

THE HUMAN TRAFFICKING  
PRO BONO LEGAL CENTER



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Hearing on “Challenges & Opportunities: The  
Advancement of Human Rights in India”

Before the  
Tom Lantos Human Rights Commission  
United States Congress  
114th Congress  
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Chairman McGovern and Chairman Pitts, Members of the Commission,

Thank you for this opportunity to testify before the Tom Lantos Commission on Human Rights. It is an honor to appear before you today to discuss India and human trafficking.

Senator Corker and Senator Cardin each raised India's troubling record on human trafficking and modern slavery in a May 24<sup>th</sup> hearing before the Senate Foreign Relations Committee. I am delighted that the Lantos Commission has chosen to focus on this key human rights issue, as well.

### *Trafficking, Forced Labor, and Slavery in India*

According to the International Labor Organization, the Asia-Pacific region accounts for the largest percentage of people – including children – in forced labor.<sup>1</sup> International experts agree that India has by far the largest number of people in bonded and forced labor in the world.

The ILO numbers – 11.7 million people held in all forms of forced labor in the Asia-Pacific region, most of those in India – are indeed shocking. But one need look no further than the U.S. State Department's Trafficking in Persons Report to understand the depth of India's struggle with human trafficking and forced labor. As the 2015 TIP report chapter on India states:

...men, women, and children in debt bondage—sometimes inherited from previous generations—are forced to work in industries such as brick kilns, rice mills, agriculture, and embroidery factories. Ninety percent of India's trafficking problem is internal, and those from the most disadvantaged social strata—lowest caste *Dalits*, members of tribal communities, religious minorities, and women and girls from excluded groups—are most vulnerable. Trafficking within India continues to rise due to increased mobility and growth in industries utilizing forced labor, such as construction, steel, textiles, wire manufacturing for underground cables, biscuit factories, pickling, floriculture, fish farms, and boat cutting. Thousands of unregulated work placement agencies reportedly lure adults and children for sex trafficking or forced labor, including domestic servitude, under false promises of employment. In addition to bonded labor, children are subjected to forced labor as factory workers, domestic

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<sup>1</sup> The ILO estimates that more than 56 percent of the estimated 20.9 million people held in forced labor and servitude around the world are in this region. ILO Fact Sheet, available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_181921.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_181921.pdf) (accessed June 6, 2016).

servants, beggars, and agricultural workers. Begging ring leaders sometimes maim children to earn more money.<sup>2</sup>

The 2015 TIP Report also points to widespread corruption in India, corruption that allows trafficking to flourish. In the words of the TIP Report, “Some corrupt law enforcement officers protect suspected traffickers and brothel owners from enforcement of the law, take bribes from sex trafficking establishments and sexual services from victims, and tip-off sex and labor traffickers to impede rescue efforts.”<sup>3</sup>

India has refused to provide data on prosecutions and convictions to the United States Government. Similarly, India has provided no data on prosecutions of corrupt officials complicit in human trafficking.<sup>4</sup>

A recent Harvard study reports that in the case of child forced labor, police file legally-mandated reports only “sporadically,” and traffickers are “rarely prosecuted.”<sup>5</sup> Across the board in India, impunity remains the norm.

Inexplicably, with zero prosecutions of traffickers reported and with credible reports that the Indian authorities instead prosecuted *victims* of human trafficking, the U.S. Government nevertheless ranked India as a tier two country.<sup>6</sup> India’s record combatting human trafficking and forced labor merits a tier three – or, at a minimum, a tier two watch list – ranking. Political expediency appears to have played a significant role in this ranking. **In light of India’s failure to take decisive steps to combat human trafficking, India should be ranked as tier three in the 2016 TIP Report.**

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<sup>2</sup> U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT: JULY 2015 184 (2015) [hereinafter TIP REPORT 2015].

<sup>3</sup> *Id.*

<sup>4</sup> The U.S. State Department Trafficking in Persons Report 2015 states, “[The Indian] government’s law enforcement progress was unknown as the government did not provide adequate disaggregated anti-trafficking data and official complicity remained a serious concern. The government sometimes penalized victims through arrests for crimes committed as a result of being subjected to human trafficking.” *Id.*

<sup>5</sup> Elizabeth Donger & Jacqueline Bhabha, FXB Center for Health and Human Rights at Harvard University, *Is this Protection? Analyzing India’s Approach to the Rescue and Reintegration of Children Trafficked for Labour Exploitation* 4, (2016), <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/5/2016/03/Is-this-Protection-Final.pdf>.

<sup>6</sup> TIP REPORT 2015, *supra* note 5 at 184.

## *Violations of the Rights of Indian Trafficking Victims Abroad*

India not only has a significant human trafficking problem at home. India is the country of origin for thousands victims around the world.<sup>7</sup> The list of destination countries is extensive. It includes the United States.

One measure of a government's seriousness in combatting trafficking is the treatment meted out to victims seeking consular support from their own government while abroad. The Indian Government's treatment of trafficking victims in the United States is highly problematic. Advocates, churches, and NGOs supporting these victims report that harassment of Indian trafficking victims in the United States *by Indian Government and consular officials* is commonplace. Trafficking victims with T-visas – visas issued to protect victims of trafficking and to allow them to remain in this country – face demands from Indian consular officials that they provide their entire T-visa application to the Indian Government.<sup>8</sup> These applications include highly confidential information about the traffickers and the victims' vulnerability to retaliation.

The T-visa application includes four prongs that a victim must prove:

1. He/she is a victim of a severe form of trafficking in persons;
2. He/she is physically present in the United States on account of trafficking;
3. He/she has cooperated with all reasonable requests from law enforcement (unless he/she is under 18 or unable to cooperate due to trauma);
4. He/she would suffer extreme hardship involving unusual and severe harm upon removal.

In order to prove these elements, our clients submit lengthy affidavits. These documents are highly confidential. The affidavits generally name recruiters, corrupt officials, and other guilty parties in the country of origin. The mere existence of the affidavit indicates that the victims have disclosed this information to law enforcement in the United States. Disclosure of these statements to the Indian Government may put the victims and their families at risk of retaliation.

The factual data required under prong 4, "extreme hardship," can be particularly problematic. This portion of the affidavit often includes: 1) the people in the home country the victim fears might retaliate against him/her or his/her family members; 2) any

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<sup>7</sup> *Id.* Unscrupulous labor recruiters in India send workers around the world into conditions of forced labor. Those labor recruiters – including the recruiters involved in the Signal International human trafficking litigation in the United States – continue to operate with impunity.

<sup>8</sup> Jason Szep & Matt Spetalnick, *India Takes Tough Line on Trafficking Victims Who Get Special U.S. Visas*, REUTERS (Nov. 4, 2015), <http://www.reuters.com/article/us-usa-india-visas-insight-idUSKCN0ST1SN20151104>.

evidence of prior abuse or retaliation; 3) information on any debts held by the traffickers in the country of origin; 4) any evidence of other dangers in the home country, such as domestic violence; 5) information about medical conditions that make it difficult for the victim to return home; 6) evidence of corruption in the home country that renders the victim unsafe.

The Indian Government is essentially blackmailing trafficking victims – requiring production of the T-visa application if the victims ever want to receive a passport or bring their families to the US. Meanwhile, the clock on the derivatives’ visas is ticking. The visas expire. The children age out.

In addition to demanding T-visa applications, the Indian Government interferes with the victims’ families’ travel. Family members with T-derivative visas to come to the United States have been pulled out of departure lines, their passports seized by Indian immigration officials at the airport. In March 2016, a mother and child, T-derivative visa holders, had passports and visas seized at the airport. They were not permitted to leave the country. The Indian Government eventually allowed them fly, but only after the husband obtained documentation from an Indian consulate in the US that permitted the family members to obtain their passports back from the Indian government and depart.

Indian trafficking victims have sued the Indian Government, demanding that the violation of their right to depart their own country cease immediately. And although the Indian citizen petitioners won their suit, the harassment continues.

Most recently, India has begun stamping the new Indian passports issued for T-visa recipients in the United States with a statement that the bearer is a victim of trafficking. This is the equivalent of stamping a scarlet T on the victims’ identification documents. It is a significant violation of trafficking victims’ confidentiality.

India is a signatory to the U.N. Trafficking Protocol.<sup>9</sup> India’s treatment of its own citizen victims of trafficking violates the commitments undertaken with adoption of the Protocol.

#### *Trafficking of Domestic Workers to the United States by Indian Officials and Diplomats*

Unfortunately, harassment of Indian trafficking victims in the United States is entirely consistent with other Indian Government actions in this country. In particular, we have seen instances of trafficking of domestic workers by Indian officials posted to the United States.

Traditionally, foreign diplomats and consular officers are permitted to bring domestic workers to this country on A-3 and G-5 visas. Because these visas tie the domestic workers to their employers, the workers are extremely vulnerable to abuse. Three

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<sup>9</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

separate cases have been brought in the federal courts alleging the trafficking of domestic workers into this country by Indian consular officials.<sup>10</sup>

In a letter to Secretary of State John Kerry in the wake of the well-known Khobragade case, a coalition of non-governmental organizations wrote:

*The Khobragade case was not the first allegation of domestic worker abuse by Indian diplomats in the United States; in fact, it was the third case from the Indian Consulate in New York alone. Two civil cases filed in the Southern District of New York, Bhardwaj v. Dayal and Gurung v. Malhotra, alleged human trafficking and significant abuse of domestic workers in the United States. The Malhotra case ended in a \$1.4 million default judgment. The Dayal case ended in a confidential settlement.*

*The Indian Government has not only tolerated this widespread alleged abuse, it has facilitated these violations. The Indian Government participated in the harassment of the victims and their families. The Indian Government joined Defendant Malhotra and her co-defendant spouse in suing the victim in the Gurung case, along with all of her U.S. pro bono attorneys. The suit sought to enjoin enforcement of the U.S. judgment in India. In the Dayal case, the Consul General held press conferences demanding the deportation of the plaintiff, and showed her picture to the press. The Indian Government's behavior in the Khobragade case shocks the conscience. Rather than seeking to investigate allegations against Khobragade raised in a 2013 State Department letter, the Indian Government and the Defendant initiated legal actions against the victim and the Defendant embarked on a campaign of harassment against the victim's family. The police interrogations and harassment reached such a level that the United States brought the family to the United States for their own protection. India's misuse of diplomatic immunity to whisk their consular official home to India was a shameful episode in international affairs.<sup>11</sup>*

Abuse of A-3/G-5 domestic workers – including abuse by Indian officials posted to the United States – prompted Congress to pass extensive protections for these domestic workers. One of the remedies Congress mandated in 2008 provided for suspension of countries from the A-3/G-5 visa regime.

Section 203(a)(2) of the William Wilberforce Act requires the Secretary of State to suspend the issuance of A-3 or G-5 visas to applicants “seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there

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<sup>10</sup> See U.S. v. Khobragade, No. 13-MAG-2870 (S.D.N.Y.); Bhardwaj v. Dayal, No. 11-cv-04170 (S.D.N.Y.); Gurung v. Malhotra, No. 10-cv-5086 (S.D.N.Y.).

<sup>11</sup> Letter to Secretary John Kerry, April 25, 2014.

is credible evidence that one or more employees” have abused or exploited one or more non-immigrants holding an A-3 or G-5 visa, where the diplomatic mission or international organization “tolerated” such actions.

Appropriations language attached to the State Department budget further clarified this requirement.

Provided, That in determining whether to suspend the issuance of A-3 or G-5 visas under such section, the Secretary should consider the following as “credible evidence”: (1) a final court judgment (including a default judgment) issued against a current or former employee of such mission or organization (for which the time period for appeal has expired); (2) the issuance of a T-visa to the victim; or (3) a request by the Department of State to the sending state that immunity of individual diplomats or family members be waived to permit criminal prosecution: Provided further, That the Secretary should assist in obtaining payment of final court judgments awarded to A-3 and G-5 visa holders, including encouraging the sending states to provide compensation directly to victims.

Finally, the report language further states:

In addition to the directives in subsection (k) of this section and with respect to the implementation of section 203(a)(2) of Public Law 110-457, the Secretary of State is directed to consider the failure to provide a replacement passport within a reasonable period of time to a T-visa recipient; the existence of multiple concurrent civil suits against members of the diplomatic mission; or failure to satisfy a civil judgment against an employee of the diplomatic mission as sufficient to determine that such mission “tolerated such actions.”

In 2014, non-governmental organizations called for the suspension of India from the A-3/G-5 visa program. But Secretary Kerry did not suspend India.

Instead, India appears to have found a way to circumvent Congress’s protections for A-3/G-5 domestic workers. Rather than apply for these visas, there are reports that Indian officials now request A-2 visas for private domestic workers. But A-2 visas are restricted to technical and administrative staff employed directly by an embassy or consulate. Assuming that reports that India is now using A-2 visas for private domestic workers are accurate, India is flouting the Wilberforce protection regime designed to prevent the exploitation of domestic workers. This is visa fraud. To the extent that the United States government is issuing A-2 visas under these circumstances, the State Department has provided Indian government officials posted in the United States a license to exploit. And that is simply unacceptable.

*Conclusion:*

The challenges discussed above are not insurmountable. Recommendations to the United State Government to end these abuses include:

- Rank India as a tier three country in the 2016 Trafficking in Persons Report;
- Suspend India from the A-3/G-5 visa program;
- Prevent the issuance of A-2 visas to workers who should be covered by the Wilberforce protections under the A-3/G-5 visa program;
- Press India to end the forced disclosure of T-visa and other confidential information in order to obtain normal consular services in the United States;
- Press India to provide appropriate, disaggregated data on human trafficking prosecutions of perpetrators and corrupt officials;
- Press India to suspend – and prosecute – unscrupulous labor recruiters who send workers around the globe into conditions of forced labor; and
- Press India to support and protect those Indian and international organizations doing anti-trafficking work in India.