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"We Need Their Wages": Implications of COVID-19 on the Rising Levels of Child Labor in India

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“We Need Their Wages”: Implications of COVID-19 on the Rising Levels of Child Labor in India

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I. Introduction

Surlina, a fourteen-year-old girl, wakes up in the morning and paints her whole body in silver paint.¹ She sits completely still

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¹ See Jeffery Gettleman & Suhasini Raj, *As COVID-19 Closes Schools, the World’s Children Go to Work*, N.Y. TIMES (Oct. 8, 2020), <https://www.nytimes.com/2020/09/27/world/asia/covid-19-india-children-school-education-labor.html?searchResultPosition=8> [https://perma.cc/QZ74-2NFB].

outside of a gas station, pretending to be a statue to earn money to take back to her family.² At the end of the day, she hands her money over to her mother and waits for her next “shift.”³ Surlina doesn’t attend school, but tries to read from a study book. Without assistance, she gives up because it makes her dizzy.⁴ When asked why she works like this, Surlina said, “I have no choice. This is my life. My family is poor. What else can I do?”⁵

Unfortunately, Surlina’s story is not an unusual one. Globally, there are an estimated 152 million children who are currently forced into child labor and 73 million who are performing hazardous work.⁶ One of the countries where this practice is most prevalent is India.⁷ Although India has experienced a seemingly miraculous economic boom in recent years, the country has struggled with issues of poverty, and higher levels of poverty correlate with high levels of child labor.⁸

On August 4, 2020, the International Labour Organization’s Convention No. 182 on the Worst Forms of Child Labour achieved universal ratification.⁹ While the goals of the Convention are substantial, the COVID-19 pandemic has significantly frustrated the actualization of those goals on a global scale. In India, the number of children forced into work has continued to rise—exposing the weaknesses in the framework of laws intended to address child labor.¹⁰

² *See id.*

³ *See id.*

⁴ *See id.*

⁵ *See id.*

⁶ *See ILO Child Labour Convention Achieves Universal Ratification*, INT’L LABOUR ORG. (Aug. 4, 2020), [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_749858/lang-en/index.htm#:~:text=universal%20ratification%20ILO%20Child%20Labour%20Convention%20achieves%20universal%20ratification,1999%20\(No.%20182\)\[https://perma.cc/9YXK-EBBK\]](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_749858/lang-en/index.htm#:~:text=universal%20ratification%20ILO%20Child%20Labour%20Convention%20achieves%20universal%20ratification,1999%20(No.%20182)[https://perma.cc/9YXK-EBBK]).

⁷ *See Ambika Ramachandran, Child Labor in India*, HUMANIUM (June 2, 2020), <https://www.humanium.org/en/child-labor-in-india/> [https://perma.cc/SX4Z-G877].

⁸ “Children are forced into child labor because of distinct factors; migration, emergencies, the lack of decent work available and poverty which is known as the most influencing factor.” *Id.*

⁹ *See ILO Child Labour Convention Achieves Universal Ratification*, *supra* note 6.

¹⁰ *See Biswajeet Banerjee & Sheikh Saaliq, Pandemic Threatens India’s Children with Child Labor Rising*, ABC NEWS (Oct. 12, 2020, 11:17 AM), <https://abcnews.go.com/International/wireStory/pandemic-threatens-indias-children->

The pandemic has sent shockwaves throughout the global community; as the world shut down, there arose a myriad of problems that had to be addressed. With schools closing, many children, like Surlina, had no choice but to seek employment to try and bring in extra money for their families.¹¹ Some studies contend that even once schools reopen, children will not return to school or normal life because their families will still need them as a source of income.¹² India has made great strides in the fight against child labor, but the pandemic threatens to erode all of that progress.¹³

This note will survey the current state of the laws against child labor in India and how the pandemic could poke holes in the already flimsy protections that India is offering its children. Part I will give a history of the practice of child labor generally and in India, and an overview of Convention No. 182 on the Worst Forms of Child Labour. Part II will give an overview of India's current laws against child labor, including internal laws and regulations and international agreements. Part III will argue that India's current laws do not go far enough and the COVID-19 pandemic will have consequences for child labor in the country. Finally, Part IV will discuss how India can amend its current laws to improve its response as a country and how the COVID-19 response can be used as a tool to combat child labor in the country.

II. Background

A. *The History of Child Labor Generally*

The practice of child labor has been prevalent around the world for centuries, largely finding its primitive origin in agricultural societies.¹⁴ With the rise of industrialization, child labor became a global practice.¹⁵ As jobs became more dangerous, expensive, and time-consuming, employers turned to children to perform jobs that

child-labor-rising-74685176 [https://perma.cc/VA8E-B6YP].

¹¹ See Gettleman & Raj, *supra* note 1.

¹² *See id.*

¹³ “All the gains that have been made, all this work we have been doing, will be rolled back, especially in places like India,” said Cornelius Williams, a high-ranking UNICEF official.” *Id.*

¹⁴ See Rama Kant Rai, *History of Child Rights and Child Labour*, MENENGAGE ALL., <http://menengage.org/wp-content/uploads/2014/06/History-of-child-rights-and-child-labour.pdf> [https://perma.cc/7LME-2NVX] (last visited Sept. 24, 2021).

¹⁵ *See id.*

were less desirable.¹⁶ “Child Labour,” as defined by the International Labour Organization (“ILO”),¹⁷ is “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.”¹⁸ This specifically refers to work that is “mentally, physically, socially or morally dangerous and harmful to children” or interferes with their ability to attend and succeed in school.¹⁹ The worst forms of child labor involve enslavement, child trafficking, exposure to serious hazards and toxins, family separation, prostitution, and the use of children for illicit activities.²⁰ Worldwide, nearly one in ten children are currently in child labor and almost half of those children work in hazardous conditions.²¹

There is no single factor ultimately responsible for the practice of child labor,²² but most often, child labor is the result of financial uncertainty or poverty.²³ Countries with thriving economies that place an emphasis on providing adults with well-paying jobs have seen a significant decrease in the rates of child labor.²⁴ In addition, when the primary male wage earner in a household loses his job, children in the household are more likely to be subjected to child

¹⁶ *See id.*

¹⁷ The International Labour Organization is a tripartite United Nations Agency that “brings together governments, employers and workers of 187 member States, to set labour standards, develop policies and devise programmes promoting decent work for all women and men.” *About the ILO*, INT’L LABOUR ORG., <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm> [<https://perma.cc/74PL-BS53>] (last visited Sept. 24, 2021).

¹⁸ *International Programme on the Elimination of Child Labour (IPEC): What is Child Labour*, INT’L LABOUR ORG., <https://www.ilo.org/ipec/facts/lang--en/index.htm> [hereinafter *IPEC: What is Child Labour*] [<https://perma.cc/JD84-P7X7>].

¹⁹ *Id.*

²⁰ Article 3 of the ILO Convention No. 182 defines the worst forms of child labor as “all forms of slavery or practices similar to slavery . . . the use, procuring or offering of a child for prostitution, for the production of pornography . . . the use, procuring or offering of a child for illicit activities . . . work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.” *Id.*

²¹ *Child Labour*, UNICEF, <https://www.unicef.org/protection/child-labour> [<https://perma.cc/E787-Q5HT>].

²² *See* Shima Baradaran & Stephanie Barclay, *Fair Trade and Child Labor*, 43 COLUM. HUM. RTS. L. REV. 1, 11 (2011).

²³ *See id.* at 11–13.

²⁴ “[A] study done in Vietnam found that child labor decreased in Vietnam by thirty percent between 1993 and 1997 when the country’s GDP grew by an average of nine percent per year.” *Id.* at 12.

labor.²⁵ Children provide an extra source of income to families who are left without other options.²⁶ Unfortunately, cutting off a child's access to education further perpetuates the cycle of poverty.²⁷ When children are educated, they have greater control over their futures and can help their families gain sustainable financial stability.²⁸ Child labor reinforces social inequalities for those in poverty, and severely limits the right to education and the right to proper development under international law.²⁹ Poverty is not only a direct cause of child labor, it is also "the genesis of many other causes of child labor."³⁰

To be clear, not all work performed by children should be considered child labor.³¹ A child who works in a family business to make extra cash often learns valuable skills that will help prepare him or her to be a productive citizen.³² Thus, the line between productive work and child labor is hard to distinguish.³³ The determinative factor is whether the work affects the child's health and development, or interferes with their schooling.³⁴ Other factors that are used to determine if work should be considered child labor are the nature and hours of the work, the conditions under which the work is performed, and the objective of the work.³⁵ Ultimately, each country has its own definition of child labor; whether something is considered to be work or child labor depends on how the country

²⁵ *See id.*

²⁶ "Chronic poverty can often lead families to place children into child labor in order to reduce the number of dependents in a family or in the hope of securing increased income . . . often the wages of two working adults is no longer sufficient and thus the added child's salary is needed for additional family income." *See id.* at 11–12, 14.

²⁷ *See id.* at 13.

²⁸ *See Child Labour, supra* note 21.

²⁹ *See generally, id.* ("Unlike activities that help children develop, such as contributing to light housework or taking on a job during school holidays, child labour limits access to education and harms a child's physical, mental and social growth.")

³⁰ Baradaran & Barclay, *supra* note 22 at 13.

³¹ *See IPEC: What is Child Labour, supra* note 18.

³² *See id.*

³³ *See Baradaran & Barclay, supra* note 22 at 6. ("As for the definition of child labor, scholars have recognized that one of the great problems is defining the scope of the problematic behavior.")

³⁴ *See id.*

³⁵ *See IPEC: What is Child Labour, supra* note 18.

chooses to define it.³⁶

B. The History of Child Labor in India

India has the highest number of children currently subjected to child labor in the world,³⁷ with 33 million children between the ages of 5 to 18 currently working.³⁸ The country also has one of the world's largest economies and is still growing at a rapid pace.³⁹ India has experienced an economic boom in the past decade,⁴⁰ but over a third of India's population lives below the poverty line.⁴¹ India's growth in GDP has mainly benefitted those members of the population who are educated and a part of the skilled workforce.⁴² Since child labor is most prevalent outside of the skilled workforce, the economic growth in India has not helped dismantle the problem.⁴³

Families subject to poverty are left without options and must put their children into the workforce to bring in extra money, even if that means foregoing the child's education.⁴⁴ Families that live below the poverty line are a part of India's "informal economy."⁴⁵

³⁶ *See id.*

³⁷ "With credible estimates ranging from 60 to 115 million, India has the largest number of working children in the world." *See The Small Hands of Slavery: Bonded Child Labor in India*, HUM. RTS. WATCH 1 (1996) <https://www.hrw.org/reports/india969.pdf> [hereinafter *Hands of Slavery*] [<https://perma.cc/5DRK-DCLM>].

³⁸ *See id.*

³⁹ *See* Josh Jacobs & Reeva Misra, *Child Labor: The Inconvenient Truth Behind India's Growth Story*, WASH. POST (Aug. 21, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/08/21/child-labor-the-inconvenient-truth-behind-indias-growth-story/> [<https://perma.cc/8C6U-U68T>].

⁴⁰ *See* Ramachandran, *supra* note 7.

⁴¹ *Id.* "Two-thirds of people in India live in poverty: 68.8% of the Indian population lives on less than \$2 a day." *Poverty in India: Facts and Figures on the Daily Struggle for Survival*, SOS CHILD.'S VILLS.: CAN., <https://www.soschildrensvillages.ca/news/poverty-in-india-602>. [hereinafter *Struggle for Survival*] [<https://perma.cc/F42Z-WQC9>]. Those who are considered "extremely poor" live on less than \$1.25 per day and make up over 30% of the population. *See id.* India has one of the largest economies in the world, but only a small portion of India's population has benefited from the country's recent economic boom. *See id.*

⁴² *See* Jacobs & Misra, *supra* note 39.

⁴³ *See id.*

⁴⁴ *See* Ramachandran, *supra* note 7.

⁴⁵ *See generally* Jacobs & Misra, *supra* note 39 ("[M]ost child labor is concentrated away from the skilled economy, in the informal sector that makes up about 90 percent of India's workforce and half of its GDP.").

The informal economy makes up approximately ninety percent of India's workforce and consists of individuals with lower levels of education and therefore less access to higher paying jobs.⁴⁶ There is significantly less regulation of the informal economy, especially when it comes to child labor.⁴⁷ In the informal economy, "children are not subject to government inspections, legal protections or minimum wage requirements."⁴⁸ Additionally, most attempts to quantify the number of children currently subjected to child labor often undercount the true scope because of the secrecy that exists within this section of the economy.⁴⁹ The Indian Government has taken legislative action to attempt to ban child labor,⁵⁰ but these governmental measures are aimed at the skilled workforce and therefore do not have the desired effect on the informal economy, which is the sector where child labor is most prevalent.⁵¹

In addition, the Indian government has developed a "culture of impunity" when it comes to trying child trafficking cases.⁵² The Indian Government fails to protect its children from exploitation in the workforce,⁵³ discourages outside help from other countries in addressing this problem,⁵⁴ and places global economic success over the protection of its most vulnerable citizens.⁵⁵ These factors have contributed to child labor becoming one of the most significant issues in India.⁵⁶ Without further action, child labor rates will continue to escalate, and this will have a detrimental effect on the country's development.⁵⁷ Legislative action is necessary, there can

⁴⁶ *See id.*

⁴⁷ *See id.*

⁴⁸ *Id.*

⁴⁹ *See id.*

⁵⁰ *See id.* (listing examples of legislative acts of the Indian Government since the 1930s).

⁵¹ *See Jacobs & Misra, supra* note 39.

⁵² *See id.* In 2015, "[o]nly 14.3% of the child trafficking cases sent to trial . . . resulted in convictions." *Id.*

⁵³ *See Hands of Slavery, supra* note 37, at 7.

⁵⁴ *See id.*

⁵⁵ *See generally Jacobs & Misra, supra* note 39 ("The country has since created one of the world's largest economies. But despite its wealth . . . India [is] home to one of the highest concentrations of child workers in the world.").

⁵⁶ *See Ramachandran, supra* note 7.

⁵⁷ *See Jacobs & Misra, supra* note 39. "It certainly impedes the development of the individuals affected, but it also impedes the development of the overall economy, because

be no doubt, but in India there must also be a shift in cultural attitudes for true change to last.⁵⁸

C. Background on the Universal Ratification of the ILO Child Labour Convention

Convention No. 182 on the Worst Forms of Child Labour (the “Convention”) is one of the eight “Fundamental Conventions” of the International Labour Organization (“ILO”).⁵⁹ The Convention addresses the need for complete “prohibition and elimination of the worst forms of child labour.”⁶⁰ The ILO has a program called the International Programme on the Elimination of Child Labour (“IPEC”) that supports State members in their efforts to eliminate child labor through measures such as this convention.⁶¹

On August 4, 2020,⁶² the Convention became the first ILO convention to achieve universal ratification by all 187 member states of the ILO.⁶³ ILO Director-General Guy Ryder stated that the universal ratification of the Convention “reflects a global commitment that the worst forms of child labour, such as slavery, sexual exploitation, the use of children in armed conflict or other illicit or hazardous work that compromises children’s health, morals or psychological wellbeing, have no place in our society.”⁶⁴

Between 2000 and 2016, the number of countries that ratified the Convention increased and the rate of child labor decreased by almost forty percent.⁶⁵ Unfortunately, “progress has slowed in recent years.”⁶⁶ But the United Nations General Assembly has taken unanimous action to bring this issue to the forefront in 2021 by

your future workforce is going to be less well educated.” *Id.* (quoting Sandra Polaski, deputy director-general of the ILO from 2012 to 2016).

⁵⁸ *See id.*

⁵⁹ *ILO Child Labour Convention Achieves Universal Ratification*, *supra* note 6.

⁶⁰ *Id.* (identifying the worst forms of child labor as slavery, forced labor, and trafficking).

⁶¹ *See Convention 182 on the Worst Forms of Child Labour, 1999*, HUMANIUM, <https://www.humanium.org/en/child-labour-convention/> [<https://perma.cc/985Y-X9DW>].

⁶² It is the first, and most rapidly affirmed, ILO convention to be ratified by all of the member states. *See ILO Child Labour Convention Achieves Universal Ratification*, *supra* note 6.

⁶³ *See id.*

⁶⁴ *Id.*

⁶⁵ *See id.*

⁶⁶ *Id.*

declaring 2021 “the International Year for the Elimination of Child Labour.”⁶⁷ This push by the United Nations combined with the universal ratification of the Convention will help bring awareness to the issue and hopefully accelerate progress towards elimination of the practice.⁶⁸

III. India’s Current Laws Against Child Labor

A. Domestic Laws and Efforts

India has taken internal steps to put a stop to the practice of child labor. Article 24 of the Indian constitution prohibits the employment of children who are younger than the age of fourteen in “factories, mines, and other hazardous employment.”⁶⁹ Articles 21 and 45 of the constitution ensure the right of children ages six to fourteen to receive “free and compulsory education.”⁷⁰ One of the most significant laws pertaining to the issue is the Child Labour Prohibition and Regulation Act of 1986.⁷¹ It places a ban on the employment of children in twenty-five hazardous industries and sets strict age requirements for work.⁷² In addition, the Child Labour Prohibition Act sets out concrete penalties for employers who choose to violate this law.⁷³ Since the enactment of the Child Labour Prohibition Act, additional laws that address child labor have been enacted. The Juvenile Justice (Care and Protection) of Children Act of 2000, for example, makes it illegal for an employer to hire a child to work in any hazardous occupation.⁷⁴

In 2016, the Indian government enacted the Child Labour

⁶⁷ 2021 Declared International Year for the Elimination of Child Labour, INT’L LABOUR ORG. (Jul. 26, 2019), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_713925/lang--en/index.htm [<https://perma.cc/24PH-63RR>].

⁶⁸ See generally *ILO Child Labour Convention Achieves Universal Ratification*, *supra* note 6. (“Convention No. 182 calls for the prohibition and elimination of the worst forms of child labour.”).

⁶⁹ Ruchira Gupta, *A Law that Allows Child Labour*, THE HINDU (Aug. 10, 2016, 1:09 AM IST), <https://www.thehindu.com/opinion/columns/A-law-that-allows-child-labour/article14560563.ece> [<https://perma.cc/V8HX-RN8Z>].

⁷⁰ *Id.*

⁷¹ See Radha Tilva Vachhani, *Côte d’Ivoire and India: Stricter Enforcement and Unanimous Compliance Required to End Child Labor*, 15 NEW ENG. J. INT’L & COMP. L. 125, 133 (2009).

⁷² *See id.*

⁷³ *See id.*

⁷⁴ *See* Gupta, *supra* note 69.

(Prohibition and Regulation) Amendment Act, 2016 (the “2016 Act”).⁷⁵ The 2016 Act makes it illegal for children under the age of fourteen to participate in any form of employment and for children under eighteen to work in hazardous occupations.⁷⁶ The 2016 Act cut the list of 83 hazardous occupations down “to just mining, explosives, and occupations listed in the Factory Act.”⁷⁷ This short list of hazardous occupations can be altered by government authorities at their discretion,⁷⁸ effectively making it much easier to lower the threshold for what is considered a hazardous occupation.⁷⁹ In addition, the 2016 Act allows children to be employed in “‘family or family enterprises’ or allows the child to be ‘an artist in an audio-visual entertainment industry.’”⁸⁰ Furthermore, the 2016 Act increases penalties, sets the minimum length of imprisonment for employers who choose to employ children, and provides that parents or guardians can be held liable.⁸¹ Lastly, the 2016 Act provides rehabilitation services for children who were victimized through the practice of child labor.⁸² In addition to legislative action, the Ministry of Labour and Employment continues to implement projects aimed at rehabilitation of child workers.⁸³ Non-

⁷⁵ *See id.*

⁷⁶ *See id.* This means children from the age of fourteen to eighteen can legally be employed, except in hazardous conditions. *See id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *See id.* (noting that hazardous occupations listed in the 2016 Act can be removed).

⁸⁰ Gupta, *supra* note 69. “The law clearly states the penalties for employers who contravene the ban, ‘ . . . imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.’” Prashant Bharadwaj et al., *Perverse Consequences of Well Intentioned Regulation: Evidence from India’s Child Labor Ban*, 18 J. EUR. ECON. ASS’N 1158, 1162 (2020).

⁸¹ Rudra Srivastava, *India: Child Labour (Prohibition and Regulation) Amendment Act, 2016 of India*, MONDAQ (June 15, 2017), <https://www.mondaq.com/india/employee-rights-labour-relations/602434/child-labour-prohibition-and-regulation-amendment-act-2016-of-india> [<https://perma.cc/WWB9-J6BK>].

⁸² *Id.*

⁸³ Ramachandran, *supra* note 7. The Government has implemented the Ministry of Women and Child Development Programs to provide resources for children who were recently removed from hazardous work sites. *See Child Labor and Forced Labor Reports, India: Findings on the Worst Forms of Child Labor*, U.S. DEP’T LAB.: BUREAU INT’L LAB. AFFS., at 11 (2019), https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/India.pdf [hereinafter BUREAU INT’L LAB. AFFS.] [<https://perma.cc/2WAW-F4BF>]. Another

government organizations have also joined the fight against child labor in India.⁸⁴

B. International Acts

In addition to India's internal legislative and governmental action, the country has participated in global efforts to eradicate child labor. In 2017, India ratified ILO Convention No. 182.⁸⁵ India also ratified ILO Convention No. 138 on the Minimum Age.⁸⁶ Convention No. 138 requires countries to (1) set a minimum age for children to enter into the workforce and (2) establish concrete policies with the goal of eliminating child labor.⁸⁷

India also ratified the United Nations Convention on the Rights of the Child⁸⁸ in 1992.⁸⁹ Ratification of this convention signifies the recognition that all children are born with fundamental rights, including the right to survival, the right to development, the right to protection, and the right to participation.⁹⁰ The right to development means the right to "education, care, leisure, recreation, [and] cultural activities."⁹¹ The right to protection means protection from

program that rescues and rehabilitates bonded workers in general is the Central Sector Scheme for the Rehabilitation of Bonded Laborers. *Id.*

⁸⁴ Ramachandran, *supra* note 7. The Indian Government has implemented groups to coordinate its efforts against child labor. BUREAU INT'L LAB. AFFS., *supra* note 83. These groups include a task force to implement the Child Labor Act, the Central Advisory Board on Child and Adolescent Labour, and the National Commission for the Protection of Child Rights. *Id.* They have also implemented an online portal, called the Platform for Effective Enforcement for No Child Labor Portal, where different agencies and organizations can upload relevant and helpful information for combatting child labor. *Id.*

⁸⁵ *India Ratifies Both Fundamental ILO Conventions on Child Labour*, INT'L LABOUR ORG. (June 13, 2017), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_557295/lang--ja/index.htm [<https://perma.cc/9ZA8-K2KX>].

⁸⁶ *Id.*

⁸⁷ *ILO Conventions on Child Labour*, INT'L LABOUR ORG., <https://www.ilo.org/ipecc/facts/ILOconventionsonchildlabour/lang--en/index.htm> [<https://perma.cc/LNZ8-HZ86>].

⁸⁸ The United Nations Convention on the Rights of the Child is an international legal framework that was adopted in 1989. *What Is the Convention on the Rights of the Child?*, UNICEF, <https://www.unicef.org/child-rights-convention/what-is-the-convention> [<https://perma.cc/XX48-8DP7>]. It is the most widely ratified human rights treaty in history. *Id.*

⁸⁹ *About Child Rights*, CHILD RTS. & YOU, <https://www.cry.org/child-rights> [<https://perma.cc/Q4BR-8MUR>].

⁹⁰ *Id.*

⁹¹ *Id.*

“exploitation, abuse, [and] neglect.”⁹² The rights to development and protection cannot coexist with child labor.⁹³ These rights of the child cannot be properly protected while child labor is still in practice.

IV. India’s Legal Actions in Combatting Child Labor Are Ineffective

A. Weaknesses in India’s Current Laws and Policies

Despite the fact that India has enacted multiple laws and policies to combat child labor, the country still has one of the highest rates of child labor globally.⁹⁴ There are many reasons why the practice continues to prevail, including the lack of enforcement of existing laws.⁹⁵ There are many gaps in labor law enforcement and criminal law enforcement in India that prevent adequate enforcement.⁹⁶ The Child Labour (Prohibition and Regulation) Amendment Act, 2016, increased the penalties for employers who violate the provision,⁹⁷ but India currently has no way to enforce the penalties because of the major gaps in law enforcement.⁹⁸

In addition, the 2016 Act contains many shortcomings inherent in its design that are detrimental to the fight against child labor.⁹⁹ First, the 2016 Act contradicts the Juvenile Justice Act of 2000¹⁰⁰ by drastically decreasing the number of hazardous occupations listed from eighty-three to “just mining, explosives, and occupations mentioned in the Factory Act.”¹⁰¹ Because the 2016 Act allows children from the ages of fourteen to eighteen to be employed, this

⁹² *Id.*

⁹³ *See id.*

⁹⁴ Vachhani, *supra* note 71, at 135.

⁹⁵ *Id.*

⁹⁶ BUREAU INT’L LAB. AFFS., *supra* note 83, at 5-6.

⁹⁷ Srivastava, *supra* note 81.

⁹⁸ *See generally* Gupta, *supra* note 69 (“Two, section 3 in Clause 5 allows child labour in ‘family or family enterprises’ or allows the child to be ‘an artist in an audio-visual entertainment industry.’ Since most of India’s child labour is caste-based work, with poor families trapped in intergenerational debt bondage, this refers to most of the country’s child labourers.”).

⁹⁹ *See id.*

¹⁰⁰ The Juvenile Justice Act made it illegal for employers to hire children to work in any hazardous occupation. *Id.*

¹⁰¹ *See id.*

non-exhaustive list presents a greater opportunity for children to be exposed to hazardous occupations.¹⁰² On its face, the 2016 Act seems to place a complete ban on the employment of children under the age of fourteen, however, it still allows children in that age bracket to be employed in a family business.¹⁰³ In India, child labor occurs predominantly in portions of society that are unregulated, and the 2016 Act does not provide for a system of regulation for family businesses.¹⁰⁴ The 2016 Act is also dangerous because it does not set firm limits on the number of hours that can be worked.¹⁰⁵ These inherent weaknesses and contradictions of the 2016 Act reversed significant gains that India had made in the fight against child labor.¹⁰⁶

India's social and cultural beliefs weaken the effectiveness of their current laws and policies as well. Child labor cannot be eradicated in India solely as a result of economic growth¹⁰⁷ because of the existence of the "informal economy."¹⁰⁸ The informal economy continues to persist because of "age-old prejudices about women's education, the value of formal schooling, and systematic problems related to caste, religion and class."¹⁰⁹ Until legislative restrictions effectively regulate the informal economy, enforcement in child labor cases will be impossible.¹¹⁰

B. India's Failure to Implement the ILO Child Labour Convention

India signed on to Convention No. 182 on the Worst Forms of

¹⁰² *See id.*

¹⁰³ Srivastava, *supra* note 81.

¹⁰⁴ *Id.* "Since most of India's child labour is caste-based work, with poor families trapped in intergenerational debt bondage, this [allowing children to be employed in family businesses] refers to most of the country's child laborers." Gupta, *supra* note 69.

¹⁰⁵ Gupta, *supra* note 69.

¹⁰⁶ *See id.*

¹⁰⁷ *See* Vachhani, *supra* note 71, at 135; *see also* Jacobs & Misra, *supra* note 39 ("[E]conomic arguments have not made clamping down on child labor easy, especially in such a highly decentralized and vast country.").

¹⁰⁸ *See* Jacobs & Misra, *supra* note 39.

¹⁰⁹ Vachhani, *supra* note 71, at 135-36 (citing Ranjan K. Agarwal, *The Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India*, 21 ARIZ. J. INT'L & COMP. L. 663, 711 (2004)).

¹¹⁰ *See id.* at 135.

Child Labour in 2017,¹¹¹ but India has yet to meet the Convention's requirements.¹¹² The Convention's main goal is to eliminate the worst forms of child labor, including slavery, sexual exploitation, and the use of children in hazardous work.¹¹³ At first glance, the legislative action that India has taken by enacting the Child Labour Amendment Act, 2016, should be enough to satisfy the requirements of the Convention.¹¹⁴ However, the 2016 Act's weaknesses prevent India from achieving compliance with the Convention.

The 2016 Act slashed the list of hazardous occupations that children between the ages of fourteen and eighteen are prohibited from working in.¹¹⁵ These rollbacks mean that children are allowed to work in industries such as "chemical mixing units, cotton farms, battery recycling units, and brick kilns" and many other hazardous industries.¹¹⁶ Preventing children from working in hazardous occupations is one of the main goals of the Convention.¹¹⁷ The Indian Government's choice to limit the hazardous occupations gives employers in dangerous areas the go-ahead to hire young children¹¹⁸ and prevents India from attaining compliance with the Convention.

In addition, the 2016 Act allows children to be employed in any family business or enterprise.¹¹⁹ This change does not account for the informal economy, where much of the labor is unregulated and goes without any monitoring.¹²⁰ Because the 2016 Act does not account for this section of the population, many "forms of child

¹¹¹ *India Ratifies Both Fundamental ILO Conventions on Child Labour*, *supra* note 85.

¹¹² *See generally* Srivastava, *supra* note 81 (explaining the 2016 Amendment's inadequate protections for children working in hazardous industries).

¹¹³ *See ILO Child Labour Convention Achieves Universal Ratification*, *supra* note 6.

¹¹⁴ *See generally* Gupta, *supra* note 69 (explaining that the 2016 Act appears progressive but has significant problems).

¹¹⁵ *See* Srivastava, *supra* note 81.

¹¹⁶ Gupta, *supra* note 69.

¹¹⁷ *See ILO Child Labour Convention Achieves Universal Ratification*, *supra* note 6.

¹¹⁸ *See* Srivastava, *supra* note 81.

¹¹⁹ *See* D. Ravi Kanth, *India Ratifying ILO Conventions on Child Labour a Good Step*, MINT (June 21, 2017, 12:32 AM), <https://www.livemint.com/Opinion/dc2o2VmY9rAFIHxSpFJOSK/India-ratifying-ILO-conventions-on-child-labour-a-good-step.html> [<https://perma.cc/V7G4-S4A2>].

¹²⁰ *See id.*

labour may become invisible”¹²¹ and children under 18 will continue to be exploited. Until a system of regulation is implemented to include this type of familial work, India will continue to fall short of its requirements under the Convention.

C. Consequences of COVID-19

In countries like India, where child labor has always been a pressing issue, the impact of the COVID-19 pandemic has eroded decades of progress and forced many children back into the workforce.¹²² The COVID-19 pandemic has created a global economic crisis with disastrous effects on already struggling vulnerable populations.¹²³ Without urgent action to prevent and mitigate the effects of the pandemic, millions of children could be forced into work.¹²⁴

As a result of shutdowns and layoffs, the pandemic has caused a significant increase in poverty, taking a drastic toll on the job market.¹²⁵ Poverty creates desperation as families struggle to find work, and desperation leads to child labor as families will do anything in their power to survive.¹²⁶ Historically, when crisis has sparked significant economic downturn, low and middle-income countries have seen rates of child labor rise.¹²⁷ Furthermore, as primary wage-earners lose job opportunities, people are more likely to engage in hazardous or exploitative work to make ends meet.¹²⁸ “Compared to adults, children are more likely to accept work for less pay and in vulnerable conditions. Businesses may deliberately recruit children to cut costs and boost earnings.”¹²⁹ In India, as households struggle financially, families often turn to children to help make ends meet.¹³⁰ All of these conditions create more

¹²¹ *Id.*

¹²² *See* Banerjee & Saaliq, *supra* note 10.

¹²³ *See* Int’l Labour Org. & U.N. Children’s Fund, *COVID-19 and Child Labour: A Time of Crisis, A Time to Act*, at 7 (2020), <https://www.unicef.org/sites/default/files/2020-06/COVID-19-and-Child-labour-2020.pdf> [hereinafter UNICEF Report] [<https://perma.cc/C9G9-HYS7>].

¹²⁴ *See* Gettleman & Raj, *supra* note 1.

¹²⁵ *See* UNICEF Report, *supra* note 123 at 7.

¹²⁶ *See id.* at 8.

¹²⁷ *See id.*

¹²⁸ *See id.* at 9.

¹²⁹ *Id.*

¹³⁰ *See id.*

opportunities for children to be forced into labor.¹³¹

India went into a full lockdown because of the COVID-19 pandemic which shut down every school in the country.¹³² The combined result of a flailing economy and school closures is that child labor rates have escalated quickly.¹³³ One child said, “[m]any parents in my neighbourhood have taken advantage of the ‘holiday’ to send children to town to sell fruits and vegetables.”¹³⁴ The United Nations estimates that at least 24 million children worldwide will eventually drop out of school and those children will be forced into work.¹³⁵ Schools often operate as a social protection resource for vulnerable children and forced closures have taken away that protection.¹³⁶

In India, officials are not talking about school closures or children’s issues but are solely focusing on economic issues.¹³⁷ The government has shut down early childhood development centers for those living in poverty.¹³⁸ The New York Times conducted more than fifty interviews with children, teachers, parents, employers, and activists who confirmed that children are performing all types of work and that most of it is illegal and hazardous.¹³⁹ For the time being, India has closed all elementary and middle schools

¹³¹ See UNICEF Report, *supra* note 123 at 9. Authorities recently broke the padlock on an illegal shoe factory and found that a dozen children between the ages of 10 and 17 were being forced to work there. See Banerjee & Saaliq, *supra* note 10. “In rural India, a nationwide lockdown imposed in March pushed millions of people into poverty, encouraging trafficking of children from villages into cities for cheap labor. The pandemic is hampering enforcement of anti-child labor laws, with fewer workplace inspections and less vigorous pursuit of human traffickers.” Banerjee & Saaliq, *supra* note 10.

¹³² Arshad R. Zagar, *Coronavirus Pandemic Fuels Child Labor in India as Desperate Families Send Kids Off to Work*, CBS NEWS (Oct. 9, 2020, 4:29PM), <https://www.cbsnews.com/news/coronavirus-in-india-fuels-child-labor-as-desperate-families-send-kids-off-to-work/> [<https://perma.cc/2Q2N-RB3R>].

¹³³ See Gettleman & Raj, *supra* note 1.

¹³⁴ UNICEF Report, *supra* note 123 at 17.

¹³⁵ Gettleman & Raj, *supra* note 1.

¹³⁶ UNICEF Report, *supra* note 123 at 17.

¹³⁷ See Gettleman & Raj, *supra* note 1 (“Child rights activists say it is remarkable how little the school closures are being discussed [by government officials]. Speeches by India’s prime minister, Narendra Modi, and top ministers usually focus on opening up the economy, not the schools.”).

¹³⁸ *Id.*

¹³⁹ *Id.* (“[A]s Nahida Ismail, a teacher in Bihar State, said, ‘The whole ecosystem around kids is breaking down.’”).

indefinitely.¹⁴⁰ After children drop out of school and enter the workforce, it becomes much more difficult to get children back into the classroom.¹⁴¹

India has always struggled with enforcement of child labor laws,¹⁴² but the pandemic lowered enforcement because there are “fewer workplace inspections and less vigorous pursuit of human traffickers.”¹⁴³ UNICEF officials have said that there have been significantly fewer workplace inspections, especially in hazardous workplaces.¹⁴⁴ Without regulation, there is no way to know if children are being employed.¹⁴⁵ Decreased regulation and wages have led to an increase of children performing labor out of economic desperation.¹⁴⁶

The COVID-19 pandemic has affected almost every facet of life around the world, but for children in India it is dismantling the progress made in recent years in the area of children’s rights.¹⁴⁷ “All the gains that have been made, all this work we have been doing, will be rolled back, especially in places like India.”¹⁴⁸

V. Future Implications and Recommendations

A. How India Can Improve Its Action

India has an important opportunity to make necessary changes now that will improve the lives of children for years to come. These targeted changes can help further the ultimate goal of eliminating child labor in India.¹⁴⁹ Two major areas in need of change include the legal framework surrounding child labor and the enforcement of these laws.¹⁵⁰

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *See supra* Part II (B).

¹⁴³ Banerjee, *supra* note 10.

¹⁴⁴ *See* Gettleman & Raj, *supra* note 1.

¹⁴⁵ *See e.g.*, UNICEF Report, *supra* note 123 at 12.

¹⁴⁶ *See generally* Gettleman & Raj, *supra* note 1 (explaining that due to wages plummeting and decreased regulation, families need their children to work in order to try make ends meet).

¹⁴⁷ *See id.*

¹⁴⁸ *Id.* (quoting Cornelius Williams, a high-ranking UNICEF official).

¹⁴⁹ *See* BUREAU INT’L LAB. AFFS., *supra* note 83 at 12-13.

¹⁵⁰ *Id.*

The first change would be to raise the minimum working age for *all* children in *all* professions to fourteen.¹⁵¹ The law in India provides for compulsory education up until the age of fourteen.¹⁵² By setting the minimum age for work above this age, it provides children with a greater opportunity to obtain education before entering the workforce and ensures India's compliance with the UN Convention on the Rights of the Child requirement that all children have a fundamental right to development through education.¹⁵³ In addition, India should enact a law that ensures children under the age of fourteen are not employed in family enterprises and businesses.¹⁵⁴ This would address a current weakness in the Child and Adolescent Labour Amendment, 2016,¹⁵⁵ and protect young children—especially those in the informal economy—from abuse.¹⁵⁶

India should also take legal action to ensure a comprehensive prohibition of all types of hazardous work for children under eighteen.¹⁵⁷ This change would eliminate another weakness in the Child and Adolescent Labour Amendment, 2016,¹⁵⁸ which has exposed children between the ages of fourteen to eighteen to extremely dangerous working conditions in hazardous industries.¹⁵⁹ Expanding the list of hazardous work to include *all* hazardous industries will help ensure the safety of children who are in the workforce and will help India achieve compliance with Convention

¹⁵¹ *See id.*

¹⁵² Krishna Pokharel, *India Mandates Children Go to School*, WALL ST. J., (Apr. 1, 2010, 12:01 AM), <https://www.wsj.com/articles/SB10001424052702303395904575158083085257338> [<https://perma.cc/3DHY-4R6A>].

¹⁵³ *See About Child Rights*, *supra* note 89.

¹⁵⁴ *See Srivastava*, *supra* note 81.

¹⁵⁵ *See supra* Part III(A). “[T]he new amendments put a complete prohibition on employment of children, but at the same time it allows them to be employed in family enterprises/businesses.” *Srivastava*, *supra* note 81.

¹⁵⁶ *See Srivastava*, *supra* note 81.

¹⁵⁷ “Ensure that the types of hazardous work prohibited for children under age 18 are comprehensive, especially in the sectors in which children work in unsafe and unhealthy conditions for long periods of time, such as in spinning mills, garment production, carpet making, and domestic work.” BUREAU INT’L LAB. AFFS., *supra* note 83, at 12 tbl.11.

¹⁵⁸ *See supra* Part III(A). “[T]he list of hazardous industries has been drastically decreased, this may allow the employers in industries like chemical mixing units, cotton farms, battery recycling units, and brick kilns etc. (which are actually hazardous) to employ adolescent labour.” *Srivastava*, *supra* note 81.

¹⁵⁹ *See Srivastava*, *supra* note 81.

No. 182 on the Worst Forms of Child Labour, which prohibits the use of children in hazardous work.¹⁶⁰

Major changes are needed in the area of child labor law enforcement. The Indian government has implemented institutional systems that are specifically assigned to the enforcement of child labor laws and regulations.¹⁶¹ But significant gaps exist between the agencies tasked with combatting child labor in both the labor law and criminal law context.¹⁶² Inadequate training opportunities for labor inspectors, combined with an insufficient number of inspectors and long complaint response times, inhibit labor law enforcement agencies from enforcing child labor laws.¹⁶³ The Indian government should publish data on the current state of labor law enforcement agencies in the country so that work can be done to improve them.¹⁶⁴

Current gaps in the criminal law enforcement system in India are also inhibiting adequate enforcement of child labor laws.¹⁶⁵ Information on the government's efforts in investigating, prosecuting, and convicting child labor crimes is sparse due to a lack of reported data.¹⁶⁶ This data should be collected and published and should include information on "the number of criminal investigations, the number of violations found, the number of prosecutions initiated, and the number of convictions."¹⁶⁷ This would allow the Indian government to better assess the current functionality of the criminal law process surrounding child labor law enforcement and make much-needed improvements.¹⁶⁸ Currently, many employers do not even realize they are in violation of child labor laws because of the lack of enforcement.¹⁶⁹ The government should implement extreme and meaningful penalties for employers who engage in child labor to ensure deterrence.¹⁷⁰

¹⁶⁰ See *ILO Child Labour Convention Achieves Universal Ratification*, *supra* note 6.

¹⁶¹ BUREAU INT'L LAB. AFFS., *supra* note 83, at 4-9.

¹⁶² *Id.* at 3 tbl.4.

¹⁶³ *Id.* at 4-9.

¹⁶⁴ See *id.* at 12-13.

¹⁶⁵ *Id.* at 4-9.

¹⁶⁶ See *id.* at 6 tbl.7.

¹⁶⁷ See BUREAU INT'L LAB. AFFS., *supra* note 83, at 12 tbl. 11.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 4-9.

¹⁷⁰ *Id.* at 12-13.

Lastly, police officers are not receiving adequate training or education on child labor laws, especially those related to the worst forms of child labor.¹⁷¹ The Indian government should ensure that police officers are being adequately trained and should implement a uniform training standard for all officers throughout the country.¹⁷²

These suggested changes should not be the end of reform efforts with regards to child labor, but they have the potential to initiate substantial change and create real progress toward the ultimate goal of eliminating child labor.

B. How the COVID-19 Response Needs to Include Child Labor Reform

Without targeted action, vulnerable populations such as child laborers will suffer the most from the fallout of the COVID-19 pandemic.¹⁷³ The Indian government can implement child protection policies now that will mitigate the effects of the pandemic and have long-term benefits in the fight against child labor.¹⁷⁴ The best foundation for implementing policy in this area is enacting comprehensive social protection measures.¹⁷⁵ This includes expanding and strengthening access to health care and income and food security by “establishing a nationally defined social protection floor.”¹⁷⁶ When families have sustainable income, they are less likely to resort to sending their children to work.¹⁷⁷

School closures have proven to be one of the largest driving forces of child labor since the onset of the pandemic.¹⁷⁸ While certain alternative schooling measures have been implemented, the government has not provided targeted schooling alternatives for children who are most at risk.¹⁷⁹ This includes children who are going to be forced into labor in the “informal economy.”¹⁸⁰ The

¹⁷¹ *See id.*

¹⁷² “Police officers have limited access to training opportunities on laws related to the worst forms of child labor and access to trainings varies from state to state.” *Id.* at 6.

¹⁷³ *See* UNICEF Report, *supra* note 123, at 18, 21–22.

¹⁷⁴ *Id.*

¹⁷⁵ *See id.* at 23.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 25.

¹⁷⁸ *See* Gettleman & Raj, *supra* note 1.

¹⁷⁹ *See* UNICEF Report, *supra* note 123, at 26.

¹⁸⁰ *See id.* at 11, 27.

government should make a concerted effort to target campaigns to this section of the economy, which encourage families to send their children back to school upon reopening if they are going to be successful in getting children back into the classroom.¹⁸¹

Lastly, COVID-19 has significantly decreased the frequency of workplace inspections, providing a greater opportunity for employers to take advantage of vulnerable children.¹⁸² Targeted funding for inspectors who investigate workplaces with a high risk for child labor can improve their ability to monitor these industries.¹⁸³ UNICEF has also suggested a “strategic compliance inspection model,” which combines the efforts of public and private partnerships, new technologies, community-based monitoring, and internal workplace auditing to create a more comprehensive effort for combatting child labor.¹⁸⁴

Implementing child labor reform policies into the COVID-19 response can draw attention to an issue that has plagued countries, like India, for decades.¹⁸⁵ “Effective action against child labour must address the full range of vulnerabilities that children face, and requires the implementation of policies and programmes that can contribute to the elimination of child labour through sustainable solutions to address its root causes.”¹⁸⁶

VI. Conclusion

Children, like Surlina,¹⁸⁷ should not have to forfeit their childhood to support their families. Worldwide, and especially in India, children are being forced to into work. In India, the lack of a strong legal framework combined with decreased enforcement mechanisms has always made it difficult to control the growing child labor problem throughout the country, particularly in the informal economy. The COVID-19 pandemic has only exacerbated the problem because of school closures and an economic downturn. A father of two young boys in India said, “[w]e need their

¹⁸¹ This—combined with economic measures that will help make up for lost wages—will encourage families to send their children back to school. *Id.* at 23–27.

¹⁸² See Gettleman & Raj, *supra* note 1.

¹⁸³ UNICEF Report, *supra* note 123, at 27.

¹⁸⁴ *Id.*

¹⁸⁵ *See id.*

¹⁸⁶ *Id.* at 5

¹⁸⁷ Gettleman & Raj, *supra* note 1.

wages [w]ithout them, I wouldn't be able to cobble together two meals."¹⁸⁸

This does not have to be the story for the children of India. The government can make targeted changes to the internal laws of the country to better equip law enforcement to tackle the problem of child labor. The Indian government can also include child labor reforms in its COVID-19 response to ensure that its children are being afforded adequate protection and assistance. With the implementation of these reforms, there is hope for children, like Surlina, who shouldn't have to wake up every day and paint herself to become a statue to earn wages anymore.¹⁸⁹

¹⁸⁸ *Id.*

¹⁸⁹ *See id.*