliefs, such as the utility of the “nimble fingers” of children, it also awards their supposed skill in packing matches with a wage of only 60% of that of adults. Rather than addressing the gaps in the CLA and the traditional beliefs that feed the legislation’s inadequacy, the Court reinforces them. Two elements of the Court’s opinions are especially indicative of the flawed struggle against modern slavery in India: (1) the Court crafted its order on the premise that poverty is the fundamental reason for child labor, and (2) the Court ignored the discriminatory practices and corruption amongst state officials that often obstruct the noble efforts of others (the Court entrusts the implementation of its order entirely to the state governments).<sup>176</sup>

#### IX. INTERNATIONAL EFFORTS TO ENFORCE LABOR STANDARDS

The international community has sought the eradication of slavery for many years.<sup>177</sup> In particular, the international community has been especially critical of labor conditions and the use of slave labor in developing countries, such as India. In addition to the enactment of numerous conventions, states and regional organizations have adopted several alternative methods of compelling compliance with international standards. Two prevalent methods are the use of trade agreements and political pressure. In India, specifically, there are also international collaborative projects to increase enforcement of existing domestic laws.

Most often, the international community turns to trade agreements to foster labor reforms. For example, Western nations have used the World Trade Organization (WTO) as a forum to link labor conditions, such as use of child labor, to trade agreements.<sup>178</sup> The European Union (EU) has created a Generalized System of Preferences (GSP) that reduces tariffs on imports from developing countries, but simultaneously mandates a ban on all products made by slave and child labor.<sup>179</sup> Those countries that can prove compliance with these bans will obtain privileged access to the vast EU market.<sup>180</sup> The United States has

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176. See Agarwal, *supra* note 165, at 708 (stating that the PIL system is faulted by the Court’s reliance on the integrity and efficiency of state governments and local inspectors).

177. Antislavery conventions dating from 1815 and conventions prohibiting modern forms of slavery, such as the 1926 Slavery Convention, indicate the international community’s long-standing interest in eradicating slavery in all of its forms. Bassiouni, *supra* note 3, at 445; Slavery Convention of 1926, art. 2, Mar. 9, 1927, 60 L.N.T.S. 253.

178. Michele D’Avolio, *Child Labor and Cultural Relativism: From 19th Century America to 21st Century Nepal*, 16 PACE INT’L L. REV. 109, 112 (2004).

179. Bajpai, *supra* note 116, at 52. The GSP uses the definitions of slave and child labor used in ILO conventions. *Id.*

180. *Id.*

multiple provisions that tie trade privileges to recognition of labor rights.<sup>181</sup> The Trade Act of 2002, for example, requires that with each new free trade agreement, the President must present to Congress a Labor Rights Report and a Laws Governing Exploitative Child Labor Report.<sup>182</sup>

States also use political pressure to compel intensified reform efforts. The United States Department of State, for example, issues an annual Trafficking in Persons Report (TIP), which highlights those states that have failed to “discover the perpetrators, prosecute the criminals, protect the victims, and ultimately abolish” forms of modern-day slavery.<sup>183</sup> In its evaluation of India, the 2008 TIP harshly criticizes “the lack of significant federal government action to address bonded labor, the reported complicity of some law enforcement officials[,] . . . and the critical need for an effective national-level law enforcement authority.”<sup>184</sup> The report also criticizes the failure to prosecute offenders and protect victims.<sup>185</sup> Thus, on a scale of 1 to 3, the TIP has ranked India as a “Tier 2 Watch List” country for five consecutive years.<sup>186</sup> There is also a growing push to downgrade India to a Tier 3 for its consistent failure to increase efforts against modern-day slavery.<sup>187</sup> A Tier 3 rating could subsequently result in the withdrawal of foreign assistance.<sup>188</sup>

There are also collaborative efforts to help the Indian government enforce its existing laws. The INDUS project, coordinated by the Indian Ministry of Labour and the United States Department of Labor, focuses

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181. *Id.* at 53.

182. U.S. Dep’t of Labor, Labor-Related Reports for U.S. Free Trade Agreements, <http://www.dol.gov/ilab/media/reports/usfta/main.htm> (last visited Nov. 19, 2009). The Bureau of International Labor Affairs monitors child and forced labor for the purposes of creating these reports, so that these principles may be incorporated into U.S. trade agreements. Bureau of Int’l Labor Affairs, Dep’t of Labor, Factsheet, <http://www.dol.gov/ilab/media/factsheets/20080200ILAB.pdf> (last visited Feb. 12, 2009).

183. DEP’T OF STATE, 2008 TRAFFICKING IN PERSONS REPORT (TIP) (2008), *available at* <http://www.state.gov/documents/organization/105501.pdf>. The TIP Report identifies major forms of trafficking in persons, all generally described as modern-day slavery. *Id.* at 19-23. These include forced labor, bonded labor, forced child labor, and forced prostitution. *Id.*

184. *Id.* at 139.

185. *Id.* at 139-41.

186. *Id.* at 139.

187. Chidanand Rajghatta, *Act or Get Tagged for Slavery, Warns US*, TIMES (India), June 13, 2007, <http://maillout.indiatimes.com/world/us/Act-or-get-tagged-for-slavery-warns-us/articleshow/2118390.cms>. A Tier 2 rating indicates countries have failed to comply with minimum standards set forth by the Trafficking Victims Protection Act, “but are making significant efforts [to] comply.” DEP’T OF STATE, *supra* note 183, at 35. The Tier 2 group of nations is comprised of those states where there is either a significantly increasing number of victims or a failure to provide evidence of increasing efforts. *Id.* Tier 3 status is for those states not making significant efforts to comply. *Id.*

188. DEP’T OF STATE, *supra* note 183, at 5.



on the support and development of regulatory projects by both governments.<sup>189</sup> The program is geared towards the “prohibition and elimination of the worst forms of child labour;” specifically identifying victims throughout five Indian states and providing comprehensive social and economic rehabilitation programs.<sup>190</sup>

These international efforts have obviously fallen short of their goals, and contemporary forms of slavery are still prevalent in India. The question then arises: If the government of India remains unwilling to enforce its laws and punish offenders, what else can the international community do to combat the massive problem of slavery in India? In response to atrocities committed throughout the world, states such as Belgium enacted national statutes that grant universal jurisdiction over *jus cogens* violations.<sup>191</sup> Courts in the United States have jurisdiction over acts of modern slavery under the Alien Tort Claims Act.<sup>192</sup> This trend indicates that perhaps Western industrialized nations are embracing universal jurisdiction as a means to address *jus cogens* violations outside the traditional system of treaty obligations.

#### X. UNIVERSAL JURISDICTION

Slavery and slavery-related crimes are widely acknowledged as *jus cogens* violations.<sup>193</sup> The Princeton Principles lists slavery as a *jus cogens* violation, which states have an obligation to prosecute and over which they may justifiably exercise universal jurisdiction.<sup>194</sup> In 1988, Kenneth Randall posited that the world should expect more frequent and aggressive assertion of universal jurisdiction by states; he also noted a multitude of problems that could arise from such a practice.<sup>195</sup> At the time, Randall identified a general reluctance amongst states to assert universal jurisdiction but predicted that this reluctance would wane over

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189. Joint Statement on Enhanced Indo-US Cooperation on Eliminating Child Labor, U.S.-India, Aug. 31, 2000, State Dep't No. 04-942, <http://www.state.gov/documents/organization/98465.pdf>.

190. *Id.*

191. A. Hays Butler, *The Growing Support for Universal Jurisdiction in National Legislation*, in UNIVERSAL JURISDICTION, *supra* note 8, at 67, 69.

192. *See Doe v. Unocal*, 963 F. Supp. 880 (C.D. Cal. 1997).

193. Bassiouni, *supra* note 8, at 39, 50; *The Princeton Principles on Universal Jurisdiction*, in UNIVERSAL JURISDICTION, *supra* note 8, at 18, 22, 30.

194. *Commentary*, in UNIVERSAL JURISDICTION, *supra* note 8, at 30. The Princeton Assembly intended for the term “slavery” to reflect those definitions in the 1956 Supplementary Convention, rather than limiting it to the historical context of trans-Atlantic slave trade. *Id.*; *see also* Lori F. Damrosch, *Comment: Connecting the Threads in the Fabric of International Law*, in UNIVERSAL JURISDICTION, *supra* note 8, at 91, 94.

195. Kenneth C. Randall, *Universal Jurisdiction Under International Law*, 66 TEX. L. REV. 785, 839-41 (1988).

the coming years.<sup>196</sup> However, despite initial appearances, there is still a general reluctance amongst states to embrace universal jurisdiction, and the assertion of universal jurisdiction still evokes serious doubts.

Indeed, there are states that have used national statutes to assert jurisdiction over and prosecute persons who have committed *jus cogens* crimes.<sup>197</sup> To date, Amnesty International counts 125 countries that have universal jurisdiction statutes.<sup>198</sup> Among those countries are Belgium, Canada, and the United Kingdom.<sup>199</sup> In fact, even the International Court of Justice (ICJ) confirmed a state's right to assert universal jurisdiction even absent a territorial nexus.<sup>200</sup> One such example of a U.S. statute conferring universal jurisdiction is the Alien Tort Claims Act (ATCA).<sup>201</sup>

Under the ATCA, U.S. courts may exercise universal jurisdiction over nonstate actors who commit violations of peremptory norms, customary international law, or treaty law.<sup>202</sup> There is a growing sentiment that under the ATCA that there is "no logical reason . . . for allowing private individuals and corporations to escape liability for universally condemned violations" such as forced labor.<sup>203</sup> In fact, U.S. courts have explicitly recognized individual liability for slavery under the ATCA in a series of cases. In *Tel Oren v. Libyan Arab Republic*, the D.C. Circuit commented that there could be individual liability under the ATCA for acts such as slave trading.<sup>204</sup> Over ten years later in *Kadic v. Karadzic*, the Second Circuit confirmed that offenses of "universal concern" under the ATCA include slave trading committed by nonstate actors.<sup>205</sup> Finally, in *Doe v. Unocal Corp.*, the Central District of

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196. *Id.*

197. Israel's prosecution of Adolph Eichmann is the earliest instance and is the paradigmatic case of the assertion of universal jurisdiction to prosecuting *jus cogens* crimes. See Damrosch, *supra* note 194, at 94.

198. AMNESTY INT'L, UNIVERSAL JURISDICTION: THE CHALLENGES FOR POLICE AND PROSECUTING AUTHORITIES 3 (2007), available at <http://www.amnesty.org/en/library/asset/IOR53/007/2007/en/dom-IOR530072007en.pdf>.

199. Butler, *supra* note 191, at 69-72.

200. Case Concerning the Arrest Warrant of 11 April 2000 (Republic of the Congo v. Belgium), 2002 I.C.J. 3 (Feb. 14, 2002). The I.C.J. held that the growing number of states adopting national statutes granting universal jurisdiction evidenced a consensus in support of Belgium's statute that allowed universal jurisdiction absent any other jurisdictional basis. *Id.*

201. *Id.* para. 48.

202. KENNETH C. RANDALL, FEDERAL COURTS AND THE INTERNATIONAL HUMAN RIGHTS PARADIGM 49 (1990).

203. Marisa A. Pagnattaro, *Enforcing International Labor Standards: The Potential of the Alien Tort Claims Act*, 37 VAND. J. TRANSNAT'L L. 203, 227 (2004) (quoting *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 445 (D.N.J. 1999)).

204. 726 F.2d 774, 794-95 (D.C. Cir. 1984); H. Knox Thames, *Forced Labor and Private Individual Liability in U.S. Courts*, 9 MICH. ST. U. J. INT'L L. 153, 191 (2000).

205. 70 F.3d 232, 240 (2d Cir. 1995); Thames, *supra* note 204, at 193.

California determined that individual and corporate liability under the ATCA exists not just for slave trading, but also for forced labor as a modern form of slavery.<sup>206</sup>

While this seems to indicate a growing international consensus supporting the use of national statutes to assert universal jurisdiction over *jus cogens* violations, such an appearance is misleading. Universal jurisdiction still faces serious questions and doubts that hardly evidence support by the international community, especially in regard to the prosecution of slavery.

#### XI. IS UNIVERSAL JURISDICTION THE ANSWER?

Even though the international community recognizes slavery and all of its forms as *jus cogens* violations, the assertion of universal jurisdiction remains an ill-fitted solution to a complex problem. First, there is a questionable basis for universal jurisdiction over the international crime of slavery when the definition of slavery has expanded well beyond its historical meaning. Also, while there are several states that have some sort of statute allowing for universal jurisdiction, there does not seem to be widespread support for the assertion of universal jurisdiction over slavery.<sup>207</sup> This implicates serious questions of comity and calls into question whether such a blunt instrument is the best tool with which to approach such a delicate issue. Finally, universal jurisdiction may do little to address the complex and fundamental issues underlying contemporary forms of slavery in India.

Historically, traditional slavery is tied to piracy as a *jus cogens* violation.<sup>208</sup> Some scholars argue that this in itself is a flawed rationale for universal jurisdiction, as piracy was never historically regarded as a heinous crime or subject to universal jurisdiction.<sup>209</sup> Perhaps even more problematic is the expansion of the *jus cogens* crime of slavery to include certain practices that may not belong in the same classification. Modern forms of slavery are clearly different from traditional forms of slavery in that they are not defined by ownership. However, as a practical matter, it is necessary to rewrite the definition of slavery to include those modern forms of slavery, which rely on a critical level of control. Yet an overly

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206. 110 F. Supp. 2d 1294, 1308 (C.D. Cal. 2000). In *Unocal*, the plaintiffs contended that forced labor is “modern slavery.” *Id.* at 1308. Even though the plaintiffs’ action against Unocal for forced labor as modern slavery failed, the court did recognize that forced labor is an act of modern slavery that invites liability under the ATCA. *Id.* at 1308-10; *see also* Thames, *supra* note 204, at 153.

207. *See* Bassiouni, *supra* note 3, at 450; *see also* Rassam, *supra* note 51, at 809.

208. Kontorovich, *supra* note 10, at 186.

209. *Id.*

broad and malleable definition of the crime of slavery poses two serious problems: (1) it would undermine enforcement efforts by overextending resources, and (2) an open-ended definition lends itself to cultural imperialism.<sup>210</sup>

Under this ill-defined crime, it is not clear when economic exploitation of an individual constitutes slavery. While pornography, prostitution, or female circumcision may be exploitative practices, at what point do they attain the status of slavery, if at all? Arguably, these practices should never receive the status of *jus cogens* violations. The prevalent system of bonded labor in India, however, is much more likely to attain that critical level of control necessary to constitute the international crime of slavery.

Yet regardless of the present status of *jus cogens*, some scholars counter that there is no real consensus supporting the assertion of universal jurisdiction over the crime of slavery. Even though the ICJ declared that there is a move towards universal jurisdiction, as evidenced by national statutes, this is a questionable premise. Of all the national statutes, those of Belgium and Spain are the only two that permit the exercise of pure universal jurisdiction without relying on some territorial connection.<sup>211</sup> All other national universal jurisdiction statutes rely on a territorial nexus.<sup>212</sup> Furthermore, under extreme pressure from the U.S. government, Belgium redrafted its statute to essentially remove the grant of universal jurisdiction.<sup>213</sup> The ATCA, under which U.S. courts have specifically found an action for slavery, has also relied on some territorial nexus in each of its applications, and courts have never found pure

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210. When a judge in an industrialized nation sits in judgment of developing countries to prosecute an ill-defined violation, it undermines the validity and has the taste of cultural imperialism. See Michael Kirby, *Universal Jurisdiction and Judicial Reluctance: A New "Fourteen Points,"* in UNIVERSAL JURISDICTION, *supra* note 8, at 240, 250-51.

211. M. Cherif Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, 42 VA. J. INT'L L. 81, 137 (2001); see Butler, *supra* note 191, at 69.

212. Bassiouni, *supra* note 211, at 136-37; Diane F. Orentlicher, *The Future of Universal Jurisdiction in the New Architecture of Transnational Justice*, in UNIVERSAL JURISDICTION, *supra* note 8, at 214, 216; see Butler, *supra* note 191, at 73-75. Prosecution under Canada's statute, for example, requires the accused to be present in Canada in order to protect the right to confrontation. Butler, *supra* note 191, at 71. Furthermore, there has been no assertion of pure universal jurisdiction under the ATCA. This territorial basis for prosecution under national statutes merely constitutes practice of the principle of *aut dedere aut judicare*; it is not necessarily sufficient to establish "international customary practice with respect to universal jurisdiction." Bassiouni, *supra* note 211, at 149-51.

213. AMNESTY INT'L, UNIVERSAL JURISDICTION: THE SCOPE OF UNIVERSAL CIVIL JURISDICTION 5 (2007), available at [http://asiapacific.amnesty.org/library/pdf/IOR530082007ENGLISH/\\$File/IOR5300807.pdf](http://asiapacific.amnesty.org/library/pdf/IOR530082007ENGLISH/$File/IOR5300807.pdf).

universal jurisdiction. This does little to establish a consensus amongst Western nations favoring the unilateral assertion of universal jurisdiction.

The lack of consensus on the exercise of universal jurisdiction by states over *jus cogens* violations implicates serious issues of comity and cultural tension, especially in regard to slavery in India. As one scholar points out, “[e]ven with the best of intentions, universal jurisdiction can be used imprudently, creating unnecessary frictions between states, potential abuses of legal processes, and undue harassment of individuals.”<sup>214</sup> Additionally, enforcing the prohibitions of modern forms of slavery is a “very delicate” matter, “since any attempt to dismantle the system mean[s] attacking the very social, economic[,] and political fabric of the country.”<sup>215</sup> Developing countries often worry that reform will deprive them of their “competitive advantage” and that such reforms imposed by Western states are intentionally economically repressive.<sup>216</sup>

Indeed, the fatal flaw of universal jurisdiction as exercised by individual nations lies in its inability to generate common values necessary to deter and prevent the crime of slavery in an effective manner.<sup>217</sup> Perhaps the most fundamental cause of slavery in India is the caste system, a societal construct to which Western nations cannot easily relate. The radically divergent cultural norms of India and Western industrialized nations will indeed frustrate any effort to enforce international labor standards. Yet even though there may be a need for “special caution and sensitivity when advancing arguments of universalism in the face of clashing cultural values,” contemporary slavery does not warrant blind tolerance.<sup>218</sup>

Nevertheless, the assertion of universal jurisdiction through national statutes is not a realistic answer. The relevant statutes fail to address the societal and economic factors that drive contemporary forms of slavery in India. The prosecution of Indian nationals in distant courtrooms, in countries with no comprehension of Indian cultural traditions, is unlikely to yield a paradigm shift in Indian social and labor practices. In order to eradicate modern forms of slavery in India, there must be an internal movement to dismantle caste bias and antiquated notions that value work

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214. Bassiouni, *supra* note 211, at 82.

215. *U.N. Report*, *supra* note 2.

216. D’Avolio, *supra* note 178, at 112; Geeta Chowdhry & Mark Beeman, *Challenging Child Labor: Transnational Activism and India’s Carpet Industry*, 575 ANNALS 158, 159 (2001).

217. Bassiouni describes the theory of universal jurisdiction as based on the “existence of common values” and an “assumption that expanded jurisdiction will deter and prevent crime.” Bassiouni, *supra* note 8, at 42.

218. Jack Donnelly, *The Relative Universality of Human Rights*, 29 HUM. RTS. Q. 281, 304 (2007).

over education. A distant courtroom is not the proper forum to bring these issues to the Indian masses, who are the ones that must instigate that change. While international efforts may help to bring these issues to the domestic fore, they must be carefully crafted to address such a complex, multifaceted problem. Prosecution by a foreign country may only foster cultural imperialism and breed resentment, which is not the way to encourage Indian officials to abandon corruption and discrimination and properly enforce their laws.

For those critical of the unilateral assertion of universal jurisdiction through national statutes, the International Criminal Court (ICC) offers another potential venue for prosecution. In fact, article 7 of the Rome Statute lists "enslavement" as a crime against humanity over which the ICC has jurisdiction.<sup>219</sup> Yet, under the Rome Statute of the ICC, prosecution may only be initiated in one of three ways: (1) by U.N. Security Council referral, (2) by the referral of a member state, or (3) by the initiative of the prosecutor.<sup>220</sup> India, however, is not a signatory to the Rome Statute. Nevertheless, the ICC may still exercise jurisdiction over a national of a nonsignatory state if referred by the Security Council or if the crime was committed in the territory of a party state.<sup>221</sup> Unlike the unilateral assertion of universal jurisdiction by a state, the jurisdiction of the ICC possesses the legitimacy of international consensus.

However, the ICC does not present a viable venue for prosecution. While the ICC could exercise jurisdiction over an Indian national despite India's status as a nonsignatory, the ICC has never tried a case of enslavement outside the "context of a formal war."<sup>222</sup> Even though individual acts of enslavement during peacetime may be within ICC jurisdiction, the ICC is not the proper forum to try small scale violations by individual moneylenders or Vigilance Committee members. Prosecution in the ICC is too costly and too cumbersome to address private acts of enslavement in India. Additionally, the ICC should not be distracted from its task of prosecuting systematic enslavement of an entire population by belligerent states.

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219. Rome Statute, *supra* note 20, art. 7. Some of the ICC's earliest arrest warrants were for crimes of enslavement, for example against Joseph Kony in Uganda. *See, e.g.*, Prosecutor v. Kony, Case No. ICC-02/04-01/05, Warrant of Arrest for Joseph Kony, ¶42 (Sept. 27, 2005), available at <http://www.icc-cpi.int/iccdocs/doc/doc97185.pdf>.

220. Rome Statute, *supra* note 20, arts. 13-14.

221. *Id.*

222. Rassam, *supra* note 51, at 835.

## XII. CONCLUSION

The practice of modern slavery in India is widespread, with more bonded laborers in India than any other country. Continued adherence to the caste system ensures that slavery remains entrenched in Indian society. Unfortunately, domestic and international efforts have failed to undermine slavery's prevalence in India. The international community is now grasping for a solution to this dire situation. Yet while something must be done to address modern slavery in India, universal jurisdiction is an imprecise tool for such a complex problem. Seeking prosecution in a distant courtroom does nothing to dispel the caste bias and ease the resulting poverty. It is an ill-fitted and coarse approach to a problem that requires a meticulously crafted solution generated and endorsed by the Indian people.