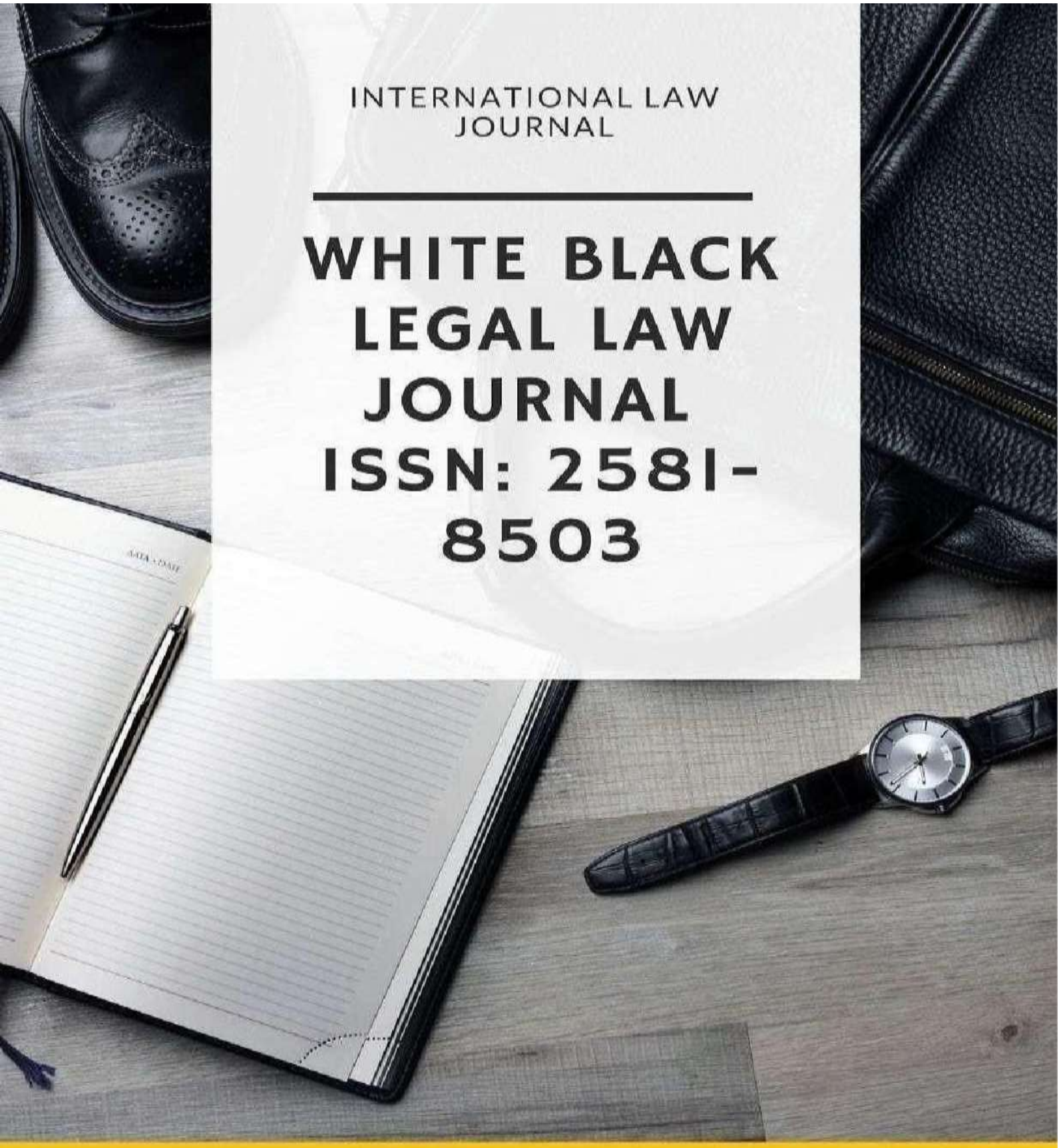

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THE "KIDFLUENCER" AND "E-ATHLETE" LABOUR GAP

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ABSTRACT-

The proliferation of the worldwide "Creator Economy" has given birth to a new category of precarious worker—the "Kidfluencer" and the "E-Athlete." This research-based article seeks to examine the emergence of the "Digital Labour Gap" in India, where children participate in high-intensity content creation and professional gaming within the unregulated domestic sphere. While existing Indian laws, such as the Child Labour (Prohibition and Regulation) Act, 1986, were formulated to control the exploitation of child labour in the industrial sphere, the "family enterprise" provision introduced through the 2016 Amendment has inadvertently legitimized unregulated child labour within the domestic sphere through the provision of domestic help services.

This research-based article seeks to examine the unique "Parent-Employer" relationship and the lack of financial security through the creation of "Coogan" trusts, as well as the erosion of the child's right to privacy. Through an examination of the constitutional conflict between the commercial exploitation of children and the Right to Education (Article 21A), this research-based article seeks to examine the need for an evolution of existing Indian laws through the lens of international best practices, such as the French "Kidfluencer Law" of 2020, and the creation of a "Digital Coogan Act" for the Indian context.

INTRODUCTION –

The conceptual formulation of the so-called Kidfluencer and E-Athlete role is that a contemporary socio-legal phenomenon in which the historic lines of childhood play are wiped out by the commercial realities of the digital economy. In this regard, the everyday life, character, or gaming prowess of a minor is turned into a commercial product via sites such as YouTube, Instagram, and Twitch. The Labour Gap symbolizes the emptiness between the

professional activity of these children, whereby they frequently write, act, and train between 12 and 14 hours a day, and the lack of any legislative safeguards over them. In contrast to traditional work, the work is practiced in the domestic context and the boundary between a family pastime and a business is likely to be lost. This definition is further complicated by the nature of the Parent-Employer relationship which is that the legal guardian is also the manager, producer, and the main beneficiary of the digital revenue of the child. This has turned the digital playground into a work environment that meets none of the minimum wage, safety regulation, and contractual ambiguity necessary to secure the long-term interests of the minor.

The significance of this issue is based on the fact that it discusses one of the key changes in the character of child exploitation. Traditionally, child labour was taken to imply physical work in factories or the mine due to economic reasons; in the current era, though, it is frequently found in the middle or high-income environment, and cannot be detected by the old methods of labour discipline. This study is imperative in the sense that it brings to light the conflict of interest that will arise once the upbringing of a child turns out to be the main source of income of a family. Also, the problem is furthered to the notion of digital permanence. A kidfluencer has to record the content of their private milestones, emotional outbursts, and developmental stages, which become the ruins of their work product compared to an industrial worker who leaves the factory at the end of a shift. It is not one but a violation of the principle of the Best Interests of the Child, and it requires a contemporary legal discourse, focusing on the psychological integrity of the child and not on the algorithmic profit-making.

Changes in the labour law in India have been a shift towards the protection of children in the brick-and-mortar industries to a more subtle, though still imperfect, social welfare strategy. Starting with Factories Act of 1948, the only concern was to avoid physical injuries to the hazardous environment. The historic Child Labour (Prohibition and Regulation) Act (CLPR) of 1986 aimed at prohibiting the use of child labour in certain industries, yet it was the 2016 Amendment that was the unintentional cause of the contemporary digital loophole. Although the amendment prohibited all work done by children below 14 years old, it added an exception of family businesses, although the work must be done after school. In the modern world, parents often view monetized social media platforms as family businesses, which provides them with an opportunity to avoid labour limitations. Although the 2017 Amendment Rules came up with the child artists guidelines in the audio- visual media, the provisions were set on

the regulated film sets where independent producers are involved. The legislation has not kept up with the Creator Economy, and the children in home-based digital studios do not have the required rest time or educational protection that the children in regular child acting can have.

A legal regulation is badly needed as the existing legal framework does not cover financial autonomy, privacy, and mental health. In India, we do not have such a Coogan Law that would compel parents to remit some percentage of the incomes of a minor in a blocked trust. Without this type of mandates, a child can grow up to become an adult only to discover that his/her hard-earned wealth has been drained by the people in charge. Also, the constant pressure of the social media algorithms establishes a 24/7 working schedule that does not bother about the need of a child to relax and learn. It should be regulated to create a limit on the number of hours spent at the screen and to provide the children with a right to be forgotten, so that once they become older enough, they can take back the rights over their privacy. The area of this study is more precise concerning the legal status of minors below 18 years in India who are involved in the creation of monetized content or professional Esports. It examines the interaction between the employer and the employee in the family and compares it with other international models, including the French legislation of 2020 on Kidfluencers, to suggest a possible Indian approach.

The main aims of the study are to unzip the family enterprise loophole and assess the role the system plays in providing an avenue through which people engage in unregulated labour in the name of house help. The research will examine the constitutionality of digital labour in relation to Articles 21, 21A, and 24 of the Indian Constitution, so that the Right to Education will still be on the top of commercial performance. Moreover, the study will suggest a Digital Coogan Act to be applied to the Indian setting, which will require establishing legal trusts on the income of minors. Finally, it is aimed at creating a framework of digital labour standards that will regulate working hours in excess and give a clear channel through which a child can achieve its financial and emotional freedom, without its talent being misused in a black hole of the law.

CONSTITUITIONAL FOUNDATION- RIGHTS OF THE DIGITAL CHILD-

1. Article 24 and the Reimagining of "Hazardous Labour"

Article 24 states, "No child below the age of fourteen years shall be employed to work in any factory, mine, or any other hazardous employment." "Hazard" was traditionally understood in terms of physical danger, i.e., "smoke, chemicals, or machines." Nevertheless, in the case of MC Mehta v. State of Tamil Nadu (1996), the Supreme Court emphasized that the spirit of Article 24 was to protect the "tender age" of children from any environment that would stunt their growth. In the age of information technology, the "hazard" has changed from the physical to the psychological. The 14-hour production cycles, the pressure of being rejected by algorithms, and the lack of a personal identity all create a "psychological hazard" that is at least as debilitating as industrial work. Legal theorists argue that the definition of hazardous employment must be construed purposively to include the digital environment that causes sleep deprivation, social isolation, and extreme mental stress.

2. Article 21A: The Conflict Between "Content" and "Classroom"

The Right to Education is a fundamental right granted to children aged 6 to 14 years old. This is not a right to be in school, but a right to a meaningful educational process without the encumbrance of economic costs. When a "Kidfluencer" or "E-Athlete" has to adhere to a rigorous schedule of filming or training, their ability to access the state-mandated educational process is undermined. In the case of Society for Un-aided Private Schools of Rajasthan v. Union of India (2012), it was held that the purpose of Article 21A was to ensure a child's "holistic development." When a child is subject to a schedule dictated by a "Parent-Employer" to maximize views or wins, this directly interferes with the state mandate. The educational process of a digital child cannot be relegated to "after-thought" status, but must be protected from the incursion of professional digital work.

3. Article 21: Right to Privacy and the "Digital Footprint"

Article 21, which relates to the Right to Life and Personal Liberty, was significantly expanded in the landmark case of Justice K.S. Puttaswamy v. Union of India, 2017, which related to the Right to Privacy. For the digital child, the right to privacy does not exist. Every step, every tantrum, is live-streamed for the purpose of making money. Therefore, the "Permanent Digital Footprint" that the digital child cannot erase or opt out of is established. However, under the

Right to be Forgotten, which is derived from Article 21, the right of the digital child to reclaim their identity at the end of their minority must exist. In the case of Zulfiqar Ahman Khan v. Quintillion Business Media, 2019, the right to be forgotten, which is an aspect of the right to privacy, must exist for the kidfluencer, as their right to work cannot be compromised due to their childhood.

4. Article 39(e) & (f): Protection Against Moral Abandonment

The Directive Principles, though not binding under any court of law like the Fundamental Rights, provide the "constitutional conscience" for regulation. Under 39(e), it is the duty of the State to see that children do not enter avocations which are not suitable to their ages by reason of economic necessity. Under 39(f), it is the duty of the State to provide opportunities to children to develop in a healthy manner and to see that they are not subjected to "moral and material abandonment." Where parents treat their children as revenue-generating assets, it can be argued that they have been "materially abandoned," since their emotional needs take second place to their market value. This is reflected in the judgment in Bandhua Mukti Morcha v. Union of India, 1984, where it was held by the Supreme Court that the "tender age" of the child must not be taken into account. This gives the State constitutional authority to intervene in "family enterprises" like YouTube videos which have crossed over into exploitation.[1]

THE FAMILY ENTERPRISE LOOPHOLE-

I. It is not that there is no law in India that would restrict the activities of so-called Kidfluencers and child E- Athletes, but rather the fact that certain law-related exceptions have not kept pace with technological progress. Child Labour (Prohibition and Regulation) Amendment Act, 2016, came out as a progressive move to make India a child-free labour country. Nevertheless, it brought about a dual-proviso to Section 3 that has since been the main legal refuge to allow parent-employers to commercialize their children with no government intervention. Such a weakness of the system is actually legalizing exploitation in the name of a family obligation and artistic expression.

[1] UN Convention on the Rights of the Child (UNCRC), 1989
M.C. Mehta v. State of Tamil Nadu, (1996) 6 SCC 756
Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC
Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161
The Child Labour (Prohibition and Regulation) Amendment Act, 2016, Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161.
The Child Labour (Prohibition and Regulation) Amendment Act, 2016, § 3(2)(b).
Child Labour (Prohibition and Regulation) Amendment Rules, 2017, Rule 2C.

Section 3(2)(a): The Family Business Fairy-tale and the Contemporary sweatshop. Section 3(1) of the Amended Act is categorical that children below the age of fourteen years should not be employed in any occupation.

However, Section 3(2)(a) offers blanketing exception: a child could assist his family or family business, but such a work could not be in dangerous jobs or during school time or vacations. This was initially intended in the traditional way, which is to enable a child to help in a family owned kirana store or a small scale farm -which was once considered to be a part of the child socialization and vocational training in the Indian social world.

But in the digital age, the definition of a family enterprise has been expressed in an uncontrolled and radical proliferation. A YouTube channel managed by a father or an Instagram page managed by a mother is actually a family business today. When the face of a channel is a child who earns millions on the deals with the brands, the child is not contributing to the business; the child is the business. The juridical risk is that there is no statutory definition of the word help. Indian jurisprudence does not give a very distinct boundary separating the concept of the occasional assistance and professional labour. With the monetized social media account being classified as a family enterprise, parents can legally explain 10-hour filming schedules as extracurricular help.

This makes a situation where a child is technically in the law as long he/she gets to school, without factoring in the huge physical and mental exhaustion that comes about after a full day in school and after a full night working on content creation. In Bandhua Mukti Morcha v. Union of India, the Supreme Court stressed the fact that the dignity is the inseparable part of the Right to life in the case when the childhood of a child is sold on the video, the family economy gains. This loophole basically allows some kind of digital bonded labor wherein the child is economically bound to the digital brand of the family, usually without their conscious or explicit permission or without receiving any portion of the proceeds.

II. Section 3(2) (b): The "Child Artist" Exception and its Digital Failure. In Section 3(2)(b) is the second exception, which permits children to be employed as an artist in the audio-visual entertainment sector, i.e. films, television and any other form of entertainment. Although this was intended to guard child actors in Bollywood, the Child Labour Amendment Rules, 2017 (Rule 2C), provided a separate protection of the child artists:

Compulsory Education: No child should miss a year that contains more than 27 days without attending school. Working Hours: No child shall work during more than five hours in one day or more than six days in succession. The Presence of a Minder: One of the parents should be

present at least when filming.

When it comes to social media, there are two times of failure in this section. First, the Rules of 2017 were formulated in the relationship of a Producer-Actor, an external third party (the producer) is responsible on behalf of the safety of the child. The parent is the producer in the world of the Kidfluencer. The statute basically requests the parent to watch himself, and this poses an immense conflict of interest. There is also no third party to check that the child is not being overworked.

Second, a 24/7 aspect of the social media was an unanticipated feature of the industry that was labelled uas the entertainment industry in 2017. The conventional TV and film shows have distinct start and stop times. Social media career on the other hand entails filming of personal life at all times. In the event that a child is being filmed over breakfast, playtime and bedtime as part of a so-called daily vlog, does that count towards the five- hour daily limit? Due to the fact that the home is the place where work is, there is no difference between living and working. It is the Child Artist exception, applicable to temporary performances, which is used to justify one of permanent nature of labour that Rule 2C is so ill-equipped to control.

III. The Vacuum of Regulation: Talent vs. Economic Exploitation. The parent-manager argument commonly happens as, their children are merely gifted and like the attention. Nevertheless, the enjoyment of the worker is not the issue of labour law; rather, it is the economic relationship. In M.C. Mehta v. The Supreme Court of the State of Tamil Nadu has decided that children should be spared of economic necessity which causes them to work in the digital age, 5 it is the economic necessity of the parents, or rather desire to live virally, that causes the child to take the stage.

The existing system of the CLPR Act does not acknowledge the fact that E-Athletes and Kidfluencers are also professionals. The e-athletes tend to spend 12 hours in training to compete in tournaments with huge prize money. In Section 3(2) (a), such training is commonly rejected as a game or contributing to the family team. This judicial misclassification deprives these children of money in trusts to protect the earnings of the children and a labour commissioner independent to regulate the working hours of the children. Additionally, the National Commission of Protection of Child Rights (NCPCR) has pointed out that a family member in social media also produces content on which no one can intervene because the media has considered it part of its duties to monitor the activities of such entertainment, which

has left no one to complain when a child has been overworked or abused financially.[2]

THE PARENTAL-EMPLOYER CONTRACTUAL PARADOX

According to the conventional scenery of Indian Contracts Act, 1872, the rights of minors are unrestricted. Nevertheless, the emergence of the so-called Kidfluencers and E-Athletes has given rise to a contractual paradox. Although a child is a person who is legally incompetent when it comes to signing a contract, they are even more sold to become a more popular and famous person and create their likeness and work under multibillion dollar contracts with gaming organizations and social networks. Parents are the triangulating agents in these agreements, and this tri-relational structure places the child into the labor and the brand into the fee, and the parent, the so-called Contractual Bridge, to manage legal and financial discourse. In this part the author examines the validity of such arrangements and the subsequent absence of agency on the minor.

I. Doctrine of Incompetency. Indian contract law on minors was set on the major case of Mohori Bibee v. In Dharmodas Ghose (1903), the Privy Council decided that, where a minor was involved in a contract, it was void ab initio (void from the beginning).^1 Under Section 11 of the Indian Contract Act, 1872, a contractor was only competent to contract when he had reached the age of majority. The intent of the law is obvious: minors are not mature enough to realize the consequences of a binding contract and should be excluded of their own follies and greediness of other people.

This poses a big challenge to the brands and Esports teams in the digital age. A minor gaming genius is not able to sign an Athlete Representation Agreement, nor is a minor unboxing creator able to sign a Brand Endorsement Contract. To avoid this, the industry makes use of Parental Consent. Parents are the ones who penetrate such agreements on behalf of the minor, as they are usually the natural guardian of their child and their professional manager. This is a conflict of interest that arises as a result of this dual role. The parent can sign a contract that negatively impacts the long-term well-being of the child, including the notion of perpetual likeness rights, or 12- hour work shifts.

[2] National Commission for Protection of Child Rights (NCPCR), *Regulatory Guidelines for Child Participation in the Entertainment Industry*, (Revised 2022).
Loi n° 2020-1266, Oct. 19, 2020 (France).
The Hindu Minority and Guardianship Act, 1956.=

II. Validity of Parental Consent: Agency or Exploitation? Although parents are the natural guardians of the child according to the Hindu Minority and Guardianship Act, 1956, their contractual ability is restricted to actions that are in the best interest of the child. By signing a contract with a platform such as YouTube, a parent is, in fact, signing the Terms of Service of the platform, which usually contain a wide right to use, monetize, and store the data of the child.

Can a parent consent to the loss of the privacy of a child in future, then this is the legal question. According to the doctrine of maturity, the right to self-determination by the child ought to increase in proportion to his growth. Nevertheless, a lot of online contracts are evergreen, which means that the materials published by the child belong to the brand or platform permanently. Since the minor was not a party to the contract, he/she lacks any legal right to object to the contract or to rescind consent upon reaching 18 years old. This essentially confines the digital identity of the child in a contract that they did not even sign and which might no longer favour them.

III. The Minor Shield and the Doctrine of Restitution. Under Indian law, a minor may be liable to restitution under the Doctrine of Restitution (under Section 33 of the Specific Relief Act, 1963) in case the minor signs an agreement and misrepresents the age, in that case the minor will have to give back the gains.

What would a child E-Athlete do when he or she has to pull out of a sponsorship agreement that has worn her out too much? In case the minor rescinds the contract, the brand has no claim over breach of contract against the minor since they never entered into any valid contract between the brand and the child. This leaves the Parent- Employer as the sole party to be held liable. As a result, parents, which can be afraid of a lawsuit, or the denial of future income, may compel the child to work against his or her desire. The legislation that was to be utilized as a shield in the hands of the minor (protecting against being sued), instead, becomes a sword in the hands of the industry to make sure that parents manage their children in order to avoid defaulting on the contract.[3]

IV. Esports and Service Contract Trap. Major league teams usually enter into Service Contracts or Scholarship Agreements with minors in the Esports industry. These are often

[3] Mohori Bibee v. Dharmodas Ghose, (1903) 30 IA 114
The Indian Contract Act, 1872

presented as educational opportunities to avoid labor laws. Non-compete clauses in many Esports contracts mean that a child is prohibited years of a lawful profession, trade, and business, however, under Section 27 of the Indian Contract Act, such a contract is void. It is a life sentence to a child whose career may be between 14 and 20 years. As the minor is not legally able to sign the contract, these restraints are frequently added on to the parents, and the freedom of movement of the child within the industry is limited to ensure these parents can fulfill the ownership of the talent of the child in the team.

V.The necessity of Judicial Review. Contractual paradox of the Parent-Employer brings forth a sense of desperate need of Judicial Intervention. In the present day, brand transactions with minors will occur within the wild west of private emails and DMs. No one has to be vetted by a Child Welfare Committee or a court so that these contracts will not be exploitation. To save this, India can refer to the ideologies of Coogan Law, according to which the agreement of any professional services by a minor must be approved by the court. This would restore the balance of power back to the State, which would be parens patriae (parent of the nation). To make sure that the ability of the child to contract or lack of it is not used as the loophole to deny them their rights and their future, we can demand that the judge should examine the hours, nature of the work, and financial trust arrangements.

OCCUPATIONAL HAZARDOUS IN THE DIGITAL WORKSPACE: REDEFINING WORK AND WELFARE –

The conventional perception of child labor is obscurity sweatshops and lifeless machines-the tangible surroundings that leave physical marks. But with the “Kidfluencer” and the “E-Athlete the workplace is a sterilized home environment: a bedroom, a gaming chair, and an expensive computer. Since these conditions do not have the conventional signs of danger they have largely avoided the attention of the labor inspectors.

However, the work-related risks of the virtual working environment do not disappear; they are just hidden. In this section, the author examines how the current labor codes, including the Shops and Establishments Acts and the Occupational Safety, Health and Working Conditions Code (OSH Code), 2020, need to be interpreted to reflect the physical and mental peculiarities of the 24/7 digital economy.

The Home as a Commercial Landing: Jurisdiction Problems. The physical location of the work is the first challenge in the regulation of the digital labor. Children professionals working as Kidfluencers and E-Athletes work mostly at home. A commercial establishment is a set of premises under which any trade, business or profession is conducted, which, under a number of state-specific Shops and Establishments Acts, include the Maharashtra or Delhi Shops and Establishments Acts, essentially transforms the bedroom of a child into an unboxing channel worth millions of rupees or the living room into an Esports training venue. But naming a home as a commercial place causes complications within the legal requirements of working hours, breaks that are mandatory as well as the weekly holidays. Children who are under these Acts are not generally allowed to work in any given establishment. Parents and platforms circumvent these limitations by disregarding the commercial aspect of the so-called home-studios. Provided that the law were to consider these domestic spaces as workplaces they would have to put a limit on the number of hours of production- ensuring that they are not able to do the 14 hour filming sessions as it is today. The legal issue is the domestic veil piercing to make sure that the sanctity of the home is not a pretext to an unregulated digital sweatshop.

II. The OSH Code, 2020: What Does Arduous Work mean in the Digital Age. The code of Occupational Safety, Health and Working Conditions, 2020, was intended to update the labour standards in India. It brings into play the notion of the hazardous processes and the hard work, which are traditionally related to the chemical plants or building, but the digital workspace presents the new form of Arduous Work that exclusively harms the minors: Blue-Light and Physiological Strain E-Athletes may engage in 10-12 hours of high intense monitors. The vision, spinal health (ergonomic hazards) and circadian rhythm effects are highly significant in the long term. This on a purposive reading of safety standards, this qualifies as a physical hazard of a developing child. The Algorithmic Hazard: Unlike a human supervisor, a social media algorithm is awake twenty four hours a day. To create content on the daily basis is a result of the fear of obsolescence that creators are facing. This is continuous stress to perform which the World Health Organization (WHO) has termed as a Burnout- now an occupational phenomenon. The psychological risk of fame: To a minor, the occupational risk is the toxicity of publicity. When they are exposed to trolls, cyber-bullied, and commodified in their personal life, they experience serious developmental problems, such as anxiety and body dysmorphia.

III. The working hours definition in a 24/7 Economy. The definition of working hours of digital creators is one of the most important loopholes of the rules of the Child Labour

(Prohibition and Regulation) Amendment, 2017. Though Rule 2C restricts the working hours of a child artist to five hours a day, this is circumvented easily in the social media. To a Kidfluencer, his or her work is life. When a parent records the breakfast of a child, the school trip and their evening tantrum in a video, does the timer not run? The absence of the Wrap Times contributes to the "Working Hour" dilemma. The work in Esports does not only involve the tournament match, but the thousands of hours spent in training and strategizing. In the absence of a legislative clarification to categorize the “Practice Time" and the Vlogging Time as a type of working hours, the children will remain exposed to working schedules that would otherwise be considered as illegal in any other field. We should also create a Right to Disconnect of the minor, where digital silence is required, where no monetization and production are allowed.

IV. Parens Patriae and the Occupational Safety Role. The case of M.C. Mehta v. in the Supreme Court. The state of Tamil Nadu believed that the state should make sure not to exploit the children in any setting that will not make them develop holistically. The digital workspace is a silent killer, as it is left uncontrollable. Parens Patriae (the State as the protector of the nation) is a doctrine that states that the government has a responsibility to intervene where parents have not created a secure working environment to their children. The existing labour checks are focused on the factories. Digital Labour Inspectors or Child Welfare Officers who have been trained to oversee the online work of child stars are urgently required. In case a channel uploads some content three times per day, every day, it is prima facie evidence of a breach of the limits to the number of hours worked per day. The OSH Code should be revised to identify "Digital Performative Spaces" as a controlled category, so that the ergonomic, physiological, and psychological standards of safety could be fulfilled.

V.Physical Protection to Neurological Protection. The labour law has always been developed in response to the then existing technology. Similarly as the laws of the 19th century were responding to the steam engine, the laws in the 21st century need to respond to the smartphone. The Digital workspace occupational Hazards do not cause broken bones, but they cause broken childhoods, and neurological Fatigue. Realizing that the home is a commercial space and the algorithm is a dangerous overseer, India will be able to lead the way in safeguarding its most gifted yet at the same time its most vulnerable digital citizens. It is not aimed at preventing children to become creators, but rather to make sure their office (their home) is a place to be

safe, not a place of unremitting production.[4]

DATA PRIVACY AND THE "RIGHT TO FORGOTTEN"-

During the industrial era, the child who has managed to leave a factory could forget about his work and begin anew. However, in the digital era, the work of an influencer or an athlete-celebrity, known as a Kidfluencer or an E-Athlete, cannot be seen outside of the context of the personal information of this person, face, voice, his or her feelings, his or her everyday life, which are captured and stored forever. This poses a special crisis of Informational Privacy. Although India has made a giant step towards digital governance with the Digital Personal Data Protection (DPDP) Act, 2023, the existing framework has a Guardian Paradox: the regulation presupposes the parents to safeguard the data belonging to a child, yet they are the ones who exploit and commercially trade the data of a child. This part discusses the flaws of the DPDP Act and reasons why a strong statutory right to be forgotten should exist, entitling a minor to delete a history of their digital work when they have attained the age of majority.

Section 9 of the DPDP Act, 2023: The Failure of Proxy Consent. Section 9 of the Digital Personal Data Protection (DPDP) Act, 2023, proposes certain protection of children. It also provides that a Data Fiduciary (YouTube, Instagram, or an Esports platform) has to seek out verifiable parental consent prior to processing the personal data of a child before doing so. \section 9(2) also specifies that any processing of personal data that is likely to result in a negative impact on the well-being of a child cannot take place.

The fact that the interests of the parent and the child are always the same is the legal blind spot behind this issue. In the Kidfluencer economy, the parent frequently uploads the information to the fiduciary. By vlogging about a child on a personal tantrum, a medical appointment, or even a moment of intimacy with their family members to engage and raise ad income, a parent is actually consenting to the platform to staff and monetize such information. The DPDP Act does not take care of the parent-as-processor dynamic. The law does not offer a means through which the child can protest against the over-exposure to harmful effect by the very parent that brought the child into existence. This leaves the guardian as the ultimate privacy protector, and

[4] The Delhi Shops and Establishments Act, 1954
Society for Un-aided Private Schools of Rajasthan v. Union of India, (2012) 6 SCC
The Occupational Safety, Health and Working Conditions Code, 2020
World Health Organization (WHO)

disregards the economic fact that the guardian has a financial stake in invading that privacy.

II. The Puttaswamy Standard of Informational Privacy. Justice K.S. Puttaswamy v. the Supreme Court of India. The Right to Privacy, stated in Union of India (2017) as a right of fundamental importance by Article 21.3, stated that the Informational Privacy was an important aspect of this concept and that people must have authority over their digital shadows. The child creator does not have this kind of control. Their digital image is sold to brands and algorithms when they are cognitively incapable of knowing the meaning of a privacy policy at all.

It is not just about photos but rather Biometric and Behavioral Data. Under the DPDP Act, this on Esports is called Personal Data and includes information about reaction times, eye movement and the level of stress of a minor. But the fact that the parent is one who signs the Terms of Service leaves the child practically deprived of his or her informational autonomy. As determined in Zulfiqar Ahman Khan v. The Delhi High Court acknowledged that the Right to be Forgotten is a component of the Right to Life, and people cannot leave their past behind, which is psychologically devastating to a minor whose whole childhood has been their acting experience as their work pursues them to each and every job interview since that time (Quintillion Business Media, 2019).

III. The Right to be Forgotten an absolute necessity among Minors. The Right to be Forgotten (RTBF) gives a person the possibility to ask to have his or her personal data deleted in case they are not essential anymore or when the person provides the withdrawal of consent anyway. Although the DPDP Act describes the correction and erasure of data in case of Section 12, it does not explicitly present an absolute and unconditional RTBF of former child creators.

The legal status of the digital work history of a minor should be that of Retractable Data. The person at the age of 18 should have a legal option of issuing a statutory right of a De-monetization and Deletion Mandate to any platform whose content was filmed when the individual is still a minor. This is necessary since the consent provided by a parent is a proxy consent and once the person reaches the age of majority he should be in position to disregard the proxy on the retrospective basis. Devoid of this, the child is practically a sort of commercial captive of the previous commercial choices of their parents. India should also imitate the example set by the European Union in its GDPR (Article 17), which states that children deserve some special treatment since they might lack the awareness of the danger

and ramifications of data processing.

IV. The Algorithmic Exploitation and the Depreciation of "Withdrawal" Mechanisms. The DPDP Act permits the revocation of consent, but in the case of a child, it is a nightmare of a procedure. In case a 14-year-old E-Athlete learns that his or her training data is being sold to third-party scouts, he will not be able to give that consent independently, but rather through his parent (the potential "Consent Provider" will likely not be giving consent).

Moreover, social media algorithms have the feature of Behavioral Profiling that ensures that children remain in the production cycle. The DPDP Act section 9(3) outlaws tracking or monitoring of the behavior of children which entails detrimental effects. Nevertheless, all the business concept of Kidfluencing is created on the idea of keeping watch over what trends and what the viewers desire to watch out of the child. This forms a cycle of Performance Privacy whereby the child is never really on his own. The legislation should require all algorithmic profiles created based on the work of a minor to be erased or wiped out upon reaching the age of 18 so that an adult could begin their digital life with a clean sheet.

V. Reclaiming Autonomy from the Guardian and the Algorithm

The DPDP Act, though a monumental legislation, is a "paper tiger" in the face of the monetization of the child by the parent. For the digital child, the Indian government needs to introduce the "Doctrine of Consent Maturity," which will provide that any consent given by the parent in the context of data monetization is "temporary" and will lapse when the child turns 18 years old, unless ratified by the adult child.

The right to privacy is not just the right to be left alone; it is the right to define who we are in the present without the burden of the "monetized version" of our past. In connecting the DPDP Act with the fundamental Right to be Forgotten, the Indian government is capable of providing that the "Kidfluencers" of today become the autonomous and private citizens of tomorrow. The State is the ultimate guardian of the digital child's data when the natural guardian has chosen the path of monetization over privacy.[5]

[5] The Digital Personal Data Protection (DPDP) Act, 2023
General Data Protection Regulation (GDPR), Regulation (EU) 2016/679.
The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

GAP BETWEEN GUIDELINES AND GOVERNANCE-

Even the most well instituted constitutional rights are a mere paper promise unless monitored by the administration through punitive means. Regarding the situation with Kidfluencers and E-Athletes, the National Commission of Protection of Child Rights (NCPCR) and special courts according to Juvenile Justice (JJ) Act, 2015 must bear the brunt of the responsibility. But as this paragraph will answer the question, India experiences the crisis of Enforcement Lethargy. Although the NCPCR has tried to come up with regulations of child involvement in entertainment, the efforts are not enforced by statutes to reach the personal digital home.

Moreover, the hypothetical possibility of prosecuting the exploitative parents according to the JJ Act Section 75 is an unexplored and debatable frontier of law.

The NCPCR and the Paradox of the Guidelines Without Guts. According to the Commissions for Protection of Child Rights (CPCR) Act, 2005, Section 13, the NCPCR is required to investigate all those factors which prevent children to enjoy their rights and to provide recommendations on how to rectify this situation (NCPCR, 2022/2024). The guidelines were a step forward, since it specifically covered social media and content that was made by the child or the family.

There is however, a critical examination of these guidelines which is shown to have a lack of Enforcement Teeth. These guidelines require that any child engaging in an audio-visual program be registered with the District Magistrate (DM) and that the child must have at least 20 percent of his income deposited in a fixed deposit account.3 This, however, since these are guidelines and not rules under a particular labor law, are mostly advisory. A filming in their living room has no oversight at all compared to a television production house which is afraid of losing its license. When a child is being filmed 14 hours or the 20% deposit is being made, no Digital Labour Inspectorate verifies it. The NCPCR acts as a watchdog that can bark but not bite, it may suggest action to the police, but can not impose fines and close down an exploitative YouTube channel on its own.

II. Section 75 of the JJ Act: Viral Fame Cruelty possible? The Juvenile Justice (Care and Protection of Children) Act, 2015 is the most powerful, but least used enforcement tool. Precisely, Section 75 mandates the punishment of any individual who has actual responsibility

of, or authority over, a child and has the unwillingness, neglect, or assaults the child in a way that is likely to cause unnecessary mental or physical agony.

This paper suggests that this systematic overworking of a child to engage in viral activities, which includes denying the child sleep, compelling them to work against their emotions, or being exposed to severe gaming boot camps, amounts to Mental Suffering under subclause 75. In case a child is an employee of the family brand, the inability to provide rest and the commercialization of their personal life may be legally discussed as Cruelty. In Exploitation of Children in Orphanages v. The Supreme Court determined that the exploitation in Union of India (2017) should be interpreted broadly to safeguard the dignity of the child, and in theory, should be able to prosecute a parent who is using his or her child as a digital pack animal to make money off of AdSense revenue. Nevertheless, the judiciary has been slow to intervene in the sanctity of the family, which has largely left Section 75 scarcely used in the creator economy.

III. The Conflict of Interest in the Clause of the Actual Charge. One of the major obstacles to administrative enforcement is the fact that the law presumes that the individual with the actual charge of the child (the parent) is the individual who is going to report abuse. The complainant is normally the guardian under POCSO Act or JJ Act. The offender of the labour violation is the guardian in the paradox, Kidfluencer. This presents an Administrative Blind Spot.

To make the JJ Act effective in the digital age we need to shift to the Mandatory Reporting Requirement of digital platforms. When an algorithm is identified to know that a minor is uploading content at 3:00 AM or creating at least 10+ hours of video a day, the platform (under the DPDP act as Data Fiduciary) ought to be legally obligated to red flag the account to the NCPCR, and the NCPCR (or its political subdivision) does not have the technical capacity to monitor millions of family channels.

IV. Bridging the Gap: = The Digital Child Welfare Officer Necessity. India needs new categories of Digital Child Welfare Officers (DCWOs) to render the CPCR Act and JJ Act effective within this space. These officers are supposed to be allowed to: Audit the Financials: Take advantage of Section 13 of the CPCR Act and request bank statements of high earning minor creators to guarantee the 20 percent trust fund requirement is fulfilled. Carry out Digital Check-Ins: Keep an eye on the uploads to identify burnout or performative distress frequency and character. Take Suo Motu Action: In accordance with Section 75 of the JJ Act, the

DCWOs ought to be given the power to initiate cases against parents in cases of evidence of systematic mental suffering by commercial overexposure.

V. Moving from Advisory to Adversarial- The administrative oversight that currently exists in the country is "reactive" rather than "proactive." We only respond to the child's public outburst before the NCPCR intervenes. To protect the "E-Athlete" and the "Kidfluencer," the state must move towards an Adversarial Oversight Model where the right of the Parent-Employer over their child is balanced against the right of the child to be protected from labour. By providing "teeth" to the NCPCR guidelines through the creation of a dedicated "Digital Child Labour Code" and bravely applying Section 75 of the JJ Act to the domestic workplace, the country can ensure that the "privacy of the home" does not become the "cloak for exploitation." The administrative machinery must evolve to recognize that a child in front of a ring light is just as vulnerable as the child in front of the furnace.

CONCLUSION-

The development of labour law in India has taken a decisive point whereby the pure material security of the child has ceased to be the sole point of defence. As seen in this study, the move towards the Attention Economy as a replacement of industrial labour has made the age-old laws such as the Child Labour (Prohibition and Regulation) Act, 1986, irrelevant. The Kidfluencer and the E-Athlete is an example of a contemporary paradox: they are hailed as digital innovators and at the same time, are the same structural exploitation that labour laws were originally meant to eliminate. The Family Enterprise exemption of Section 3(2)(a) has quite literally turned the domestic arena into a no-fly zone, where parents are now able to circumvent the five hour daily cap and safety requirements of child actors. According to the labour law, the monetization of childhood should be defined as a formal employment relationship, irrespective of the blood association between the manager and the performer. The fact that a legal loophole now exists, where a person can make a fortune of millions of dollars and not be covered by the Digital Coogan Law, is against the very core of financial free will and the Right to Privacy free of law in Article 21. Moreover, the incessant stress of algorithmic performance and 14 hours cycles of gaming practice is a psychological hazard which should be treated by the State intervention (as much as the factories are). The administrative governmental agencies such as the NCPCR should no longer be advisory but assume a form of adversarial control and implement the provision of Section 75 of the Juvenile Justice Act to

impose penalties to those parents who treat their children as commodities instead of persons who hold rights.

Finally, the digital playground should not be permitted to turn into a digital sweatshop. India, being one of the creator economy leaders in the world, can become a trendsetter by introducing a "Digital Child Labour Code" that requires blocked trust accounts, a "Right to Disconnect," and a "Right to be Forgotten" on reaching adulthood. We should make sure that a child talent should be an instrument of the future prosperity of the child and not a parental bonanza.