

# Evolution of Child Labor vs. Education: Unpacking the Tensions in the 2016 Amendment Act

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## ABSTRACT

*Despite numerous government initiatives and regulations for children's welfare, issues surrounding child rights and education persist as pressing challenges in the country. This study highlights critical concerns affecting children, particularly the struggles faced by girls due to gender discrimination. Girls' rights remain in conflict, often overshadowed by societal contradictions. As emphasized, a child is a unique individual with innate potential, requiring support to develop fully physically, emotionally, intellectually, and spiritually. Without nurturing this growth, the nation's progress remains stunted. Addressing these disparities is crucial for ensuring a healthy and equitable future for all children, especially young girls.*

**Keywords:** Labor Commission of India, Exploitation of labor, SSA 2002, Child Labor, Girls' Right to Education, GoI, CLPRA 2016

## 1. INTRODUCTION:

It is widely acknowledged that despite the existence of International Conventions, Declarations, and numerous laws addressing the Rights of the Child, child labor in economic activities remains a significant and pressing issue in the country. One area where children are often employed is in traditional family businesses, where they work under the close supervision of adult family members, and the risk of exploitation is typically minimized. In these environments, children can develop a sense of responsibility and learn time management skills from an early age. According to UNICEF's State of the World's Children Report 1997, "Children's work needs to be seen as happening along with a continuum with destructive and exploitative work at one end and beneficial works promoting or enhancing children's development without interfering with their schooling, recreation and rest at the other. And between these poles, there are vast areas of work that need not negatively affect a child's development."

However, alongside the more positive aspects of child labor, there is a troubling trend of children being engaged in work that severely hampers their future development and career prospects. Efforts to combat this issue, including awareness campaigns and access to free education, have not effectively curbed the practice of placing children in work environments that rob them of their childhood. This particular group of working children has raised concerns both domestically and internationally.

The 2016 Child Labor Prohibition and Regulation Amendment Bill (CLPRA), introduced by the Government of India and passed by Parliament, aims to prohibit all forms of employment for children under the age of 14. A contentious

aspect of the CLPRA 2016 is the provision that permits children to assist in family enterprises after school hours and during holidays, which has sparked debate among various stakeholders. Additionally, the previous list of 65 hazardous processes and 16 occupations has been significantly reduced to just 3 occupations and 23 processes, thereby excluding many previously regulated activities.

### 1.1 CLPRA 2016

Child labor legislation in India has experienced limited changes over the years. The initial comprehensive law addressing child labor was enacted in 1938 with the Employment of Children Act, which was informed by the findings of the Royal Commission of Labor in 1931. This legislation aimed to eliminate child labor in certain hazardous occupations and remained in effect for approximately three decades. In 1986, the Central government introduced the Child Labor Prohibition and Regulation Act, which was influenced by the recommendations of the Gurupadaswamy Committee Report from 1979. The committee concluded that completely eradicating child labor was unrealistic given the pervasive poverty in India. Consequently, the CLPRA 1986 focused on prohibiting the employment of children in hazardous and exploitative labor across various sectors. It is important to highlight that the amendment to the Child Labor (Prohibition and Regulation) Act in 2016 was a delayed action, occurring 15 years after elementary education was established as a fundamental right in the Indian Constitution and five years after the Right to Education (RTE) Act was implemented. During this interval, census data indicated a reduction in the number of child laborers, from 12,666,377 in 2001 to 4,353,247 in 2011. However, these statistics have faced legal challenges, primarily due to the underreporting of child laborers in the informal sector, which includes domestic work and agricultural labor. Regarding the educational opportunities for child laborers, two specific provisions in the CLPRA 2016 have been criticized for their ambiguous foundations. One such provision permits children to assist in family businesses, which has drawn significant scrutiny from various stakeholders.

### 1.2 The Extent of Child Labor

The International Labor Organization (ILO) estimates that there are currently 246 million children aged 5 to 17 engaged in work, representing approximately 15 percent of the global child population and around 35 percent in Sub-Saharan Africa. More than 10 million of these children are involved in dangerous occupations, including drug trafficking and sex work. The ILO further indicates that 70 percent of child laborers are employed in agriculture, with the remaining 30 percent working in services (22%) and industry (9%). The Asia-Pacific region has the highest number of child laborers, totaling 122 million, followed by Sub-Saharan Africa with 49 million (ILO Reports, 1998). According to the Child Rights Information Network (CRIN), approximately 1 in 6 children worldwide are engaged in full-time work, with a total of 218 million children currently employed, of which 126 million are in hazardous conditions (Bose 1994:67). Many of these children are laboring to repay debts that they did not incur. The commodities produced by these children on commercial plantations include cocoa, coffee, coconut, cotton, tea, rubber, tobacco, palm oil, and sugar (Karmakar 1999:44). Since the adoption of the Convention on the Rights of the Child by the UN General Assembly in November 1989, and its subsequent ratification by numerous countries, including India in 1992, there has been a growing global awareness of the need to protect children's rights. However, the lack of relevant statistical data regarding child employment continues to hinder efforts to address this issue effectively. One significant challenge is that children are often not adequately represented in contemporary social accounting, which limits the availability of information on various forms of child exploitation and abuse.

### 1.3 Child Labor in India

In India, the problem of child labor is well recognized. There are varying estimates of the number of working children in the country due to different concepts and methods of estimation. Out of the 12.6 million working children (5-14

years), 5.77 million of them are classified as "main" workers and 6.88million as "marginal" workers. The share of workers of the country aged 5-14 years to the total workforce is 3.15 percent (*National Census, 2001*).14 percent of the children in the age group 5-14 years are engaged as child laborers in India (*UNICEF,2006*).

*According to ILO, "factors that contribute to child labor in South Asia include parental poverty, illiteracy, social and economic circumstances, lack of awareness, lack of access to basic and meaningful quality education and skills, internal conflict, migration and trafficking and high rates of adult unemployment." (ILO Reports, 1998).*

Similarly, in the Laborers Working on Salal Hydro Project vs. State of Jammu and Kashmir case, it was revealed by the J&K Labor Commission that some minors were employed in the site of the project. However, the explanation provided a defense for the same stated that "these minors accompany members of their families on their own and insist on getting employed". (<http://legalserviceindia.com/>) The court while specifying the case of Asiad workers declared the domain of constructionwork as hazardous wherein the employment of under 14 children was considered illegal and unlawful as per Article 24 of the Indian Constitution. The court alongside imposed on the state government to approach and encourage the workmen to send their children to school and to provide free and compulsory education there.

#### 1.4 Comparison with Neighbors

It is reported that in Pakistan, where more than 3.3 million children are economically active on a full-time basis, the statistical data on various aspects of a life of these child laborers are grossly inadequate even in the official social accounting system (*The Dawn 2008:45*). The country has been asked by the ILO to prepare a national statistical program on child labor.

In China too, the detailed statistics regarding child labor are not available as the government does not allow direct collection of information in this regard. But "most China watchers conclude that child labor in China is increasing as is evident from the high dropout rates from school and the hasty expansion of foreign investment dependant export-oriented enterprises. There is increasing evidence that children are becoming part of the growing workforce in China" (*Mukherjee 2008:34*)

In neighboring Bangladesh, out of total 35.06 million child population of 5-14 age group, 5.05 million children fall under the category of child laborers (*BBS, 2003*).

In Nepal, the incidence of child labor is on a higher side. Out of a total of 6.2 million children of 5-14 age groups about 2.7 million children are child laborers (*CDPS,1997*).

## 2. Education and Employment Trade- Off

To establish a defined relationship between child labor and education is not a smooth task. Treating association as causation might not be the right thing to do: children in many countries might engage themselves in employment because of exclusion from educational opportunities of dropping out of school. In India, rates of non-attendance for child laborers are twice. However, what is quite evident statistically and empirically is that child labor aggravates the risk more than the children not engaged in labor. For the neighboring countries of Bangladesh and Pakistan, child laborers are four times more likely to be out of school as compared to their non-employed counterparts. (*ILO reports, 2011*)

It also has to be taken into account that the time intensity of employment period has a bearing on the learning outcomes of a child, especially in regard to the girl child. The UCW through its series of detailed surveys similarly has established a negative relationship between working hours and educational prospects of children globally. It states that while the

first 20 hours of works have a limited impact on the children's school attendance, however, post this there is a scope of high risk-escalation. “*Children who work 38 hours are 40 percent more likely to be out of school than those working an extra 0-5 hours*” (UCW, 2014).

The interplay of poverty, child labor along with educational deprivation together produces a vicious cycle of disadvantage. In India, child laborers in the poorest 20 percent of households are four times more likely to be out-of-school than those in the richest 20 percent, rising to fifteen times more likely in Ghana. (ILO Reports, 2011) The lack of access to school is one of the many elements in the continuing pattern of disadvantage in the country.

It is often seen in the Indian context that the equality enjoyed by both men and women seems to be *de jure* in nature. To argue, the Indian constitution in Article 14 guarantees equal opportunities and rights of both men and women in the social, economic and political sphere; again Article 42 holds the state responsible to ensure humane and just work conditions as well as maternity; and Article 51 (A) imposes upon its citizens the fundamental duty of denouncing derogatory practices impacting the dignity of its women; Article 21A guarantees the right to education for children. Nevertheless, such kind of *de jure* equality on the ground has not been much successful in transforming into *de facto* equality despite several efforts in the country's Five Year Plans.

While the country's Five Year Plans continued to focus on the prior and similar women's welfare schemes; education and maternal and child health services have currently been gaining prominence however with questions concerning their effectiveness. Section 17-A inserted by the 2016 Child Labor Act seeks to empower the District Magistrate in order to ensure the right implementation of provisions mentioned in the Act. However, as is clearly evident from past Indian experience, it is neither realistic nor feasible for a single individual/ group to *monitor* whether the concerned children's education is getting inhibited, let alone dealing effectively with child labor issues which *do* enter the legal space. For instance, as per 2006- 07 budget an amount of Rs 222. 31 billion was to be spent solely and exclusively for the women in the country. Those schemes which have direct women beneficiaries were to receive 100% funding from that fund while those which impact women indirectly were to receive 30% of the funding. However, the implementation aspect remained questionable when schemes like *Indira Awas Yojana* (77% women beneficiaries) and National Child Labor Project (44% women beneficiaries) have been the recipients of 100% funding meant for the women population exclusively. (<http://legalserviceindia.com/>)

On the other hand, *Apni Beti Apni Dhan*, 2016 (Your daughter, your wealth) is a girl child-sensitive scheme proposed by the Ministry of Women and Child in Haryana under which families have to redeem a bond of Rs. 25, 000 at the time when their girl child reaches the age of 18 and the concerned mother is given an amount of Rs. 500 during the birth of a girl child. However, this very scheme which was meant to facilitate better education for girls remained unsuccessful when reports by International Centre for Research on Women revealed that 53% of the families redeemed the amount for girls' marriages while only 23% spent the same on education. (ICRW, 2016)

Table 1 shows the gender gap in enrolment ratio (in thousands) for girls and boys in India for the year 2014 from standard I to XII. It is evident that the stark gender difference in the enrolment of girls and boys is explicit in the lower primary group (I- V). There have been significant debates on the investment of the State in higher education at the cost of primary education keeping in mind the economic aspect of development in the country. In this regard, Alston and Bhuta argue that the perceived returns on educational investments have still not led to the conclusion that it should be provided to every child irrespective of their productive potential. Alongside, while the language of education has witnessed a shift to universal access, it is still today characterized as a program justified 'essentially' in terms of economic benefits. For instance, a study conducted by ILO subtitled *An Economic Study of the Costs and Benefits of*

Eliminating Child Labor was entitled 'Investing in every Child' wherein the language of rights has been carefully and intentionally avoided. (*CHRJ, 2006*)

Especially in the Indian context, the question of implementation of social rights laws as against civil and political rights remains on shaky grounds statistically. For instance, the petition in regard to the Right to Education, states like West Bengal and Assam offered an abysmal picture in provisioning education for the child laborers working in these respective tea gardens. While the provisioning of Education to these children is also enacted in the Plantation Labor Act (1951), the management as well as the respective state governments are being unable to meet the necessary demands. It is worth mentioning here that in case of governmental refusal to provide its' citizens' the claimed positive rights, it posits a situation wherein the concerned citizens are *forcefully alienated* from enjoying the same, which again assists further inequality amongst the right bearing citizens.

### 3. Effect on Girls Right to Education

The 'right' to education allows a framework within which there is a general acceptance of education as an entitlement of every citizen irrespective of their ethnicity, identity, caste, race, gender, disability or ability. However, focusing solely on the access to education puts a limit on the well-prescribed agenda to a very 'narrowly framed policy agenda' which concerns more with meeting international enrolment and universalization targets rather than addressing the 'traditional relationships' that shape and contribute towards exclusion. There have been negligible efforts aimed at altering the relationships between state administrators, village leadership, low caste groups and teachers and the poor without which the right to education would reap the benefits anticipated for.

The distinction between child work and child labor is important while interpreting the current CLPRA 2016. Such a distinction can be gauged from the outcomes that the concerned child faces. While child work can be assumed to be beneficial without hampering the overall development of the child; child labor occurs when the normal development of the concerned is obstructed due to long and additional working hours, lack of adequate and quality education and health services, inability to attend school and the like. The new CLPRA 2016 seems to be furthering processes of child labor. For instance, the amendment made in CLPRA 2016 fails to address in detail the nature of *help*. What is help? How many are working hours per child considered as help?

Eighty-sixth amendment, 2002 added Article 21-A in the Indian Constitution making it mandatory on State's part to provide free and compulsory education to children of age six-fourteen years. Similarly, Article 24 of the Constitution provides that no children below the age of fourteen years shall be employed in any factory or mine or engaged in any other hazardous employment. Direction for free and compulsory education for children has been provided under Article 45 of the Constitution. By amending the Schedule pertaining to hazardous activities, the amendment has violated the spirit of Article 21-A.

Trying to map how in the policy domain the amended laws are being actually realized by the State, i.e. how it is trying to eliminate/mitigate the pervasive problem of child labor, it is worth mentioning about the NCLP. It was approved at the seventh 5- year plan in 1987 and has been revised following CLPRA Amendment, 2012. The Standing Committee on Labour, 2014 in its 40<sup>th</sup> Report states the following:

*"The Ministry of Labour & Employment is implementing National Child Labour Project (NCLP) in 266 districts of the country including metros for rehabilitation of children rescued/ withdrawn from work. Under the Project, children rescued/withdrawn from work are enrolled in the special schools, where they are provided with bridge*

education, vocational training, nutrition, stipend, health care, etc. before mainstreaming into the formal education system. At present, about 7311 special schools are running with an enrolment of 3.2 lakh children under the NCLP Scheme.”

On the other hand, The Ministry of Women & Child Development is implementing a Centrally Sponsored Scheme i.e. Integrated Child Protection Scheme (ICPS) under which inter- alia financial assistance is being provided to State Governments/UT Administration for setting up and maintaining Homes for children in ‘difficult circumstances’ and especially orphan children. By investigating Government data to support its noble initiatives, a bleak but positive image emerges through the reliability of the data is limited. ([planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11\\_rpc/lab.doc](http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11_rpc/lab.doc))

Table 2 clearly shows the increase in the workforce participation of children (especially the girls) in the age group 5-9 years and 5- 14 years. Bachpan Bachao Andolan, an organization committed to children welfare, rescued 5, 254 children from what is termed as ‘exploitative labor’ in the year 2015. 83% of the children have rescued from home and family based units and was predominantly females. (<http://www.bba.org.in/?q=resources/publications>) However, the new child labor act 2016 now keeps this population of the children out of the legal purview of the law, through its provision of extending *family help*, thereby increasing their vulnerability towards labor and exploitation.

In the Swedish International Development Agency report, Gautam Bhan in *India Gender Profile* posits that while the Census report 2011 shows an increase of female literacy to 15% (higher than 13.2% for males), however, it cannot be assumed that gender bias in education has been tackled. And, thanks to the country's unbalanced sex ratio! An increase of 15% in female literates implies an increase of merely 10.51 million in contrast to 21.4 million male literates. The number of female illiterates in Bihar actually increased by 12.25%- a drastic increase of 2.31 million illiterate persons over the 1990's. In fact, the number of female illiterates rose in 10 states and union territories. ([http://e-learningup.org.in/UploadArticlePDFFiles/Education-for-Womens-Empowerment\\_183eab2848c-e5fc-4194-ade7-cdb1101171e7.pdf](http://e-learningup.org.in/UploadArticlePDFFiles/Education-for-Womens-Empowerment_183eab2848c-e5fc-4194-ade7-cdb1101171e7.pdf)) The supply-side factors such as the role of poverty in compelling parents to send their children to work, and demand-side factors such as the way a society organizes its production processes to help determine the extent to which children are engaged in child labor. *Social exclusion* mechanisms for marginalized communities are another strong factor that keeps children out of school leading them to work.

To argue, empowering individuals in order to put forth justified and constitutionally legitimated claims are an important component of the human right paradigm. This is also related to the concept of accountability which forms an essential part of the concept of human rights. The Human Development Report 2000 states that in any case, a person lacks the access to the fundamental right to education; it implies some culpability in the concerned social system. (*CHRGJ, 2006*)

In the post-colonial Indian context, there seems to be at work a paradox between the homogenizing impulse of nationalism which argues that all should have equal rights and in-between the heterogenizing impulse of Indian governmentality which bases itself on differentiating between population groups. More than 70% of the countries globally devote between 10 and 20 percent of public spending to education, and 18 percent spend a higher proportion. Only one in eight countries devote less than 10 percent of public expenditures to the education of which India is an example. While countries like USA, Russia, Indonesia have been successful in attaining gender parity in primary and secondary education; the Indian State till today struggles to guarantee the distinctly inter- related socio-economic rights to its citizens.

Kapoor argues that there exists two chief apparatus of the social welfare policy, vis a vis, basic public goods and social

protection. India as a welfare state has disproportionately focused on the latter since the past two decades through the creation of new social protection programs and expanding the already existing ones. This, in turn, is leading to a gradual decay of the country's basic and important public services like quality education, public health, sanitation, water and the like. Figure 1 reveals that educational attainment for girls globally has been witnessing a dismal scenario (despite an increase in female enrolment ratio) in primary, upper primary as well as secondary levels with the largest disparity existing in the primary level of education (55%).

It would be worth noting Myron Weiner who while strongly disagreeing with the claim of lack of resources resulting in low educational rates in the country posits three reasons/ causes for the same. Reciprocating to the why aspect of child labor in India he explains that the first and foremost catalyst to child labor is weak government policies on primary education with a focus on higher education thereby catering to the interests of the middle class and the very fact that 'child labor was a part of the government's industrial strategy to promote the small-scale sector and to expand exports'. (CHRJ, 2006). The intrinsically predatory nature of the Indian state has been one of the major reasons for vexed implementation processes. Harris-White terms the Indian state as a 'shadowstate, private status state, state of last resort and spinning state' which has been captured by elite and other group interests and which is prone to unrelenting corruption.

Although there has been consistent agreement on the equal status of both civil and political right and socio-economic rights; the latter, especially in the Indian context, seems to be lagging behind from the mainstream discourse of human rights and their enforcement, mainly because of their contentious nature. Sunstein puts forth the 'religious' responsibilities of a 'decent' society stating its' assurances of food and shelter, medical care, education, and jobs. In a way, these positive rights serve as a protective force that aims to provide social security to a state either by means of constitution or legislation. But we could problematize the legislative procedure of protection of such rights in a huge complex economy like India which is divided into several classes, castes, and ethnicities.

The egalitarian judicial activism of the Supreme Court to uphold due processes of rights and equal treatment for women has, therefore, not been satisfactory. Epp argues that such an undermining has been a result of the "lack of a support structure for legal mobilization, consisting of rights-based advocacy organizations, rights advocacy lawyers and sources of government financing". (Ruparelia, 2013). The fragmentation of India's interest groups on the basis of caste and gender, lack of cooperation and understanding between legal practitioners along with the resource constraints in the country has led the agenda of achieving individual rights in the country achieve a snail's pace.

## Conclusion

The realization of the right to education is essential for the comprehensive enjoyment of various civil and political rights, including the rights to health, employment, and civic participation. Ensuring the constitutional right to education reflects a commitment to accountability for governments in this regard. Since 2005, India has witnessed a series of legislative measures aimed at enhancing citizens' rights to a range of socio-economic benefits, including education, access to information, employment, food security, environmental conservation, and public services. The evolution of India's welfare framework has been significantly influenced by progressive judicial activism, the broadening of the social underpinnings of its federal parliamentary democracy, and a burgeoning counter-movement addressing the imbalances in the development process (Ruparelia, 2013). In the past decade, notable advancements have been made in the educational sector. For example, the Indian Government's 2003 report on the Rights of the Child served as a catalyst for numerous alternative reports produced by civil society organizations, which were subsequently submitted to the United Nations. This underscores the positive impact that commitments from non-governmental organizations, civil

society, and various levels of government can have on primary education, although the effectiveness and quality of universal education still require further examination. Nevertheless, when considering the Indian context of child labor and education, it can be argued that elevating socio-economic entitlements to the level of fundamental rights has not necessarily resulted in clear positive outcomes. For instance, in Himachal Pradesh, despite an increase in literacy rates, there has been a significant rise in the number of children aged 5 to 14 engaged in marginal labor. The proportion of child workers in Himachal Pradesh increased from 5.4% in 2001 to 9.6% in 2011, highlighting a concerning trend despite constitutional guarantees.

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### Annexure:

**Table 1: ENROLMENT RATIO INDIA INDIA , Source: CCS, 2011**

Type of Schools	Boys	Girls
Primary (1- V)	67223	62796
Upper Primary (VI-VIII)	33746	32035
Secondary (IX- X)	19484	17477
Senior Secondary (XI-XII)	11747	10406

**Table 2: AGE WISE ENROLMENT DISTRIBUTION 1911- 2011, Source: Prognosis IPC, 2012**

	ALL INDIA	9 years of age (%)	0- 14 years of age (%)	5- 14 years of age (%)
<b>1991</b>	<b>Boys</b>	0.9	10.9	5.7
	<b>Girls</b>	0.9	9.9	5.1
	<b>All children</b>	0.9	10.4	5.4
<b>2001</b>	<b>Boys</b>	1.5	8.8	5.1
	<b>Girls</b>	1.4	8.5	4.9
	<b>All Children</b>	1.5	8.7	5
<b>2011</b>	<b>Boys</b>	2.3	7.2	4.8
	<b>Girls</b>	2.2	6.1	4.2



	<b>All Children</b>	2.3	6.7	4.5
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**Table 3: Gender-based Literacy rate in % from 1951-2011, Source: GoI**

Particulars	1951	1961	1971	1981	1991	2001	2011
Total	18.3	28.3	34.5	43.6	52.2	64.8	74.04
Male	27.2	40.4	46	56.4	64.1	79.3	82.14
Female	8.9	15.4	22.18	29.8	39.3	53.7	65.46
<b>Disparity</b>	<b>18.3</b>	<b>23</b>	<b>26</b>	<b>25.6</b>	<b>24.8</b>	<b>25.6</b>	<b>16.68</b>