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THE MONETISED CHILDHOOD: BRINGING ‘KIDFLUENCERS’ UNDER THE AMBIT OF INDIA’S CHILD LABOUR LAWS

~ Tanisha Chauhan

ABSTRACT

India’s child labour framework was built to police factories, mines, and film sets, not a bedroom converted into a studio by a smartphone and a ring light. This paper examines whether children who are the principal earners of monetised YouTube channels, Instagram pages, and family vlogs, colloquially “kidfluencers”, fall within, or through, India’s child protection architecture. It argues that the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 already contains a statutory analogue, the audio-visual entertainment proviso in Section 3(2)(b), together with 2017 Rules mandating District Magistrate authorisation and an earnings deposit, that has never been extended to platform-based content creation. Using doctrinal and comparative methodology, the paper situates this gap within Articles 15(3), 21, 21A, 23, and 24 of the Constitution, examines the “unconscionable gains” clause of the Juvenile Justice Act, 2015, and evaluates the limits of the Digital Personal Data Protection Act, 2023. Drawing on trust-account models in California and Illinois, France’s authorisation model, and the European Union’s data-protection architecture, it proposes a calibrated Indian framework and concludes that extension, rather than wholesale new legislation, is the most constitutionally sound and feasible path.

KEYWORDS

kidfluencers; digital child labour; Child and Adolescent Labour (Prohibition and Regulation) Act, 1986; sharenting; Juvenile Justice Act, 2015; Digital Personal Data Protection Act, 2023; comparative child rights law; platform accountability

I. INTRODUCTION

In December 1996, the Supreme Court of India confronted the exploitation of children in the matchstick and fireworks units of Sivakasi and observed that the constitutional promise made

to children had, half a century later, remained substantially unfulfilled.¹ Nearly three decades later, the site of exploitation has migrated to a bedroom, a living room, or a rented studio converted into a content-production set, and the exploiter is frequently the child's own parent. This paper asks whether India's child labour framework, conceived for an industrial economy, has any purchase over the kidfluencer economy: the commercial exploitation, through monetised social media content, of children who are the principal subject and economic driver of a digital presence.

The core question is one of legal characterisation. A child who appears, often for hours and on a near-daily schedule, in videos generating advertising revenue, sponsorships, and platform payouts is engaged in an activity that shares every functional attribute of labour (sustained effort, third-party economic benefit, and subordination to a directing adult), yet is formally treated in India as engaged in nothing at all. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (the "1986 Act"), as amended in 2016, prohibits the employment of children below fourteen in any occupation or process, subject to two narrow exceptions: assistance in a non-hazardous family enterprise, and work as an artist in the "audio-visual entertainment industry" under prescribed safety conditions.² Neither exception was drafted with a YouTube channel in mind, yet the second, properly read, sits far closer to the phenomenon than legislative silence suggests.

This paper's thesis is that India suffers not from a legislative vacuum but from legislative non-application. The statutory tools required to regulate child influencers substantially exist: an entertainment-industry proviso, a District Magistrate permission mechanism, a mandatory earnings-deposit rule, and the residual category of a "child in need of care and protection" under the Juvenile Justice (Care and Protection of Children) Act, 2015 (the "JJ Act"). None has been interpreted, notified, or administratively extended to digital content creation. Part II situates the kidfluencer economy within scholarship on "sharenting". Part III conceptualises digital child labour. Part IV examines the Indian constitutional, statutory, and regulatory framework. Part V considers international instruments, and Part VI undertakes a comparative analysis of the United States, France, and the European Union. Part VII identifies the remaining regulatory gaps, and Part VIII proposes a framework calibrated to India's constitutional structure and enforcement capacity.

II. The Rise of the Kidfluencer Economy

The phenomenon emerged not from formal child entertainment but from "sharenting", the routine disclosure by parents of their children's images, milestones, and daily lives on social

¹ See *M.C. Mehta v. State of Tamil Nadu*, (1996) 6 SCC 756 (India).

² Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, No. 61 of 1986, § 3 (India) (as amended by Act No. 35 of 2016).

media.³ What began as an extension of the family photo album evolved, once platforms introduced revenue-sharing and brand sponsorship, into a distinct commercial activity. Steinberg identified the core legal tension this paper extends into the labour context: parents act simultaneously as gatekeepers of a child's personal information and narrators of the child's public story, creating a structural conflict between the parent's expressive and economic interests and the child's interest in autonomy and privacy.⁴

The move from sharenting to kidfluencing is one of intensity and intent. A parent who occasionally posts a photograph exercises ordinary discretion; a parent who builds a channel around a child's daily life, times content to monetisation thresholds, negotiates brand integrations, and derives substantial household income from the child's on-camera presence has created something closer to an enterprise than a diary. Business-ethics scholarship now characterises this shift as a labour question, arguing that routinised, revenue-generating appearances satisfy the functional indicia of work even where the formal indicia of employment are absent.⁵ The scale of the economy is illustrative even where India-specific data is sparse: a single family-vlogging channel has reportedly generated tens of millions of dollars annually from a child's on-screen presence, and the creator economy has been projected to approach half a trillion dollars by 2027.⁶ No comparable India-specific market study appears to exist in the public domain, and this paper does not purport to supply one; that absence is itself indicative of the regulatory invisibility it seeks to address.

Three features complicate the legal treatment of the kidfluencer economy. First, production occurs in the home rather than on a regulated set, beyond the practical reach of labour inspectors accustomed to physical workplaces. Second, the directing adult is typically a parent rather than an employer, triggering the deep deference historically extended to parental authority. Third, the child's "work product" is frequently indistinguishable from ordinary domestic life (meals, play, tantrums, milestones), making it difficult to isolate a discrete compensable activity, a difficulty French legislative drafters themselves acknowledged.⁷

³ Stacey B. Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, 66 EMORY L.J. 839 (2017).

⁴ *Id.*

⁵ D.R. Clark & A.B. Jno-Charles, *The Child Labor in Social Media: Kidfluencers, Ethics of Care, and Exploitation*, 201 J. BUS. ETHICS 35 (2025).

⁶ See *California Safeguards Child Influencers*, KIDSCREEN (Sept. 27, 2024), <https://kidscreen.com/2024/09/27/california-safeguards-child-influencers/> (citing Forbes); *Legal Protections for Child Influencers*, COUNCIL OF STATE GOVERNMENTS SOUTH (n.d.), <https://csgsouth.org/policies/from-likes-to-laws-state-legal-protections-for-child-influencers/> (citing Goldman Sachs).

⁷ *Pour les Enfants: A New French Law Regulates Influencers Who Are Under the Age of 16*, MAW-LAW (Feb. 1, 2021), <https://www.maw-law.com/uncategorized/pour-les-enfants-a-new-french-law-regulates-influencers-who-are-under-the-age-of-16/>.

III. Conceptualising Digital Child Labour

Labour law traditionally relies on a triad of indicators to establish employment: performance of work, remuneration, and subordination. French legislative history is instructive. The 2020 Studer Report, which preceded France's child-influencer statute, concluded that most kidfluencer arrangements fail this cumulative test, because children filmed in ordinary life provide no discrete "service", some content is unmonetised even where the channel is commercial, and the child rarely receives explicit instructions from a producer.⁸ The Report's conclusion was not that kidfluencing falls outside labour concerns, but that conventional categories are the wrong instrument to capture it, and France legislated a bespoke category rather than forcing the phenomenon into the Labour Code test.

This paper adopts a similar functional approach. Digital child labour, as used here, denotes the sustained and repeated appearance of a child in monetised digital content, where an adult exercises directive control over its timing, content, and publication, and where the resulting content generates a material economic benefit disproportionately accruing to persons other than the child. The definition deliberately dispenses with a conventional contract of service. It borrows from functional reasoning Indian courts have applied elsewhere: in the Sivakasi litigation, the Supreme Court treated the reality of a child's economic contribution, rather than the formal absence of an employment contract, as the operative fact triggering constitutional protection under Articles 21 and 24.⁹

Two objections merit acknowledgment. First, not all family content involving children is commercially exploitative; an occasional sponsored post differs qualitatively from a channel built around a child's persona, and any response must avoid capturing incidental or non-commercial family expression, which enjoys its own constitutional protection. Second, parental authority is itself a value the Constitution and Indian family law protect, and a labour framework insensitive to it risks being paternalistic and unenforceable. The framework proposed in Part VIII answers both objections through proportionality, calibrating regulatory intensity to the frequency and commercial scale of a child's appearance rather than treating all family content as presumptively exploitative.

IV. The Existing Indian Legal Framework

A. CONSTITUTIONAL FOUNDATIONS

The Constitution supplies the interpretive foundation for any child labour framework, digital or industrial. Article 24 prohibits the employment of a child below fourteen in any factory or mine or in any other hazardous employment, and Article 23 prohibits traffic in human beings

⁸ *Id.*

⁹ See *M.C. Mehta*, (1996) 6 SCC 756.

and forced labour.¹⁰ Article 21, as construed in *Unni Krishnan*, encompasses a right to education and a dignified childhood, a construction the Supreme Court relied on in the Sivakasi matter to hold that child labour implicates the right to life and not merely a statutory prohibition.¹¹ Article 21A guarantees free and compulsory education for children aged six to fourteen, a guarantee squarely threatened where content-production schedules displace schooling. Article 15(3) empowers the State to make special provision for children, and Articles 39(e)–(f) direct the State to protect childhood against exploitation and to ensure conditions of freedom and dignity.¹² None of these provisions distinguishes between exploitation on a factory floor and exploitation in front of a smartphone camera; the constitutional text is technology-neutral even where the statutory apparatus beneath it is not.

B. THE CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 1986

The 1986 Act, substantially rewritten by the 2016 amendment, is the primary statutory instrument. Section 3(1) prohibits the employment of any child, defined as a person under fourteen, in any occupation or process. Section 3(2) carves out two exceptions. Clause (a) permits a child to help in a non-hazardous family enterprise after school hours or during vacations. Clause (b) permits a child to work as an artist in an audio-visual entertainment industry, including advertisement, films, television serials, or other entertainment or sports activities except the circus, subject to prescribed conditions and safety measures and provided the work does not affect the child's schooling.¹³

The 2017 Rules operationalise clause (b) through a permission-and-protection regime that closely anticipates the concerns raised here. A producer engaging a child must obtain prior permission from the District Magistrate and furnish an undertaking; maintain a list of child participants with parental consent and the identity of the person responsible for the child's safety; ensure continuity of schooling; not engage the child for more than twenty-seven consecutive days; appoint one responsible adult for a maximum of five children; and, most significantly for present purposes, ensure that at least twenty-one per cent of the child's earnings are deposited in a fixed deposit in a nationalised bank in the child's name, released on attaining majority.¹⁴ Read together, Section 3(2)(b) and the 2017 Rules constitute, in substance,

¹⁰ India Const. arts. 23–24.

¹¹ See *Unni Krishnan, J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645 (India); *M.C. Mehta*, (1996) 6 SCC 756.

¹² India Const. arts. 15(3), 21A, 39(e)–(f).

¹³ 1986 Act, § 3.

¹⁴ See Child Labour (Prohibition and Regulation) Amendment Rules, 2017 (India); *Child Actors and Child Labour Laws*, S.S. RANA & CO. (Jan. 29, 2026), <https://ssrana.in/articles/child-actors-and-child-labour-laws/>.

an Indian Coogan-style trust mechanism that predates the American state content-creator statutes discussed in Part VI by several years.

The difficulty is not that this mechanism is absent but that it has never been applied to platform-based content. The phrase “audio-visual entertainment industry” was evidently drafted with cinema, television, and formal advertising in mind. To this author’s knowledge, District Magistrates have not received or processed applications from parents operating monetised YouTube or Instagram channels, and no notification, circular, or reported decision situates family vlogging within clause (b). The statutory language, however, imposes no such limitation: “any such other entertainment... activities” is capacious enough, on ordinary principles of statutory construction, to encompass a monetised video posted to a platform with millions of subscribers. The gap is one of administrative and interpretive extension rather than legislative text, which suggests that the most direct route to regulation lies through clarification and enforcement of an existing provision rather than through fresh primary legislation.

Parliament chose to exclude even the circus from this proviso. In *Bachpan Bachao Andolan v. Union of India*, the Supreme Court addressed the trafficking and confinement of children in Indian circuses and directed that children not be employed in circuses at all, on the ground that no system of safeguards was adequate to the risk.¹⁵ The circus exclusion shows that Indian law can recognise that some entertainment contexts are too prone to exploitation to be regulated rather than prohibited. Kidfluencing, because it occurs in an unsupervised home beyond any inspector’s reach, arguably presents oversight difficulties closer to the circus paradigm than to a supervised film set, a consideration Part VIII takes up.

C. THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

Where the 1986 Act regulates employment, the JJ Act regulates welfare through the deliberately broad category of a “child in need of care and protection” under Section 2(14). Two limbs of that definition bear on kidfluencing. One captures a child found working in contravention of labour laws, which applies once a kidfluencer’s activity is characterised as labour under Part III’s functional test. More significantly, another captures a child who is being or is likely to be abused for unconscionable gains.¹⁶ This limb requires no proof of a formal employment relationship; it asks only whether the child is being used for gains that are, in the ordinary sense, unconscionable, a standard well suited to sustained commercial exploitation of a child’s image and labour by a parent, however dressed as family content.

¹⁵ *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1 (India).

¹⁶ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, § 2(14) (India).

The Act's institutional architecture, Child Welfare Committees empowered to act on a child's case and a reporting obligation on any person who believes a child needs care and protection, already exists and can be activated without new legislation. What is missing is administrative guidance: no advisory from the Ministry of Women and Child Development and no reported Child Welfare Committee determination has clarified that sustained, disproportionate commercial exploitation of a child's digital persona can constitute "unconscionable gains". Clarification, requiring no amendment, is among the lowest-cost interventions available, as Part VIII argues.

D. THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023, AND THE ASCI INFLUENCER GUIDELINES

The Digital Personal Data Protection Act, 2023 (the "DPDP Act") is India's first comprehensive data protection statute and the only recent legislation to engage directly, if narrowly, with children online. Section 9(1) requires a data fiduciary to obtain verifiable parental consent before processing a child's personal data; Section 9(2) prohibits processing likely to cause detriment to a child's well-being; and Section 9(3) prohibits tracking, behavioural monitoring, or targeted advertising directed at children.¹⁷ Section 9(4) permits exemptions for prescribed classes of fiduciaries and purposes. The Digital Personal Data Protection Rules, 2025, notified on 13 November 2025, supply them through Rule 12 and the Fourth Schedule, which relieve specified fiduciaries, such as healthcare providers and educational institutions, of Sections 9(1) and 9(3) under narrow conditions; these child-specific provisions take effect only on 13 May 2027.¹⁸

Section 9 is significant for what it protects against and for what it leaves untouched. It protects a child from platforms that would track, profile, or target them commercially. It does nothing to protect a child from a parent who is simultaneously the legal guardian competent to consent under Section 9(1) and the direct commercial beneficiary of the processing. The Act's consent architecture assumes a structural separation between the guardian who consents and the fiduciary who processes; in the kidfluencer context that separation frequently collapses, because the parent-guardian is, in substance, also the entity monetising the content. The DPDP Act addresses the child-platform relationship with some rigour and leaves the parent-child economic relationship almost entirely unaddressed, a gap Part VIII seeks to close through an autonomous, non-waivable right of erasure vested in the child.

The Advertising Standards Council of India's Guidelines for Influencer Advertising in Digital Media ("ASCI"), first issued in 2021 and updated since, operate in a different register. They

¹⁷ Digital Personal Data Protection Act, 2023, No. 22 of 2023, § 9 (India).

¹⁸ Digital Personal Data Protection Rules, 2025, G.S.R. 846(E), rr. 1(4), 12 & sch. IV (Nov. 13, 2025) (India).

require influencers to disclose material connections with advertisers and impose additional disclosure and parental-consent obligations where minors are involved.¹⁹ These are consumer-protection obligations, backed by the Central Consumer Protection Authority under the Consumer Protection Act, 2019.²⁰ They say nothing about the child's working conditions, earnings, or welfare: ASCI regulates the honesty of the advertisement, not the fairness of the arrangement that produced it.

V. INTERNATIONAL CHILD RIGHTS STANDARDS

India ratified the UN Convention on the Rights of the Child in 1992, and Article 32 recognises the child's right to be protected from economic exploitation and from work likely to be hazardous, to interfere with education, or to be harmful to development.²¹ India ratified the two fundamental ILO child labour instruments, the Minimum Age Convention (No. 138) and the Worst Forms of Child Labour Convention (No. 182), on 13 June 2017, a step the ILO described as reinforcing the 2016 amendment.²² These ratifications carry no automatic domestic force in India's dualist system, but they inform the interpretive presumption that Indian courts will construe ambiguous child protection statutes consistently with India's international commitments, a presumption applied in the Sivakasi litigation.²³

The most significant recent development is General Comment No. 25 (2021) of the UN Committee on the Rights of the Child, the first authoritative instrument to apply the Convention explicitly to the digital environment. It addresses commercial exploitation, profiling, and targeted marketing directed at children online, and calls on states to regulate advertising and marketing practices that expose children to inappropriate commercial pressure.²⁴ Although principally concerned with children as consumers and data subjects rather than as producers of monetised content, its premise, that the Convention applies online exactly as it applies offline, supports this paper's claim that a child's digital economic exploitation deserves no lesser protection than exploitation in a factory or on a film set.

¹⁹ Advertising Standards Council of India, *Guidelines for Influencer Advertising in Digital Media* (2023), <https://www.ascionline.in/wp-content/uploads/2023/08/GUIDELINES-FOR-INFLUENCER-ADVERTISING-IN-DIGITAL-MEDIA.pdf>.

²⁰ Consumer Protection Act, 2019, No. 35 of 2019 (India).

²¹ Convention on the Rights of the Child art. 32, Nov. 20, 1989, 1577 U.N.T.S. 3.

²² Convention Concerning Minimum Age for Admission to Employment (No. 138), June 26, 1973, 1015 U.N.T.S. 297; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), June 17, 1999, 2133 U.N.T.S. 161; *India Ratifies Both Fundamental ILO Conventions on Child Labour*, INT'L LAB. ORG. (June 13, 2017), <https://www.ilo.org/resource/news/ilc/106/india-ratifies-both-fundamental-ilo-conventions-child-labour>.

²³ See *M.C. Mehta*, (1996) 6 SCC 756.

²⁴ U.N. Comm. on the Rights of the Child, General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021); *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, RIGHT TO EDUC. INITIATIVE (n.d.), <https://www.right-to-education.org/resource/general-comment-no-25-2021-children-s-rights-relation-digital-environment>.

VI. Comparative Legal Analysis

Three regulatory philosophies have emerged internationally, each offering lessons and limitations for India.

A. THE UNITED STATES: A MARKET-BASED TRUST MODEL

California's Child Actor's Bill, known as the Coogan Law, was enacted in 1939 after the child star Jackie Coogan discovered on reaching majority that his parents had spent virtually all his film earnings; it requires that fifteen per cent of a child performer's earnings be deposited into a blocked trust account.²⁵ For decades this protection did not reach family-managed social media content, partly because the Fair Labor Standards Act exempts children employed by their own parents from federal child labour protections, an exemption that, transposed to the kidfluencer context, exempts precisely the arrangement most likely to produce exploitation.²⁶ California closed the gap in 2024 through Assembly Bill 1880 and Senate Bill 764, the latter requiring that sixty-five per cent of a vlogger's gross earnings be placed in trust where a minor is featured in at least thirty per cent of monetised content in a calendar month.²⁷

Illinois moved first among American states, enacting Senate Bill 1782 in August 2023, effective 1 July 2024. A minor under sixteen is entitled to a share of vlogging revenue proportionate to screen-time presence: a minor featured in half of a video is entitled to twenty-five per cent of associated earnings, and one featured throughout to fifty per cent, provided the minor appears in at least thirty per cent of the vlogger's compensated content over a rolling thirty-day period. Funds are held in trust, accessible on the minor's eighteenth birthday, and enforcement is private rather than administrative: the child may, on reaching majority, bring a civil action against the parent for non-compliance.²⁸ By 2025, at least sixteen further states had introduced similar legislation, with Minnesota and Utah having enacted comparable statutes, evidencing a genuine multistate trend.²⁹

The American model's strength is administrative minimalism: it requires no inspectorate, no prior permission, and no state capacity beyond a courthouse. Its weakness, for present purposes, is precisely that deferral: it does nothing to protect the child during the years of exploitation and offers no mechanism, comparable to the JJ Act's Child Welfare Committees, for intervention where a child's immediate welfare is at risk.

²⁵ See KIDSCREEN, *supra* note 6; Cal. Fam. Code § 6752.

²⁶ See 29 U.S.C. § 213(c)(3); CSG SOUTH, *supra* note 6.

²⁷ KIDSCREEN, *supra* note 6.

²⁸ S.B. 1782, 103d Gen. Assemb., Reg. Sess. (Ill. 2023); *Groundbreaking Illinois Law Protects Child Influencers from Financial Exploitation: How Could It Impact Your Business?*, FISHER PHILLIPS (Aug. 2, 2024), <https://www.fisherphillips.com/en/insights/insights/groundbreaking-illinois-law-protects-child-influencers-from-financial-exploitation>.

²⁹ *Protecting Young Influencers: New Laws Protect Content Creators That Are Minors*, MULTISTATE (June 25, 2025), <https://www.multistate.us/insider/2025/6/25/protecting-young-influencers-new-laws-protect-content-creators-that-are-minors>.

B. FRANCE: A LABOUR-AUTHORISATION MODEL

France adopted the most structurally ambitious response. Loi n° 2020-1266, in force since 20 April 2021, brings children under sixteen whose commercially exploited images appear on online platforms within the protective ambit of the Labour Code, treating them analogously to child models and actors.³⁰ Where a child's online activity constitutes a genuine labour relation, prior authorisation from the labour inspectorate is required; lower-intensity family content is subject to a simplified declaration regime.³¹ Earnings are placed under state-supervised protection until majority, and, in a feature with no real analogue elsewhere, the statute grants the child an autonomous "right to be forgotten", enforceable by the child without parental consent and obliging platforms to remove content on the child's own request.³² France supplemented this with Loi n° 2023-451, a broader influencer-regulation statute requiring non-resident influencers targeting French audiences to appoint an EU-based legal representative and hold professional liability insurance, and in February 2024 with a further unanimous parliamentary measure addressing the overexposure of children by parent-influencers.³³

The French model's distinctive contribution is its recognition that a child's interest in digital erasure is independent of, and may conflict with, a parent's continuing commercial interest in the content, the structural conflict left unaddressed by India's DPDP Act. Its limitation is administrative intensity: an authorisation model presupposes an inspectorate with capacity to process applications in an enormous and growing category of home-based production, which may prove challenging even for a well-resourced bureaucracy.

C. THE EUROPEAN UNION: A DATA-PROTECTION MODEL

The European Union's contribution operates through data protection rather than labour law. Article 8 of the General Data Protection Regulation sets a default digital age of consent of sixteen, permits member states to lower it to a floor of thirteen, and requires reasonable efforts to verify that consent for an information-society service offered to a child has been given or authorised by the holder of parental responsibility.³⁴ The Digital Services Act layers onto this

³⁰ Loi n° 2020-1266 du 19 octobre 2020, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Oct. 20, 2020; *France: Parliament Adopts Law to Protect Child "Influencers" on Social Media*, LIBR. OF CONG., GLOB. LEGAL MONITOR (Oct. 30, 2020), <https://www.loc.gov/item/global-legal-monitor/2020-10-30/france-parliament-adopts-law-to-protect-child-influencers-on-social-media/>.

³¹ MAW-LAW, *supra* note 7.

³² *France Passes New Law to Protect Child Influencers*, SLASHDOT (Oct. 8, 2020), <https://yro.slashdot.org/story/20/10/08/0010210/france-passes-new-law-to-protect-child-influencers>; *Child Influencers: The French Laws and Jurisdictions That Govern Them*, MADEIN.CO (Feb. 23, 2023), <https://madein.co/en/blog/production-en/child-influencers-the-french-laws-and-jurisdictions-that-govern-them/>.

³³ Loi n° 2023-451 du 9 juin 2023, J.O., June 10, 2023; *Influencer Parents: What Does the New Law Say About Children's Image Rights?*, NSS MAGAZINE (Feb. 8, 2024), <https://www.nssmag.com/en/lifestyle/35731/influencer-parents-family-content-regulation-law>.

³⁴ Regulation 2016/679, of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation), art. 8, 2016 O.J. (L 119) 1.

a prohibition on profiling-based targeted advertising to minors and heightened risk-assessment obligations for Very Large Online Platforms.³⁵ This is the model India's DPDP Act most closely resembles, and it suffers the same limitation: it regulates the platform's treatment of the child as a data subject and says nothing of a parent's treatment of the child as an income source.

The comparative material suggests that no jurisdiction has produced a fully adequate response, and that India's task is not to import any one model wholesale but to combine elements of each: France's recognition of an autonomous child interest independent of parental consent, the American states' administratively light trust-account mechanism, and the EU's platform-facing anti-tracking architecture, layered onto India's own underused entertainment-industry proviso.

VII. Regulatory Gaps in India

A. FINANCIAL EXPLOITATION AND THE OWNERSHIP OF EARNINGS

India already possesses, in the 2017 Rules under Section 3(2)(b), an earnings-protection mechanism, a twenty-one per cent deposit requirement, comparable in principle to California's fifteen per cent Coogan deposit. Its non-application to digital content means that a child earning substantial sums for a family channel has no greater legal claim to those earnings than to general household income, and no statutory trustee obligation attaches to the parent who receives platform payouts. Illinois's proportionate-appearance formula, which ties entitlement to the share of content in which the child actually appears, is considerably more administrable for a continuous content stream than India's flat rule, which was designed for a discrete production such as a film or advertisement.³⁶

B. PRIVACY, CONSENT, AND DIGITAL IDENTITY

The DPDP Act's consent structure assumes an arm's-length relationship between guardian-consentor and fiduciary-processor that the kidfluencer context collapses. No Indian statute grants a child an independent right, exercisable without parental cooperation, to seek removal of monetised content depicting them once they attain majority, the very right France has codified. An eighteen-year-old former kidfluencer seeking removal of years of monetised childhood content therefore has no clearer avenue than an ordinary adult seeking removal of an old photograph, although the content was produced, published, and profited from without their own consent.

³⁵ Regulation 2022/2065, of the European Parliament and of the Council of 19 October 2022 (Digital Services Act), 2022 O.J. (L 277) 1.

³⁶ Compare Ill. S.B. 1782, with 2017 Rules.

C. PLATFORM ACCOUNTABILITY

Indian law imposes no obligation on platforms comparable to the Digital Services Act's advertising prohibition or risk-assessment duties oriented to monetised child content. The only relevant provision, Section 9(3) of the DPDP Act, addresses advertising directed at child viewers rather than the working conditions of a child who is the subject of monetised content, and its implementing rules for children do not take effect until 2027.³⁷ ASCI's disclosure-focused guidelines do not address a child performer's welfare, working hours, or compensation.

D. THE GAP BETWEEN TWO STATUTES

Finally, and perhaps most fundamentally, the 1986 Act and the JJ Act speak past each other. The former regulates employment and requires characterisation of the child's activity as work before its protections attach. The latter regulates care and protection through the residual "unconscionable gains" category, which requires no such characterisation but lacks the proactive, workplace-oriented apparatus (inspectors, permits, safety officers) that the 1986 Act supplies for regulated entertainment work. A kidfluencer is consequently protected neither by a labour statute that does not recognise the activity as labour nor by a welfare statute with no mechanism for discovering the child's situation absent an external complaint. Unlike a film set, which an officer can in principle visit, a family's living room is not a space the machinery of either statute presently reaches.

VIII. Towards a Legislative and Administrative Framework for India

The recommendations below are structured around extension and clarification of existing law rather than a new statutory category, because this is more administratively feasible and preserves doctrinal continuity with the constitutional and statutory architecture discussed above.

First, the Ministry of Labour and Employment should issue a clarificatory notification, or amend the 2017 Rules, confirming that commercial digital content creation involving children, defined by a minimum threshold of monetisation and frequency of the child's featured appearance so as to exclude incidental or non-commercial family posting, falls within "audio-visual entertainment industry" activity under Section 3(2)(b), thereby triggering the existing permission and safety regime. Second, the flat twenty-one per cent deposit should be recalibrated for digital content using a proportionate-appearance formula modelled on the Illinois and California statutes, so that a child's entitlement scales with actual on-screen contribution.

³⁷ See DPDP Act, § 9(3); DPDP Rules, r. 1(4).

Third, because full District Magistrate permission, designed for discrete film productions, is unsuited to continuous home-based content, the Ministry should introduce a tiered compliance structure: a lightweight, self-certified digital registration, extending the PENCIL portal already used to enforce the 1986 Act, for channels below a defined earnings or frequency threshold, reserving full authorisation for high-earning, high-frequency channels. This tiering answers the proportionality objection in Part III: it regulates commercial exploitation without treating every parent who occasionally posts a child's photograph as the operator of a regulated production. Fourth, the DPDP Act's erasure provisions should be clarified, by rule or amendment, to recognise an autonomous right vested in a former child content-subject, exercisable on attaining majority without the parent's cooperation, to request deletion of monetised content depicting them as a minor, modelled on the French right to be forgotten. Fifth, any future expansion of the Fourth Schedule exemptions under Rule 12 should exclude monetised child-content channels from relief from Section 9(3), since such children are simultaneously data subjects and economic subjects of the same commercial activity.

Sixth, the Ministry of Women and Child Development should advise Child Welfare Committees that sustained, disproportionate commercial exploitation of a child's digital persona, without commensurate and legally secured compensation to the child, falls within the "unconscionable gains" limb of Section 2(14), empowering Committees to act on complaints from platforms, schools, relatives, or child rights organisations without first requiring proof of a formal employment relationship. Seventh, ASCI's influencer guidelines, or a statutory successor exercised through the Central Consumer Protection Authority, should require, as a precondition to clearing advertisements associated with monetised child-content accounts, a welfare self-declaration cross-referenced against 1986 Act compliance, aligning advertising regulation with the labour-protection regime for the first time. Finally, the working-hour and rest safeguards of the 2017 Rules, including the twenty-seven-consecutive-day cap, should be extended through the same clarificatory route to digital production, enforced primarily through the self-certification portal rather than a physical inspectorate ill-suited to entering private homes.

IX. Conclusion

The Supreme Court's insistence in the Sivakasi litigation that constitutional promises to India's children cannot remain indefinitely unfulfilled was addressed to a visible, industrial form of exploitation; nothing in that reasoning confines its force to factories and match units.³⁸ A child whose routine is structured around monetised content, whose earnings are subject to no statutory trust, and whose digital image will persist long after childhood ends is exploited no

³⁸ See *M.C. Mehta*, (1996) 6 SCC 756.

less than a child bent over a fireworks assembly line, only less visibly, and at present entirely outside the reach of the very statute written to protect against such harm. *Bachpan Bachao Andolan* offers a further caution: the home, unlike a film set or a circus tent, is not a space any Indian regulator currently enters, and any framework must reckon honestly with that enforcement reality rather than legislate around it.³⁹

This paper has argued that the most administratively realistic and constitutionally coherent response lies not in inventing a new regulatory category but in deliberately extending instruments India already possesses: the audio-visual entertainment proviso and its earnings-deposit rule under the 1986 Act, the protective jurisdiction of Child Welfare Committees under the “unconscionable gains” limb of the JJ Act, and the erasure architecture of the DPDP Act, reoriented to recognise the child, rather than the consenting parent, as its ultimate beneficiary. None of these requires Parliament to legislate from a blank page; each requires only the political and administrative will to recognise that a smartphone camera pointed at a child for commercial gain is not a lesser form of the activity the Constitution and the labour statutes were written to prevent, but the same activity, differently lit.

³⁹ See *Bachpan Bachao Andolan*, (2011) 5 SCC 1.