



THE INNOCENT SMILES IN THE DARK TUNNELS OF INDIA

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ABSTRACT

The world has reached that phase where children learn through technology but it is in this same world that children are seen working with dangerous materials in hazardous environments just to earn something less than a minimum wage. Regardless of the national and international legislations, child labour is still living and the world is oblivious to this. Another disastrous yet neglected truth is that these innocent faces are employed even in the deadly mines. Why has child labour in mining activities gone unnoticed? It is probably because there are roughly about one million children employed in mining, a few hundred scattered across different countries which is a comparatively lower statistics than that of children employed in agriculture and in other fields. Mining is inherently a risky activity and employing children in mines is nothing but offering them as bait. The focal point of the paper will be on the children working in mines in India and why the prevailing laws have failed to protect their rights. The paper will also look into the present status of the child labour-fuelled-mica mines in Jharkhand which came up in public after the Thomson Reuters Foundation Investigation in 2016. The paper will also take a subjective point of view on the Corporate Social Responsibility to be adopted by companies and the measures to be taken by the government to eliminate

child labour in mines. The paper in total will give an exclusive view of the innocent faces that have lost their smiles in the dark tunnels of India.

INTRODUCTION: CHILD LABOUR IN THE WORLD AND IN INDIA

The human kind is on their way to the moon and life in the moon is not a fictional goal anymore. The world is so advanced with its high speed processors doing much of the brain work. Man has proven it like a theorem that nothing is impossible in this world if you have will-power and a focused goal. The growing masses of the world are so focused and goal-oriented that work is like a leisure time for them. The young minds of the world are not in a race with just themselves but against the adults to prove themselves. We can google young brains of the world and find the list of many young and innocent faces as the CEO's of different enterprises. It is pure focus of the mind and hard work that drive these children to be the wonders of the world. But we do not live in a utopian world where everything is sparkling and shining. There are many children who cannot even spell their names, who are abused and tortured. Nonetheless there are children who are forced to work all day long to get something else than a minimum wage. Child labour is one of the biggest roadblocks to human rights worldwide. It is a shameful truth that these children exist in the same world where even humanoid robots get citizenship. Around the world about 218 million children between age of 5 and 17 are in employment, out of which 152 million are victims of child labour and half of them, 75 million are in hazardous child labour.¹ It is even more shameful and

¹Child Labour, International Labour Organization, <https://www.ilo.org/global/topics/child-labour/lang-en/index.html>.



pathetic to say that almost half of them are in one of the ‘worst forms of child labour’ and more than four million are in forced labour, which jeopardizes children’s physical, mental, educational and social development as well as the full enjoyment of their rights.² Another devastating yet least noticed fact is that these innocent faces are seen even in the dark and crumbling mines of the world. Far away from the official radars child labour is fuelling the mining activities and this is something which the world is remaining oblivious to. This paper will focus on the strata of children engaged in mining in India. Mining is inherently a risky activity, even dangerous to an adult and a child being employed in this field is nothing but offering him as bait. The International Labour Organization (ILO) has stated that the statistics of children working in artisanal and small scale mines are more than a million and the number is increasing with the agrarianisation of large areas in Africa and Asia.³

THE GIANT INDIAN MINES AND CHILDREN EMPLOYED IN THEM

Indian mining dates back to the Harappa civilization 600 years ago. India produces as many as 95 minerals and the mining and quarrying sector’s contribution (at current price) to GVA(gross value added) accounted for about 2.3 % for the first quarter

of the year 2017-18.⁴ The number of mines which reported mineral production (excluding atomic, fuel and minor minerals) in India was 1531 in 2017-18 as against 1508 in the previous year.⁵ The number of underground mines in operation mineral-wise (excluding fuel, atomic and minor minerals) is 39.⁶ India has one of the largest reserves of coal, manganese and barites and is the world’s largest producer and exporter of mica. The Metals and Mining sector in India is all set for a huge reformation, owing to reforms such as Make in India Campaign, Smart Cities, Rural Electrification and a focus on building renewable energy projects under the National Electricity Policy and is estimated to reach \$ 126 billion by 2025.⁷ The bottom line is that India is one of the mining giants of the world.

None of this is possible if miners don’t go into those tunnels and we have to bear in mind that the Indian mining industry is also a major employment sector in the country. But the most fatal truth is that it is our children who are sent down to pick up the metals. Mostly because they are small and can go down even into the narrowest tunnels and they get paid very less. As children can easily go deep underground in tunnels and also work on minimal wages, they are preferred by employers. Child labour in mining industry is highly prevalent in Africa and Asia. Both the continents heavily rely upon

²World Day Against Child Labour, United Nations, <https://www.un.org/en/events/childlabourday/background.shtml>.

³Dylan O’Driscoll, Overview of child labour in the artisanal and small-scale mining sector in Asia and Africa, K4D Brighton, UK: Institute of Development Studies,⁴ (2017), <https://assets.publishing.service.gov.uk/media/5a5f34feed915d7dfb57d02f/209-213-Child-labour-in-mining.pdf>.

⁴Annual Report 2017-18, Ministry Of Mines, 5 (2018), https://mines.gov.in/writereaddata/UploadFile/Mines_AR_2017-18_English.pdf.

⁵ Id. at 12.

⁶ Id. at 13.

⁷Metal Industry in India- Metal Companies in India to Invest, Investindia, (Sept. 17, 2020, 7:29 PM), <https://www.investindia.gov.in/sector/metals-mining>.



children who extract gold, diamond, and different stones. Children from age group 5 to 18 are employed to work for 12-15 hour for less than \$2 per day.⁸

The employment of children in hazardous environment is one of the worst forms of child labour and comes under the definition prescribed by ILO Convention No.182 (Worst Forms) in Article 3.⁹ This is the largest sector of worst forms of child labour and is considered to be most harmful as it has very adverse effects on the child's safety, health (mental and physical) and moral development. Children working in the mining industry get exposed to various chemicals which are extremely detrimental to their health. There are potential health consequences due to the nature of the work required in mines, causing over-exertion, respiratory ailments, headaches, joint problems, hearing and vision loss.¹⁰ Children working in mines toil under dangerous conditions without any access to school, health and other basic amenities. At such a young age children are exposed to work in fatal conditions, thereby, wagering their lives.

THE RISK SUFFERED BY THE CHILDREN

Mining is an inherently dangerous activity and the body of a miner is undoubtedly exposed to the fatalities. Their body is prey to numerous diseases induced by the wholesome nature of their occupation. When it comes to children as a miner the story is a bit devastating. Mining is known to be one of the worst forms of child labour. This hefty work taken by the children can damage their bones and muscles. Falling down open mine shafts, being trapped or injured by collapsing tunnels or drowning while mining underwater are all serious threats. Of the children interviewed by World Vision at the mine site:

- 19% said they had seen a child die on an artisanal mining site.
- 87% experienced body pain, and many had been injured.
- 67% reported frequent or persistent coughing.
- Several girls had had genital infections after working waist-deep in acidic water.¹¹

Being a child, they are more vulnerable to the harmful effects of mining. Children absorb and retain heavy metals in the brain more

⁸ Nikitha Chaudhary Chaudary, Dark Reality Of Mining Industry: One Of The Industries Employing Highest Number Of Child Labourers, The Logical Indian (Jan.6, 2019), <https://thelogicalindian.com/awareness/child-labour-mining-industry/>.

⁹ For the purposes of this Convention, the term the worst forms of child labour comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or

offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) 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.

Worst Forms of Child Labour Convention, 1999 (No.182). art. 3 (1999).

¹⁰ Child Mining: 10 Facts, The Child Labour Coalition (Aug.1, 2014), <http://stopchildlabour.org/?p=3853>.

¹¹ Kathryn Reid, Child labour: Children reveal horror of working in mines, World Vision (Jun.12, 2013), <https://www.worldvision.org/child-protection-news-stories/child-labour-children-reveal-horror-working-mines>.



easily. Their enzyme systems are still developing so they are less able to detoxify hazardous substances. Children breathe faster and more deeply, so they can inhale more airborne pathogens and dust. Nevertheless they dehydrate more easily due to their larger skin surface and because of their faster breathing. Child miners face many other potential health consequences owing to the nature of their work including: over-exertion, respiratory ailments, headaches, joint problems, hearing and vision loss. And when it comes to gold mines, children working there face an additional threat from the potential side effects of mercury. Mercury is a highly toxic substance used to extract gold. Mercury poisoning can affect a person's brain, heart, kidneys, and lungs. Additionally, Mercury poisoning is extremely detrimental to children, affecting their nervous system development leading to long-term developmental disabilities.¹² Children working in mines toil under dangerous conditions without any access to school, health and other basic amenities. At such a young age children can be seen working in the are exposed to working in fatal conditions.. Therefore, working for 10-14 hours in dark mines which are filled with poisonous chemicals has a constant risk of fatal accidents and injuries. Further children are susceptible to sexual exploitation and violence. Thus the children are actually placed in hell and asked to suffer the consequences for their helplessness.

THE NEST OF LAWS

¹² Child Mining: 10 Facts, The Child Labour Coalition (Aug.1, 2014), <http://stopchildlabour.org/?p=3853>.

¹³ Supra note 3, at 4.

¹⁴ Ander Arcos, Child Labour in Mining – From Regulations to Field Experiences, Alliance For Responsible Mining (2017, 2:16 PM),

Child labour in mining is a problem that merits special attention. It takes up different forms and manifestations with the degree of harm to completely deteriorate the life of the child. They often include tunneling, diving into muddy wells, hand-picking ores, crushing, amalgamating, removing waste or water from mines, working underground, etc. Worldwide, it is estimated that one million children work in ASM¹³, performing heavy labour such as digging, diving into tunnels and flooded rivers, carrying heavy loads, pounding the rocks into smaller pieces, and, in the case of gold, grinding the ore and mixing it with mercury.¹⁴ However we should keep it in the know that there are numerous international and national legislative instruments addressing child labour.

The International Labour Organization (ILO) has put forth the International Programme on Elimination of Child Labour, ILO's Worst Forms of Child Labour Convention, 1999 (No. 182) and ILO's Minimum Age Convention, 1973 (No. 138). India has ratified ILO Convention no.138 and convention no.182. The UN Convention on the Rights of the Child, 1989 contains the idea that children are not just objects who belong to their parents and for whom decisions are made, or adults in training. Rather, they are human beings and individuals with their own rights.¹⁵

The Child and Adolescent Labour (Prohibition and & Regulation) Act in 1986

<https://www.responsiblemines.org/en/2017/07/child-labour-in-mining-from-regulations-to-field-experiences/>.

¹⁵ United Nations Convention on the Rights of the Child. art.12.



provides for a ban on employing children below the age of 14. The recently amended version, The Child Labour (Prohibition and Regulation) Act also includes 'adolescent' category of children and bars their employment in hazardous occupations.¹⁶ The law also penalizes the employment of children and makes it a cognizable offence.¹⁷ According to the Mines Act of 1952, employment of children below the age of 18 years is illegal in mines.¹⁸ National Policy on Child Labour (1987), focuses more on rehabilitation of children working in hazardous occupations and processes, rather than on prevention.¹⁹ The Right of Children to Free and Compulsory Education Act, 2009 has made it mandatory for the state to ensure that all children aged 6 to 14 years are in school and receive free education.²⁰ While article 21A of the Constitution of India recognizes education as a fundamental right, it forms an ambitious strategy to use education to combat child labour in India. There are several operations that happen in India like Operation Smile, Operation Muskaan through which a lot of raids happen in the unorganized sector, manufacturing units and other factories.

However in my opinion, a law loses its essence if it is unable to deliver its purpose. In such a case it is as if such a thing is non-existent. A bad thing does not need its occurrence to prove it is bad; however a good thing requires its operation to show it is needed. The law has to speak for itself. And

if it proves to be ineffective, then one would not be able to find the need for its existence.

WHY HAVE ALL THESE LAWS FAILED?

India has seen the entry of young into the labour markets in spite of the legal provisions, conventions and the legal mandate of universal coverage and retention of all children from the ages of 6-14 years in schools. The reality that child labour in mines still exists is a bitter truth considering the legislations prevailing. Over the years a lot has changed and the arenas in which children are employed are more dynamic than ever. Then comes the main reason as to why these children have to surrender their inalienable human rights. Let us now see some of the reasons why the child labour in mines is surging.

A) THE VICIOUS CYCLE OF POVERTY

It is like the carousel never stops turning. It is not because some exterior pressure forces them, but they themselves force to work in such conditions. The vicious circle of poverty which circumscribes them, forces their families to see them as a potential source of income at such a young age. Looking from the outside we might see children accompanying their parents to their workplace and playing in the sand, when they are actually picking out the dollar earning minerals with their bare hands. However it is more appropriate to say that they are compelled to engage in such kinds of business for their 'survival'. There is no room for savings or earnings; even a rupee made is

¹⁶ The Child Labour (Prohibition And Regulation) Amendment Act, 2016, § 3A, No.35, Acts of Parliament, 2016 (India).

¹⁷ The Child Labour (Prohibition And Regulation) Amendment Act, 2016, § 14A, No.35, Acts of Parliament, 2016 (India).

¹⁸ The Mines Act, 1952, § 40 & § 45, No.35, Acts of Parliament, 1952(India).

¹⁹ Child Labour in India, ForumIAS (Oct.22, 2018), <https://blog.forumias.com/child-labour-in-india/>.

²⁰ The Right of Children to Free and Compulsory Education Act, 2009, §3, No.35, Acts of Parliament, 2009 (India).



spent for food to barely live. As a result these people even hide the fact that they work in illegal mines or that their children are being employed. They probably find a law which prevents a child from working in mines as a potential threat for their survival since it cuts off the income which could be received by that child. The World Bank's 2000/2001 World Development Report entitled *Attacking Poverty* (an in depth statement on poverty), identifies four categories that form four quarters of the poverty circle. These categories are as follows: 1) material deprivation; 2) low levels of education and health; 3) vulnerability and exposure to risk; and 4) voicelessness & powerlessness.²¹ Mining is a sector with great employment generation potential and thus can pave way for income generation. According to the World Bank, small-scale mining provides employment for about 13 million workers worldwide while large-scale mining provides direct employment for about 2-3 million workers.²² Thus it could be understood that mining is a reliable source of income to the downtrodden and they get engulfed in these risky activities to support their life.

B) THE INFORMAL AND INVISIBLE NATURE OF ARTISANAL AND SMALL SCALE MINING (ASM)

Worldwide, 1 million children aged 5–17 are estimated to be engaged in ASM and

quarrying activities, working in dangerous conditions, with no access to basic necessities, schools or health clinics.²³ Artisanal and small-scale mining is in itself informal and illegal and the supply chain is usually a big unsolved mystery. Artisanal and small scale mining is prevalent in almost 80 countries including Africa, South America, etc. Even though it is highly informal, unmechanised and gives low productivity, they prove to be an important source of livelihood to the local population. The informal and illegal nature of the ASM along with the fact that children are employed makes the supply chain longer and complicated and becomes untraceable. Due to the informal and invisible nature of illegal mining it is hard to reflect upon its statistics. Growing informalisation of labour has led to several new home-based occupations that are emerging, which is often difficult to keep track. Accompanying this is the invisibilization of the child workforce and use of children for illegal mining. Not surprisingly, the government itself is forced to admit, "Nearly 85% of child labourers in India are hard-to-reach, invisible and excluded, as they work largely in the unorganised sector, both rural and urban, within the family or in household-based units".²⁴ For example there are numerous mica mines in Jharkhand where adults work

²¹ The World Bank, World Development Report 2000/2001: *Attacking Poverty* (2001), <http://documents1.worldbank.org/curated/en/230351468332946759/pdf/226840WDR00PUB0ng0poverty0200002001.pdf>.

²² Weber-Fahr M, Strongman J, Kunanayagam R, McMahon G, Shelton C, *Mining and poverty reduction* (2001), <https://intussen.info/OldSite/Documenten/Noord/Internationaal/WB/PRSP%20Sourcebook/20%20Mining%20and%20poverty%20reduction.pdf>.

²³ *The Burden of Gold: Child labour in small-scale mines and quarries*, International Labour

Organization, http://ilo.org/global/publications/magazines-and-journals/world-of-work-magazine/articles/WCMS_081364/lang--en/index.htm.

²⁴ Government of India, *Children in India, 2012 – A Statistical Appraisal*, Social Statistics Division, Central Statistics Office, Ministry of Statistics and Programme Implementation, 70 (2012), http://mospi.nic.in/sites/default/files/publication_reports/Children_in_India_2012-rev.pdf.



along with their children. They work outside the official perimeters and supply the minerals they procure to illegal vendors who in turn make a huge lot of profit by selling the mica in the global market. This is facilitated through the informal and invisible nature of ASM. Coming to government apathy towards such rampant child labour it should be noted that the labour department cannot intervene because according to the Child Labour (Prevention and regulation) Act 1986 these children do not come under the category of child labour as they are not employed by any industry but by their own families. The other government departments are also not enthusiastic on addressing the issue probably due to inaccessibility of these areas and because of the fact that these settlements are illegal.²⁵

C) THE INEFFICIENCY OF LAWS AND ORGANIZATIONS

Despite the existence of various agencies like Fairtrade, Fairmines, OECD (Organisation for Economic Co-Operation and Development), Responsible Jewellery Council who audit and certify the supply chain to be free of child labour, the International Labour Organization still estimates that over one million children are employed in ASM and the number of children employed in mines is still increasing. The guardian legislation in India is the Child and Adolescent Labour

(Prohibition and Regulation) Act, 1986²⁶ which was amended in 2016 where the act was renamed the Child Labour (Prohibition and Regulation) Amendment Act, 2016²⁷. Surprisingly it made a distinction between children and adolescents. While the amendment seeks to completely ban child labour²⁸, it allows children to render help in “family enterprises” and allows adolescents to work in certain occupations not considered hazardous.²⁹ In the mean time the utter truth that, when it comes to children any form of employment is to be considered inexcusable and any such employment should be barred and made a non-bailable offence. These wide gaps in law have also made the supply chain heads or individual contractors consider it to be a very small obstacle which they can escape by using some uncanny legal advice. Now as I pointed out earlier the growing informalization of the sector has made everything hard to trace. Parents may ask their children to work with them to get some more money. But it should be accepted that nevertheless, the same is also child labour in itself and exposes children to unwanted risks. This is in fact a great threat challenging the efficacy of the amendment. Further it again adds up to the enormous gaps found in laws, which are considered as loopholes by the contractors of the illegal mines.

THE ROUTE MATTERS- ILLEGAL MINES AND ILLEGAL SUPPLY CHAINS

²⁵ Child Labour in Mica Mines of Jharkhand- A situation analysis report, Child in Need Institute, 4 (2018), <http://www.cini-india.org/wp-content/uploads/2018/01/Jharkhand-Report.pdf>.

²⁶ Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, §3(1), No.35, Acts of Parliament, 1986 (India).

²⁷ Child Labour (Prohibition and Regulation) Amendment Act, 2016, No.35, Acts of Parliament, 2016 (India).

²⁸ Child Labour (Prohibition and Regulation) Amendment Act, 2016, §3(1), No.35, Acts of Parliament, 2016 (India).

²⁹ Child Labour (Prohibition and Regulation) Amendment Act, 2016, §3(2), No.35, Acts of Parliament, 2016 (India).



Illegal mines are those mines which are kept away from the official radars. They function without approval of the authorities and like the name suggests such mines gets engaged in illegal activities. They are considered to be a black-route for performing the illegal activities and obviously they are scripted to be kept away from the government's reach. Illegal mines find themselves profitable through the illegal suppliers. Thus the route of such materials becomes hard to trace as they are not channeled through legal or recognized sources. The inflow details are often hidden and might as well be included with the normal sources. In turn illegal mines and illegal supply chains become the hubs of human rights abuse. The banner that covers these illegal networks covers the abuse also. This is seen in India, Myanmar, Afganistan and many more countries. Supply chain is obviously a prime concern for the big corporates using these minerals. The UN Guiding Principles on Business and Human Rights require that companies take pro-active steps to ensure that they do not cause or contribute to human rights abuses in their global operations and respond to any human rights abuses if they do.³⁰ Whatever be the mineral, be it gold, mica or anything the supply chain of a company is bound to be a very complex one and of course stretched across jurisdictions. For that authenticity and genuineness of the chain and sources is very much appreciated. For example, take the example of skin care products. Cruelty free products are gaining a huge momentum in the cosmetic empire because of the low possibility of an animal being hurt. Such

types of products are welcomed with open arms by the people because of the relative importance people give to humanity. This goal is achieved only because the whole manufacturing-distribution procedure of the item is clean & transparent and also one where the company gives importance to the supply chain. Similarly, when we apply the same dictum in the case of minerals, the products gain more momentum when its supply chain is free from any taints. Of course this is a very hefty process but the whole morale is that an inhumane act earning profit is nothing but cruelty. That is why the supply chain or the route of the materials are as important as the quality of the product.

CASE STUDY: THE BLOOD MICA MINES OF JHARKHAND

Mica is a mineral which is famous for its sparkling effect and also for its resistance to high temperatures. It is a key ingredient in car body-paint and in cosmetics. The glitter and sparkle that is visible in today's trending palettes and highlighters have their main ingredient as mica. Mica is mostly mined in India as well as in China. Three quarters of the mica mining in India takes place in Jharkhand and Bihar. But the stunning truth is that around 90% is illegal³¹ irrespective of the fact that there are considerable number of exports from this region. The states of Jharkhand and Bihar are the world's largest mica-mining hubs accounting to about 25% of the world's total production.³² An investigation by the Thomson Reuters Foundation in 2016 explored in depth the illegal mines in northern Jharkhand, southern

³⁰ United Nations Guiding Principles on Business and Human Rights, 2011. Cl.1(A) (2011).

³¹ Albert ten Kate, Irene Schipper, Vincent Kiezebrink, Meike Remmers, „Beauty and a Beast- Child Labour in India for Sparkling Cars and Cosmetics, Terre des

Hommes, 7 (Mar. 2016), <https://www.datocms-assets.com/22233/1590499248-terre-des-hommes-beauty-and-a-beast.pdf>

³² Id.



Bihar, and in Rajasthan. The Santhal Schedule tribe of the Giridih and Koderma districts of Jharkhand are completely dependent on mica mining for their livelihood. Mica mining was actually banned in this region but the poverty of these people forced them to go down these mines. More precisely the children are sent down these mines because of their smaller sizes. When children are being sent down these mines, they scrap off the mica with stones or sometimes even with bare hands and they carry these loads of mica scraps on their heads (commonly known as 'dhibra'). According to an investigation conducted by a high profile e-journal 'Refinery 29 (R29)' it is estimated that over 22000 children are working in the mica mines of Jharkhand.³³ The three month investigation by Thomson Reuters Foundation has found children as young as 5 years work along with their parents to earn about 5Rs per kg of dhibra.³⁴ Children climb down the narrow and crumbling shafts to hammer and chisel some mica and work upto 8 hours a day.³⁵ The Thomson Reuters Foundation, the Refinery29 e-journal and Nobel laureate Kailash Satyarthi's child protection group Bachpan Bachao Andolan (BBA) - or Save the Childhood Movement have invested their time and energy in bringing this inhumane situation to the light. Interestingly these families are living in a bubble of poverty that they are cut from the outside world and are

ignorant or rather unwilling to consider other forms of livelihood. They also don't seem to have faith in governmental schemes and it is not surprising since their distrust is evident from their current plight irrespective of the existence of many laws. The families somehow manage to earn an income of Rs50-Rs100 where each family consists of about 5-6 members. These communities do not attach much importance to education and moreover they prefer to earn one rupee with a child than spend one rupee for the child. The government infrastructure for education is not any encouraging either. The parents are not left with any other option besides taking their children for mica picking.

THE FEAR TO SPEAK

If they open up they may lose their only way to make some money to live, if they don't speak up their children may die. It's actually a dilemma for these communities. They suffer behind their success. We can understand this only by stepping into their shoes. People are even reluctant to expose any fatalities that actually happen down the mines because many often that is the only way of earning an income. Initially in 2016 when the Thomson Reuters Foundation did an investigation in the mica belts of Koderma and Giridih districts they came to know that children had died in the illegal mines but their deaths were covered by blood money which kept them silent. The revelation of the death

³³ Lexy Lebsack , The Makeup Industry's Darkest Secret Is Hiding In Your Makeup Bag, Refinery29 (May.4, 2019, 8:28 PM), <https://www.refinery29.com/en-us/2019/05/229746/mica-in-makeup-mining-child-labour-india-controversy>.

³⁴ Nidhi Jamwal, The dark secret of Jharkhand's shiny mineral mica, Gaon Connection (Aug.23, 2019), <https://www.gaonconnection.com/swayamproject/dar>

[k-secret-of-jharkhand-shiny-mineral-mica-46067?infinitescroll=1](https://www.refinery29.com/en-us/2019/05/229746/mica-in-makeup-mining-child-labour-india-controversy).

³⁵ Nita Bhalla, Rina Chandran, Anuradha Nagaraj, Foundation Blood Mica: Deaths of child workers in India's mica ghost' mines covered up to keep industry alive, Reuters (Aug.3, 2016, 5:47 PM), <https://in.reuters.com/article/india-mica-children/blood-mica-deaths-of-child-workers-in-indias-mica-ghost-mines-covered-up-to-keep-industry-alive-idINKCN10E0CV>.



of 7 children made a huge ‘Anti Child Labour –Corporate Social Responsibility’ wave that made companies to think about their raw materials. However after a re-investigation of the matter by the foundation in 2017, they again found that mining continued in the remote abandoned ‘ghost mine’. Campaigners fear the death toll was likely much higher than what was revealed as bodies are often not recovered from the rubble, or are quickly and silently cremated in the forests by mine operators.³⁶

2020 ANALYSIS OF THE MICA BELTS

The large companies including Merck have made a phenomenal statement of zero tolerance towards children being involved in mining and close scrutiny of their supply chain. It is fascinating and appreciable. However in a recent investigation done by Al Jazeera Media Network (An independent news organization funded by the Qatari government, they have found that children are still present in the mica mines of Jharkhand. They contacted several miners, retailers, wholesalers and exporters and almost all of them denied the employment of children. They have even pointed out that children only come to the mines to bring food to their parents and the media capture such incidents and put up incorrect news. Unfortunately the name of Merck has come up which the name of big companies who buys mica from the exporters and the investigation has come out to reveal that these lower chains involve children in the mines. The state of Rajasthan in India has many legal mica mines and all the official exports are made from them. However the undeniable truth is that the mica extracted

from the illegal mines in Jharkhand and Bihar also find their way abroad in between the legally extracted mica. Al Jazeera has found in their investigation that the exporters get the license to export mica from Rajasthan but in reality they procure the mineral from Jharkhand and export them along with the mica from Rajasthan thus making their business look legitimate.³⁷ They have even found that the mandatory certificate for Ethical Conduct regarding child labour can be easily obtained with money and bribing. So this sting operation has put light on the present plight of mica exporting prevailing in India. The children and women are said to be evacuated from the mining sites when inspections happen. They say there are hardcore laws, there are stringent guidelines, there are global initiatives and yet somehow we can still find innocent faces in the darkest tunnels of India. These are people who do not even know what mica is or what its use is or who buys the mica. They do not know the actual worth of this mineral. They do not have any other option to survive. In a village with a population of over 4000 people and no other ways of survival, there is not much the people can do against this terrible mining. To be fair, there is a choice to be made: Starvation or Survival. And that is quite simple for them. They chose to survive.

SOLUTION 1: CLEANSING SUPPLY CHAIN AND CORPORATE SOCIAL RESPONSIBILITY

Experts opine that child labour has become a social norm in the country that is largely accepted and tolerated by the society. This exploitative and abusive practice will

³⁶ Id.

³⁷Behind the Glitter: Mica and Child Mining in India, AlJazeera (Jun.12, 2020),

<https://www.aljazeera.com/program/episode/2020/6/12/behind-the-glitter-mica-and-child-mining-in-india/>.



continue unless society adopts a zero tolerance attitude towards it. This happens because of the helplessness of the poor and their non-awareness of the beneficial legislations drafted for them. Right kind of focus and orientation with state level authorities is also needed to avoid this practice. Terres des hommes, Plan International, etc are all NGO's that work together towards eliminating child labour. They have projects running across different countries and try to eliminate child labour in its various forms. They also focus on child labour in mines and structure their projects by bringing children back to schools, providing financial aid, giving awareness sessions, etc. While the efforts of all these organizations require honorary mention, the main doctors to eradicate this practice should be the companies who use or buy these minerals.

Companies who export or buy the minerals from India should take an oath of social responsibility and try to eliminate child labour of all forms from their entire supply chain. The quality, authenticity and genuineness of the supply chain should be of paramount importance notwithstanding the hefty and tedious scrutiny the company should exercise. They should seek to develop the corporate social responsibility towards maintaining the genuineness of their supply chains. National Resources Stewardship Council (NRSC), a French non-profit organization with 63 stakeholders have reached an agreement to focus on

“traceability and transparency, community empowerment and multi-stakeholder governance”. Estee Lauder, Chanel, Yves Rocher, Clarins and L’Oreal has helped organize the summit along with pharmaceutical giant Merck and pigment manufacturer Sudarshan. Responsible Mica Initiative (RMI) is another initiative that aims to build a robust and responsible mica supply chain in India. When the world learnt about children labour in mica mines in the Indian states of Jharkhand and Bihar, many companies using mica decided this was not acceptable, and started to act. The Responsible Mica Initiative (RMI) is a global coalition for action – putting policy into practice – comprising of multiple organizations who are committed to establishing a fair, responsible and sustainable mica supply chain in the states of Jharkhand and Bihar in India and that will potentially eliminate unacceptable working conditions and eradicate child labour by 2022. On July 2020 global coalition of mica-using industries and civil society organizations led by RMI has submitted the “Jharkhand Sustainable Mica Policy Framework and Vision” with the Jharkhand Government.³⁸ Recently on September 2020 the Daimler has announced that it would be joining the Responsible Mica Initiative (RMI) becoming the first automotive brand to actively support RMI’s commitment and activities.³⁹ The corporate tycoons that procure mica from India have finally spoken up. Cosmetic giant, L’Oréal has expressed

³⁸ Sustainable Mica Policy and Vision prepared by Responsible Mica Initiative with Jharkhand Government and Civil Society Support, Responsible Mica Initiative (Jul.20, 2020), <https://responsible-mica-initiative.com/sustainable-mica-policy-and-vision-prepared-by-responsible-mica-initiative-with-jharkhand-government-and-civil-society-support>.

³⁹Daimler AG Joins Forces with the Responsible Mica Initiative to Improve Mica Supply Chains and Eliminate Child Labour, Responsible Mica Initiative (Sept.4, 2020), <https://responsible-mica-initiative.com/daimler-ag-joins-forces-with-terre-des-hommes-and-the-responsible-mica-initiative-to-improve-mica-supply-chains-and-eliminate-child-labour>.



concern over this inhumane mining practice. However they have opined that if they cut off India from their list, it would affect these impoverished communities detrimentally. Nevertheless they have ensured traceability and transparency of its whole supply chain to guarantee fair and responsible mica and also pointed out that they only buy from suppliers who source from independently-verified, gated mines where children are not present.⁴⁰ L'Oreal's mica supplier in India, Merck, has undertaken such steps to conduct social audit to identify the extent of and report against usage of child labour in mica mining. Merck is also working in partnership with NGO Bachpan Bachao Andolan (Save the Childhood Campaign) to create 'child-friendly villages' in mica-sourcing Indian communities, helping to reduce the level of child labour in these areas. The British cosmetics company Lush, known for its handmade products and ethical trading, has switched from natural to synthetic mica in 2014 due to concerns about child labour. ITC, an Indian multinational conglomerate company believes in a "No Child Labour and No Forced Labour" policy. It is ITC's policy to ensure that no person below the age of eighteen years is employed in the workplace and to filter their supply chain by refraining from engaging with vendors and suppliers who resort to using child labour and forced labour in their operations. Fellow cosmetics giant Estée-Lauder has also been involved with BBA, and claims that its affiliation with the National Resources Stewardship Circle is prompting a collaborative resolution to

problems in the supply chain.⁴¹ This proves that elimination of child labour has entered the CSR⁴² agenda of many companies. All these efforts should be clearly mapped such that it eradicates child labour from every nook and corner of the supply chain. This is not enough but yet it is a progressive and humanitarian approach towards a society to whom we owe a duty. The corporates and civil societies should work for the rights of those who have no voice. The combined efforts of the corporates and the laws will wipe out this social evil sooner or later.

SOLUTION 2: STRONGER GUARDIAN LAWS

It is not just the corporates who have a responsibility to maintain their supply chain. Everything can automatically fall into pace only if the laws are so tight that not even one child drops out of the official radars. As I have already mentioned there are numerous international and national legislations prohibiting child labour and employment of children specifically in mines. The guardian legislation for the children was the Child and Adolescent Labour (Prohibition and Regulation) Act 1986. It was recently amended in 2016 and the Child Labour (Prohibition and Regulation) Amendment Act, 2016 of India can be quoted as the prime legislation that speaks for the children. But ironically this very Act has been described by The Hindu national daily as '**the law that allows child labour**'. Earlier the Act prohibited employing children below 14 years of age but the amendments even tough

⁴⁰ Lexy Lebsack , The Makeup Industry's Darkest Secret Is Hiding In Your Makeup Bag, Refinery29 (May.4, 2019, 8:28 PM), <https://www.refinery29.com/en-us/2019/05/229746/mica-in-makeup-mining-child-labour-india-controversy>.

⁴¹ Dr.Radhika Lobo, CSR and Child Labour: Endeavours by Select Corporates in India, IOSR-JHSS 29, <https://www.iosrjournals.org/iosr-jhss/papers/NMCCLI&C/29-32.pdf>.

⁴² Corporate Social Responsibility



made with a diplomatic approach (if required to be said) it shoves as a death trap for children and their future. And thus it is evident where repairing and damage control has to be done. The act puts a blanket ban on employing children below the age of 14 in any establishment irrespective of whether it is hazardous or non-hazardous. A child is permitted to work only to help family, in family enterprise or as child artist after school hours or during vacations. This in itself serves against the purpose of the act. It should be understood that it is the downtrodden children who engage in child labour. When they are given such an option they tend to use that opportunity since there is at least a small chance for them to earn a little bit more money. Further the act introduces the concept of adolescent labour and defines an adolescent to be between the ages of 14-18. These children are allowed to work only in non-hazardous occupations and the interesting fact is that the list of hazardous occupations was reduced from 83 to 3. The offences under the Act have become compoundable and cognizable. The home based work allowed for children is yet a major gutter and this leads to children being exploited. When the families are engaged in mining, the children step out to help them after their class. This reduces their concentration in studies, if they are sent to schools and also deteriorates their health. *The Hindu Business Online* writes: "The harsh reality is that by exempting 'family enterprises' the Centre may well end up legitimizing exploitation of the poor and vulnerable." The newspaper has also reported that there exists a growing trend of outsourcing, contractors who farm out work to families at exploitation rates.⁴³ This is one

of the defects of law that is utilized by those illegal supply chains. Moreover the concept of adolescent labourers is a bit disappointing and the subsequent bookmarking of 3 occupations as hazardous is honestly not such a big plus point. The long title of the Act reads "An Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto." The newly inserted section 3A of the Act prohibits the employment of adolescents in certain hazardous occupations and processes vis-à-vis (i) mines, (ii) Inflammable substance or explosives, (iii) Hazardous process. In other words we can say that employment in chemical mixing units, cotton farms, and battery recycling units etc (which are actually hazardous) is permitted. This is yet another huge gap in the law which is meant to protect children. Though the amendment seems to be progressive it is actually having an effect of inertia, pulling the children back to their chores but with legal backing. The possibility of children being employed in family units and adolescents being employed in hazardous environments is something which calls for close scrutiny. So the laws have to be made stronger because law gives man the power to protect himself and fight for his rights. And I believe, children in India deserve to live life in the most beautiful manner.

CONCLUSION

Children are often forced into mines by poverty. The boycott of goods which are products of child labour is not a humane answer to this crisis. Reducing the income of already impoverished communities can make

⁴³ Gerard Oonk, New Indian Child Labour Bill allows many children to work, Stop Child Labour,

<https://stopchildlabour.org/new-indian-child-labour-bill-allows-many-children-to-work/>.



them strangle and the situation may get even worse. Instead, companies and their supplies need to work towards vanishing children from their supply chain. Western countries, including the United States and the United Kingdom are top destinations for products of child mining. Consumers often buy diamonds, gold and precious gems from retailers with total disregard to the origin of their jewellery or their sources or the human population involved in digging them up.⁴⁴ Consumers should be made aware of the ingredients of products they buy. And simultaneously the Government should provide rehabilitation to these children. Efforts should also be made from the side of government where the laws are made fool proof and completely bans child labour. Letting a child work in non-hazardous condition is not a merit unless it is 100% fool proof and the Indian government should realize that. Some adolescents' work are considered legal either if there is minimal risk or if they are well-trained or well-protected from the hazards. But how can risks to young people be reduced to acceptable levels? The young generation is in a stage of rapid development and at the same time they are prone to more exploitation and harm. Safe Work for Youth is an initiative by the International Labour Organization which aims to protect young people under age 18 who are engaged in legal employment. These children (over the minimum age) are not considered to be adolescent and in spite of that they are considered to be child labour under ILO Conventions Nos. 138 and 182 if the work they do is hazardous.⁴⁵ There is a need for the Indian Legislature to revisit the Child Labour (Prohibition and Regulation)

Amendment Act, 2016 and reexamine the list of hazardous and non-hazardous occupations considering the possibility that the permission to help families is a great flaw in the legislation. Even the International labour organization has expressed that in the case of adolescent children who work, risks involved cannot be completely removed but they can only be reduced. And thus risk reduction and protection of young workers should be given paramount importance. As for school going children, the government should be vigilant enough to completely eliminate the chances of their employment and also provide opportunities to the impoverished to get a better choice of employment. No child goes into those mines with a steady hand; they are forced by their circumstances. They are voiceless and life is continuing to make them voiceless. They don't examine the possibilities of the best life. Rather they just examine the possibility to feed all family members. Being the voice for the voiceless is what we can do. Children should be treated as minors and not miners and their innocent smiles do not belong to the dark tunnels.

⁴⁴ Child Mining: 10 Facts, The Child Labour Coalition (Aug. 1, 2014), <http://stopchildlabour.org/?p=3853>.

⁴⁵ Safe Work for Youth, International Labour Organization, <https://www.ilo.org/global/topics/child-labour/lang--en/index.html>.