

DIGITAL ECONOMY AND CHILD LABOUR IN INDIA: A DOCTRINAL CRITIQUE OF EXISTING LAWS IN ADDRESSING EMERGING FORMS OF EXPLOITATION

Anant Kumar¹, Trishika Srivastava²

Research Scholar¹, Research Scholar²

Faculty of Law¹, University of Lucknow¹, Lucknow (U.P), India.

Department of Political Science², University of Delhi², (Delhi), India.

Abstract

The rapid growth of India's digital economy has provided opportunities in new areas of economic activity, but at the same time has opened up new uncharted territories of exploiting children that the existing legal frameworks are ill-equipped to address. This paper makes a doctrinal critique of the Indian existing legislative structure on regulatory aspects of Child Labour including the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (as amended in 2016), the Protection of Children from Sexual Offences Act, 2012, the Information Technology Act, 2000 and others in order to examine the adequacy of such legislation to respond to emerging forms of exploitation of children that are manifesting in the form of child influencer labour, gig economy micro-tasking, online sexual exploitation, creation of digital content, and algorithmic targeting. Through an analysis of the provisions of the statute, judicial pronouncements, international obligations under ILO Conventions No. 138 & 182 and the UN Convention on the Rights of the Child, comparative frameworks of the European Union and the United States, the paper argues that due to the concepts of three fundamental doctrinal deficiencies, that is, definitional rigidity, jurisdictional ambiguity and enforcement asymmetry that are present in India's legal framework which are detrimental to the enforcement of labour laws. The paper concludes with recommendations for legislative reform and regulatory innovation for the creation of a rights-protective legal architecture that suits the realities of the twenty-first century digital economy.

Keywords: Child Labour, Digital Economy, Doctrinal Critique, CALPRA 2016, Child Rights, Online Exploitation, India, Gig Economy, POCSO, Information Technology Law

1. Introduction

India is at an outstanding crossroads. On the one hand, it is the largest nation in the world with the largest population of youth on earth, and a fast-expanding digital economy that is expected to reach USD 1 trillion by 2030. On the other hand, it remains one of the countries with the highest absolute numbers of child labourers with the 2011 Census registering the number of child labourers aged between five to fourteen at about 10.1 million, a figure that is widely acknowledged to be an undercount of the actual magnitude of the problem. The conjunction of these two realities - a booming digital economy and a chronic problem of child labour - has produced entirely new forms of exploitation for which neither policymakers nor legal scholars have addressed politically.

The digital economy and its broad understanding is that it encompasses all economic activities where digitised information and knowledge comprises an important factor of production. This encompasses e-commerce, creation of digital content and online platforms, gig and freelance work, social media influencing as well as the infrastructure of apps, algorithms and data to make that happen. For children this economy is a sharp two edged sword. On one side, there is the educational tools, the ways of creative expression and the access to worldwide knowledge. On the one, it opens up new opportunities for abuse: children are used as content

producers, social media influencers, micro-taskers who work on digital labour platforms and victims of online sexual exploitation for commercial purposes.

India's main law on child labour, the Child and Adolescent Labour (Prohibition and Regulation) Act of 1986, as amended by the Child and Adolescent Labour (Prohibition and Regulation) Amendment Act of 2016 (hereinafter CALPRA 2016) was envisaged and implemented in the context of conventional forms of child labour - factories, mines, domestic service and hazardous professions. The digital world had not even entered the legislative thoughts at the time and even the amendment of 2016, though it added some level of protection, did not substantially address digital forms of labour exploitation. This doctrinal gap has led to what this paper calls a "regulatory vacuum" a space where children are being exploited using digital means in the face of defeatist silence, ambiguity, or ineffectiveness in the law.

This paper does a doctrinal analysis of the existing Indian legal framework, as it is applicable or not to emerging forms of child exploitation in digital space. As a methodology, doctrinal legal research focuses on the systematic analysis of legal rules, on their internal logic, on their coherence with other broader legal principles, and on their ability to accomplish their stated normative objectives. This paper applies such methodology to the nexus of child labour law and the digital economy, making evident large gaps, contradictions and inadequacies in the current framework.

The following is the overall division of the paper: Section 2 charts the landscape with respect to digital child exploitation in India. Section 3 focuses on the existing legal framework. The critical doctrinal part of the discussion is carried in Section 4. Section 5 puts the survey of comparative frameworks. Section 6 provides some recommendations for reform. Section 7 concludes.

2. Digital Child Exploitation in India: A Landscape.

2.1 Digital Economy: Size and Penetration

The digital economy of India has developed at an incredible pace in the previous decade. The spread of cheaper smartphones, the introduction of low-cost mobile internet services through the Jio network, post-2016 and various government programmes under the Digital India programme have brought lakhs of people to the net for the first time. As of the year 2023, there were about 880 million internet users in India which is considered as the second largest online market in the world. Crucially, many of this user-base are children and young persons.

The Internet and Mobile Association of India (IAMAI) has estimated that a popular age group of five to fifteen years old kids would be a growing segment of Indian internet users especially in urban and peri-urban areas. The global pandemic of novel coronavirus (Covid-19) acceleration of this trend in a massive way as schools were closed, and millions of children were pushed online for the first time. This mass introduction of children into digital space without legal protection and/or digital literacy has created a fertile ground for new forms of exploitation.

2.2 Typology of Child Exploitation in the Digital World

For the purpose of this paper, CE which is economic in nature, can be divided into five broad categories and each category involves different legal questions:

First, child influencer and content creator labour which involves the use of children, often by their own parents or guardians, as social media influencers on social media platforms such as YouTube, Instagram and ShareChat. These children can be seen in videos, doing work and creating a commercial advertising income for the family. In many cases, they work long hours, have no educational continuity and have no control regarding their earnings. This phenomenon which is sometimes termed as "sharenting" in its commercial form has attained enormous scale in India.

Second, gig economy micro-tasking, wherein kids do small digital tasks like data labelling, transcription, image tagging, survey completion, etc. on platforms like Amazon Mechanical Turk, Microworkers, domestic equivalents, etc. These tasks are too often fragmented to be noticeable as employment tasks and escape the regulatory radar screen altogether.

Third, online sexual exploitation for commercial purposes (OSECP), which is the production, dissemination and commercialisation of sexual abuse materials of children (CSAM) through digital networks. India is recognised worldwide as much a source as well as a transit nation for CSAM. The National Crime Records Bureau (NCRB) data shows consistent increase in numbers of offences under the Protection of Children from Sexual Offences Act, 2012 (POCSO) involving digital elements but the real extent of the same is thought to be massively underreported.

Fourth, commercial exploitation through algorithms is the use of algorithm technologies from the platforms to target minors with ad content, brand engagement and data harvesting for commercial purposes. While children do not work in the traditional sense, their attention and behavioural data are commercial value and it calls into question whether the law is sufficient in protecting the economic interests and the welfare of child data subjects.

Fifth, e-Commerce and delivery gig-work children involved in delivery work as riders for delivery platforms or at warehouses to serve e-Commerce platforms taking advantage of the informal and unverified nature of the onboarding process for gig platforms. This is somehow a digital interface to physical child labour and creates hybrid regulatory problems.

2.3 Socio-Economic Drivers

The drivers of digital child exploitation in India are the same as traditional child labour, but are being exacerbated by the invisibility of, and cross-border nature of, the digital economy. Poverty is still the overwhelming structural driver: families forced by economic necessity resort to the digital labour of their children as an income source, not always realising that they are exploiting them. Social normalisation of child influencer culture coupled with platform incentives and aspiration adds to the challenge. The lack of education on digital literacy in these parts of the country indicates children, as well as parents, are not mentally equipped to grasp or voice their rights. Finally, the enforcement apparatus (which is already occupied in a Herculean effort to tackle traditional types of child labour) lacks both the technical capacity and the legislative mandate to effectively police digital platforms.

3. The Existing Legal Framework: An Introduction

3.1 Constitutional Underpinnings

The Indian Constitution offers the basic framework for the protection of children. Article 24 puts a ban on employing children under the age of fourteen in factories, mines or any other dangerous employment. Article 21A is an article which was inserted by the 86th Constitutional Amendment in 2002 and lauds free and compulsory education to children between the ages of six and fourteen. Article 39 (e) and (f) being Directive Principles, an obligation of the state to protect children against exploitation and to provide opportunities for children to develop in a healthy manner is vested upon it. Article 45 (as originally passed) mandated the state to provide free and compulsory education for all children and in its modified form supports article 21A.

These constitutional provisions though powerful in their normative aspirations were drafted against the background of an agrarian and industrial economy. The framers could hardly have intended the digital economy, and the provisions had not been judicially interpreted in any systematic manner with regard to the issue of digital child labour. The constitutional silence on digital rights and one that the Supreme Court partially examined in Justice K.S. Puttaswamy v. Union of India (2017) by recognising a fundamental right to privacy opens up doctrinal uncertainty of whether digital economic exploitation of children triggers constitutional obligations.

3.2 The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 & the Amendment (2016)

CALPRA as amended in 2016 is still the centrepiece of India's legal regime for child labour. The Amendment Act made significant changes: it prohibited the employment of all children below the age of fourteen, (other than in the family or home-based employment, which was not in the Schedule of Dangerous Employment and Processes) introduced the concept of "adolescent" for persons between the ages of fourteen and eighteen years, prohibited the employment of adolescents in hazardous occupations and processes and introduced enhanced penalties.

The Act defines "child" as a person, who has not completed his/her fourteenth year of age, and "adolescent" as a person, who has completed his/her fourteenth year but has not completed his/her eighteenth year. The centre prohibition may be contained in Section 3 which prohibits the employment or permitting any child to work in any occupation or process. The "family exception" in Section 3(2)(b) allows a child to work in a family enterprise defined to mean any enterprise run by his or her family as long as the work is not dangerous, and is done outside the school hours.

The Schedule to the Act enumerates risky occupations and processes where the adolescents (between the age of fourteen and eighteen) cannot work. The Ministry of Labour and Employment has not updated the Schedule to involve digital occupations, online content creation, or gig economy work of any sort. This is an important doctrinal gap, as for the date of this paper, there is no digital occupation listed as hazardous under CALPRA.

3.3 Protection of Children from Sexual Offences Act, 2012

POCSO is the most comprehensive piece of legislation in India against exploitation of children through sex. It makes it a crime to commit penetrative and non-penetrative sexual assault, sexual harassment, and use of children in pornography. The POCSO Amendment Act of 2019 provided for increased penalties during aggravated penetrative sexual assault and imposed the death penalty and also went to address the problem of child pornography by redefining it in Section 2(da) as any visual description of sexually explicit behaviour with children.

Section 13 of POCSO prohibits the use of a child for pornographic purposes and section 14 has prescribe punishment. Section 15 as amended 2019, punishes the storing of child pornographic material. Importantly, Section 15(2) and (3) make a mention of the distinction between storage with the intent to share (attracting a higher punishment) and storage without the intent to share and give a tiered approach.

While POCSO is more digitally conscious than CALPRA, it too has some major shortcomings in the digital economy context. It fails to adequately address the issue of the commercial monetisation of child sexual abuse material through digital platforms, the issue of liability for platforms through intermediaries who host such materials, and the special vulnerabilities built in through live streaming technology. The Act is essentially victim reactive: the Act deals with offences after they have occurred rather than making the prospective duties on digital platforms to prevent exploitation.

3.4 Information Technology Act, 2000 and the IT (Amendment) Act, 2008

The Information Technology Act, 2000, as amended in the year 2008, is the primary law for Cybercrimes and Electronic Commerce in India. Section 67B was introduced in the 2008 Amendment and it specifically criminalises the publication or transmission on the material where children are depicted in a sexually explicit manner. However, Section 67B has a narrow scope: it is limited to sexually explicit material, and does not cover the much wider field of exploitative material involving children such as commercial content not in a sexually explicit form, such as child influencer advertisements.

The intermediary liability regime in the IT Act made through the programme of Section 79 and the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 offers safe harbour protection to the platforms for user generated content, pending the due diligence obligations. The 2021 Rules require considerable social media intermediaries to, i.e. delete content within set timelines after receiving complaints. However, the Rules do not set any specific obligations otherwise in line to the protection of children against exploitation in economic sphere, content of the child influencer or digital labour with minors. The duty of care model taken up in these Rules is profoundly asymmetric: it is instead reactive to complaints, rather than proactive to the protection of children.

3.5 Right of Children to Free and Compulsory Education Act, 2009

The Right to Education Act (RTE Act) has guaranteed free and compulsory education to all children between the ages of six to fourteen. The Act in section 10 places a duty upon parents or guardians to send their children to a neighbourhood school. The Act has relevance to the issue of digital child labour because child influencer work and other kinds of digital work often come in conflict with children's schooling and educational development. However, the RTE Act does not provide any mechanism for dealing with interference in digital

economy with education and its enforcement machinery does not contemplate monitoring of the digital activities.

3.6 International Obligations

India has ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992 with no reservation and such a ratification contains binding obligations in Articles 32 (protection from economic exploitation), 34 (protection from sexual exploitation) and 36 (protection from any other form of exploitation). India has also ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment (2017), and ILO Convention No. 182 on the Worst Forms of Child Labour (2017), which are binding with regard to progressively increasing the minimum age for admission to employment and taking immediate effective measures of elimination of the worst forms of child labour, including those which involve child sexual exploitation for commercial purposes.

ILO Convention No. 182 explains the worst forms of child labour as inter alia the use, procuring or offering of a child for the production of pornography or for pornographic performances and work likely to harm the health, safety or morals of children. The ILO's General Principles and Operational Guidelines for Fair Recruitment (2016) have gone further and recognised that digital labour platforms are an area that needs to be addressed by specific regulation. There has not been any systematic update by India's domestic law to reflect on these international developments in the digital context.

4. Doctrinal Critique: Three Basic Deficiencies

4.1 Deficiency One - Definitional Rigidity

The most rudimentary doctrinal weakness in the legal framework of child labour in India in the digital age is the definitional rigidity. The framework was constructed using fixed and physical concepts of "employment," "workplace," "occupation," and "process" that do not translate so neatly into the digital economy.

The word "employment" in CALPRA has been interpreted judicially in a manner which implies that some type of association involving employer and employee/worker must exist including the expectation of remuneration for services provided. In the digital economy however, the relationship is often much more diffuse. A child who features in videos produced by a parent or guardian, through which parent earns revenue from advertising displayed on the platform, is not employed by the platform and may not be employed by the parent in any way. The revenue goes to the parent not to the child; the situation is arranged as family content creating rather than employing. CALPRA's "family exception" in Section 3(2) (b), which allows children to provide assistance in family enterprises, lends itself to become a pre-made doctrinal hedge to slip through this loophole of exploitative arrangements benefiting child influencers.

The issue gets further complicated by the fact that no definition of "digital labour" or "digital workplace" has been defined in any Indian statute. Courts have yet to be called upon to define whether a YouTube channel is an "enterprise" within the meaning of CALPRA's family exception, or whether a child's appearance in monetised online content is "work" in a prohibited sense. The result is an area of defunctive definition: the most prevalent forms of digital child labour occupy a legal space in which the law is clearly not clear.

This is in strong contrast with developments in other jurisdictions. France's Law No. 2020-1266, of October 19, 2020, on the Regulation of Child Labour on Online Video Platforms, explains, for the first time, the definition of child video work and provides specific protections for child influencers. The commercial exploitation of a child's image in online platforms to earn money is considered by the French law to be employment, so it should be protected with the full child labour law regime. India has no equivalent.

The problem in definition also extends the Schedules of hazardous occupations under CALPRA. The existing Schedule represents the industrial economy of the 1980s: it includes such occupations as bidi making, construction, carpet weaving, and working in mines. There is no acknowledgment that digital work especially, content creation with associated exposure to potentially harmful content, unpredictable working hours dictated by algorithmic trends and psychological stress associated with online public exposure may in itself be dangerous to the health and development of children and adolescents. The lack of the Ministry of Labour and

Employment to update the Schedule with the mirror image of the digital realities is a failure both in the legislative as well as administrative terms.

At a deeper level of doctrine, this definitional fixity of CALPRA is a manifestation of a tension in child labour law generally between the protective and participatory dimensions of children's rights. The UNCRC understands in Articles 12 through 15 that children are rights-bearing agents who have capacities and are learners, making changes as they grow and develop. An attempt to safeguard children against their digital exploitation in the framework of the law would have to do so without curbing their rightful digital engagement, creative expression and earning capacity on maturing. Doctrinal clarity as to what is exploitative digital child labour as opposed to entitled digital self-expression is urgently required, yet none is being afforded by the current framework.

4.2 Deficiency Two - Jurisdictional Ambiguity

The second serious therapeutic weakness is jurisdictional ambiguity. Digital child exploitation in the economic sense is essentially cross-border: the platforms are often based in a jurisdiction other than India; the content is stored on servers out of India; payments are made through financial systems other than India; and the people involved in the exploitation may physically be in several other countries. India's domestic law is territorial in its orientation, by nature, and has not evolved appropriate doctrinal tools to tackle trans-jurisdictional digital exploitation of children.

The IT Act has in its Section 1(2) made its scope wider as 'It extends to any offence or contravention against any law of India committed outside India by use of computer, computer system or computer network located within India.' Section 75 goes on to say that the Act is applicable to every offence or contravention which is committed outside India by any person if the act involves computer or computer network placed within India. However, these provisions have not been put into use effectively in the case of child exploitation. The practical difficulties in identifying perpetrators, serving process in foreign jurisdictions, procuring evidence from foreign servers and enforcing Indian judgments on foreign entities are formidable and the legal regime gives no particular doctrinal guidance as to how conflicts of jurisdiction shall be resolved.

The intermediary liability provision under Section 79 of the IT Act and Rules of 2021 introduces more complexity of jurisdiction. While the Rules place obligations on "significant social media intermediaries", irrespective of where they are operated in terms of incorporation, the legal enforceability of such obligations against platforms based in foreign countries through regulatory instruments in India is contested. The ministry of Electronics and Information technology (MeitY) has the power to issue blocking orders under section 69A of the IT Act but this is a blunt tool used for blocking entire platforms rather than ensuring child protection specifically within those platforms.

There is no statutory mechanism in place in India for mutual legal assistance in the child digital exploitation cases that are specifically tailored to the digital economy. The in India are party to various Mutual Legal Assistance Treaties (MLATs) and these treaties are slow, bureaucratic and unsuited to the new day to day nature of digital evidence. The Supreme Court's landmark observations in *Shreya Singhal vs State of Himachal Pradesh* (2014), the Supreme Court held that no one has the right to enter another person's residence or any other type of dwelling without that person's consent. *Union of India* (2015) which was mainly dealing with free speech, reflected on the challenge in applying domestic legal standards to content generated and hosted across borders. These jurisdictional challenges have thus far been left unsolved in the specific field of law dealing with child labour.

The jurisdictional lacuna is greatest in cases of live-streamed Child Sexual Exploitation, in which the offence is committed in India (against an Indian child), but is consumed and paid for by viewers in other countries. POCSO is applied in the offence committed of sexual exploitation but the commercial transaction takes place outside India that may not be captured by Indian law. The provisions on cybercrime contained in the IT Act are applicable but have not covered the commercial dimension specifically. There is a doctrinal gap between India's criminal law jurisdiction and its civil or regulatory jurisdiction on the structures of economy which facilitate and incentivise exploitation.

4.3 Deficiency Three- Enforcement Asymmetry

The third and perhaps most practically significant deficiency is what is called enforcement asymmetry in this paper: the mismatch between the speed, scale, and sophistication of digital exploitation on the one hand, and the capacity, tools and powers of enforcement authorities on the other.

CALPRA has its own enforcement mechanism that is mainly based on labour inspectors appointed under Section 17 of the Act. These inspectors possess the powers of entering and inspecting any premises, inspect persons and prosecute offenders. In the digital space, this machinery makes no sense: a labour inspector has no statutory power or technical capacity to inspect a You-tube channel, looking into a digital payment record or audit an influencer contract. The idea of "premises" within CALPRA does not carry over into the digital platforms. There is no provision made in CALPRA for digital surveillance, algorithmic auditing, accountability of the platforms.

POCSO's enforcement architecture is comparatively more digitally aware, especially after the Amendment in 2019, which obliged the internet service providers and electronic service providers to report on the child sexual abuse material to the designated authorities. However, the implementation of this provision has been sporadic. The National Centre for Missing and Exploited Children (NCMEC) in the United States receives Cyber Tipline reports from digital platforms and shares them with law enforcement agencies including law enforcement agencies in other countries. India has no equivalent national body and coordination between reports by the NCMEC and that of Indian law enforcement bodies represented by the Central Bureau of Investigation (CBI) and police forces in the States, has been ad hoc and inadequate.

This enforcement asymmetry is added to the inadequacy of penal provisions to come in as deterrents in the digital economy. The punishment for employing a child in prohibited work was maximum of two years term of imprisonment and/or fine of fifty thousand rupees under Section 3 of CALPRA. In the ambit of the digital economy where content produced by children as influencers may be a source of income running into crores of rupees per annum, this penalty can hardly be a credible deterrent. There is no provision for the disgorgement of profits built on the exploitation of child labour, there is no regime of civil liability and there is no framework of compensation that the child can claim from the value of the work done on its behalf.

The judicial response has also been inadequate, which is mainly due to the lack of cases reported to this day that deal with digital child labour. The Supreme Court has been playing a significant role in the traditional child labour - *M.C. Mehta v. State of Tamil Nadu* (1996) which laid down obligations of rehabilitation of child workers and *Bandhua Mukti Morcha v. Union of India* (1984), which recognised the right of the bonded labourers for dignified treatment. However, no similar judicial pronouncement has been made over the issue of digital child exploitation in the economic sense. The lack of guidance from the judiciary leaves the field open to executive discretion, which has been on the passive side.

Furthermore, there is the problem of institutional fragmentation in the machinery for its enforcement. Child labour is majorly a matter of state's concern under Entry 24 of List III (known as the Concurrent List) of the Seventh Schedule to the Constitution. Digital regulation, however, is more a matter for the Union, in the sense of communication and broadcasting. This leads to coordination problems within the institutions: State labour departments in charge of enforcement of CALPRA have no jurisdiction in the domain of digital platforms and MeitY and TRAI (Telecom Regulatory Authority of India) which have jurisdiction in the domain of digital platforms have no mandate for protection against child labour. The result is that no one institution thus has the mandate and abilities to comprehensively address digital child labour.

The National Commission for Protection of Child Rights (NCPCR), established under the Commissions for Protection of Child rights Act, 2005 has a wide mandate of examining and considering the existing laws and recommending effective protection of children. NCPCR has brought out reports on child labour and child online protection but NCPCR's powers are recommendatory only. It lacks the power to take enforcement action against digital platforms nor could it force them to change their platform design or content policies. This institutional weakness is indicative of a larger doctrinal issue, that the ecosystem of child protection institutions in India is expansive but none of them has been given the regulatory tools to address the problem of digital exploitation.

5. Comparative Perspectives: Lessons For India

5.1 The European Union framework

The method of child protection in the digital economy in the European Union is instructive. The General Data Protection Regulation (GDPR), 2016, sets a minimum age to the processing of children's personal data for commercial purposes (member states can bring this down to thirteen), and specifies the consent of parents when the age is below. The concept of children as a vulnerable class who needs to be protected in the process of data processing at the outbreak of the GDPR has shaped a generation of digital child protection thinking.

The EU's Digital Services Act (DSA) which came into full effect in February of 2024 places substantial requirements on very large online platforms (VLOPs) with regards to the protection of minors. Article 28 of the DSA prevents VLOPs from using targeted advertising to minors and serving them with content that has a negative impact on their health, safety or wellbeing. Article 34 obliges VLOPs to carry out systematic risk assessment for the risks to children and Article 35 requires mitigation measures. The DSA's model of proactive platform duty of care is a very important doctrine of innovation without being retroactive in addressing criminality, it has to tie platforms to positive duties to prevent harm to children.

The Law of 2020 on child influencers in France is therefore very relevant. It defines child video work as work done by a minor in a context of online video work to be shared on online platforms where said work results in direct or indirect remuneration: The law includes parental authorisation and administrative supervision, holding a proportion of the child's earnings in trust, limiting working hours, and imposing obligations on the platforms to comply with take down requests from the former child influencers with respect to their content. This law goes straight to the legal void which India has been unable to challenge.

5.2 The United States Framework

The United States has no federal legislation which specifically deals with child influencer labour, however, California's Coogan Law (applicable to child actors and performers) has been suggested as a basis for its extension to digital content creators. The Coogan Law is codified in California Labor Code Section 1308.5 and the law states that a portion of a minor performer's gross earnings must be placed in a blocked trust account that may be accessed by the child when he or she reaches majority. California Assembly Bill 1120 (2023) and companion Senate Bill aimed to add to these protections social media influencers under children, considering that "the context of influencer sort of social media protects a commercial work equivalent in its financial importance to traditional child entertainment" (AI).

Fed by the Children's Online Privacy Protection Act (COPPA), which is enforced by the Federal Trade Commission (FTC), a different but complementary model is also in place: the collection of personal data from children under age thirteen without parental consent is forbidden. COPPA's enforcement action through FTC action against major platforms including a record USD 170 million settlement, against YouTube in 2019, for its collection of children's data in violation of COPPA seem to demonstrate that regulatory action against platforms in child protection is both legally possible and practically significant. India's Digital Personal Data Protection Act, 2023 has some provisions that are relevant to children's data but its implementation and enforcement are very nascent.

5.3 Lessons for India

Several doctrinal and institutional lessons are suggested by these comparative experiences. First, affirmative regulation of digital child labour requires explicit definitional extensions that make the category of digital work fall under the sphere and ambition to regulate child labour, instead of assuming too far stretched interpretations of the traditional concepts of child labour. Second, a duty of care model is better for digital platforms one that creates positive obligations, not a reactive one in which liability is the only option than criminal prohibition alone. Third, the financial aspect of child exploitation needs to be tackled through the use of trust mechanisms, prosperity disgorgement, and civil rights of compensation for children. Fourth, there is need for dedicated regulatory body with both the mandate and the technical capacity to look after child protection in the digital economy. Fifth, enforcement cooperation with foreign platforms and jurisdictions must also be institutionalised by means of specific legal mechanisms as opposed to ad hoc arrangements.

6. Recommendations for Legislative and Regulatory Reforms

6.1 Definitional Reform in CALPRA

The one type of legislative reform that is the most urgent is the need for an amendment to CALPRA to explicitly extend its scope to digital forms of child labour. The definition of "employment" should be extended to encompass commercial creation of digital content (social media, micro-tasking in gig economy etc), social media influencing, gig economy micro-tasking, or any other form of digitally mediated employment that generates remuneration, directly or indirectly, through the use of a child's image, voice, performance or labour. The "family exception" should be expressly limited to exclude commercial digital content making, whatever may be the organization of such within a family enterprise.

The Schedule of hazardous occupations should be updated through a consultative process to embrace forms of digital work which demonstrate harm to children's health, safety or development including work involving exposure to harmful content online, irregular hours stipulated by algorithmic trends and commercial public exposure that undermines the health, safety or development of children's right to privacy and development. The Ministry of Labour and Employment to be obliged to review and update the Schedule by periodical basis with specific focus on emerging digital occupations.

6.2 A Child Digital Labour Act

Beyond amendment of CALPRA, India needs to consider the enactment of a dedicated Child Digital Labour Act along the lines of the French Law of 2020 which needs to be modelled to Indian conditions. Such legislation should: (i) define child digital work in comprehensive terms; (ii) provide for mandatory registration and licensing regime for commercial digital content with children requiring applications by parents/guardians approved by a designated authority; (iii) prescribe that a proportion (suggested: fifty percent) of earnings from child digital labour be deposited into a child trust account administered by the state accessible to the child on reaching the age of majority; (iv) prescribe maximum hours of child digital work in accordance with school attendance requirements; (v) provide child digital workers the right to request removal of their digital content from platforms on reaching the age.

6.3 Framework for Platform Duty of Care

India needs to follow a platform duty of care approach towards child protection based on the emerging model of the Digital Services Act. The IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 should be amended to entail the following obligations in respect of children specifically: (i) proactive detection and removal of content involving child labour or exploitation; (ii) age-verification mechanisms to prevent children from being on-boarded as commercial content creators without the consent of their parents; (iii) mandatory risk assessments for harms to children by significant social media intermediaries; (iv) restrictions on targeted advertisement directed at minors; and (v) mandatory reporting of suspected exploitation of children to NCPCR and law enforcement.

These obligations should be enforceable with progressive penalties such as fines, based on a platform's revenues, suspension of operations and finally, blocking orders in case of persistent non-compliance. The liability regime should not be structured in a way that induces compliance for damages in a reactive way, but more in a proactive manner.

6.4 Empowerment of NCPCR

The NCPCR should be empowered by amendment of the Commissions for Protection of Child Rights Act, 2005 to perform the role of regulation and enforcement function within the digital context. Specifically, it should have power to: (i) conduct investigations into digital child exploitation at its own motion; (ii) give binding directions to digital platforms relating to matters of child protection; (iii) impose penalties on platforms that are not complying; (iv) apply to courts for interim injunctions against the continued exploitation and (v) maintain a public register of platforms that have been found to be in violation of child protection obligations. NCPCR should also be properly resourced with technical staff that are able to do digital forensics, platform auditing and cross-border evidence gathering.

6.5 Bilateral and Multilateral Enforcement Co-operation

India should make an urgent attempt to enter into bilateral agreements on mutual assistance in cases of digital child exploitation with major countries of origin and destination, and platform home countries (mostly the United States and the European Union). These agreements should include for sharing evidence rapidly, accessing data in emergencies, as well as coordinating takedown mechanisms. India should also consider joining the Budapest Convention on Cyber Crime, as an observer or associate partner as it will help partner countries to have better international cooperation in the field of digital crime including child exploitation.

India should have a National Centre for Digital Child Protection based on the model of NCMEC Cyber Tipline, which will act as the central point for reporting online child exploitation into the National Centre and coordinate with platforms for mandatory reporting and channelize actionable intelligence to law enforcement and judicial authorities. This Centre needs to have a statutory base, to be independent and permanent.

6.6 DPDPA 2023 Amendment Concerning Child Specific Protections

The Digital Personal Data Protection Act, 2023, although a landmark piece of legislation, needs to be strengthened with regards to the provisions on children. Section 9 of the DPDPA currently prohibits the processing of personal data of children without consent of their parents and the tracking and behavioural monitoring of children. However, the age of protection (eighteen years) is set at the top end with no differentiation between older adolescents, and the enforcement vehicle is not specific to digital child labour situations. The DPDPA should be amended to: (i) set that commercial processing of children's personal data for advertising purposes was prohibited regardless of parental consent; (ii) give children data erasure rights which took effect upon reaching majority; and (iii) create specific obligations on platforms that allow child content creators to operate on their systems.

Conclusion

India's child labour law was designed in an analogue world. The digital economy has not just put new forms of work on the map it has put new forms of exploitation on the map which are structurally invisible to the existing legal framework. Children are being exploited in digital content generation, gig micro-tasking, online sexual exploitation, algorithmic targeting, etc. The law is looking elsewhere. This doctrinal deficiency is not on any level a technical legal issue: it is a failure of the state's most basic constitutional and international duty which is to provide protection for its most vulnerable members.

This paper has identified three underlying faults in the existing framework: artificiality of definition this framework excludes digital forms of child labour from the protection of the law; jurisdictional ambiguity: this framework allows cross-border digital exploitation to fall outside regulatory reach; enforcement asymmetry: this framework leaves digital platforms largely unaccountable for the child exploitation that they facilitate. These deficiencies are not incidental imperfections, they are structural features of a legal regime that has not kept pace with the economic and technological reality.

The way forward will take both legislative imagination as well as institutional will. It requires extending the existing child labour demands to the digital space through explicit definitional reform, developing new regulation instruments that are appropriate to the digital economy, enabling existing institutions like NCPCR to have the tools and resources they require, and developing the international cooperation frameworks needed to combat cross-border exploitation. These reforms are thoroughgoing but certainly not unprecedented: France, the European Union and the United States have all shown that it is legally possible and politically feasible to extend meaningful protection to children in the digital economy.

India's children deserve the legal system to view them in all the spaces they live, including the digital spaces which are increasingly determining their lives, their labours, and their futures. The silence of the law to the digital child exploitation is not neutrality: it is complicity. The time of doctrinal innovation is the time now.

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