

# The Child Labor (Prohibition and Regulation) Amendment Act 2016 and the Right to Education for Girls: Tensions and Contradictions

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## Abstract

*“The child is a soul with a being, a nature and capacities on its own, who must be helped to find them, to grow into their maturity, into fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual, and spiritual being: otherwise there cannot be a healthy growth of nation.”*

- PN Bhagwati, Former Chief Justice of India, 2000

*There are many rights and regulations made by government for welfare of children, but the issues of child rights and education of children are still suffering from tragic and burning problems in the country. We are tried to focus some of the issues of children here in the study and their position in the society. Especially girl's rights are still struggling from contradictions because of gender discrimination.*

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

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## Introduction:

It is well recognized today that notwithstanding the International Conventions and Declarations and a plethora of legislation on the issue of the Right of the Child, the employment of children in economic activities still continues to be a tragic and burning problem in the country.

Traditional family occupations are one such area where children work under strict supervision of the family adults and the matter of exploitation is generally ruled out. Under such situations, the children learn a sense of responsibility and time management at an early age. In this regard UNICEF's State of the World's Children Report 1997, pp-27, puts it, "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 against such a non-negative side of the issue of 'child labor', there has been increasing use of children in works that damages their future development and career altogether. No amount of propaganda and access to free education has succeeded in preventing such undesirable practice of putting children to work where they miss childhood completely. It is this group of working children that has created a concern both at the domestic level of countries and also at the international level.

The 2016 Child Labor Prohibition and Regulation Amendment Bill (CLPRA) introduced by the GoI and passed by the Parliament seek to ban all forms of employment activities for children less than 14 years of age. One specific provision of the CLPRA 2016, namely allowing children to *help* in 'family' enterprises post-school hours and during holidays, has generated a debate amongst

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<sup>1</sup> *Family* in CLPRA 2016 is defined as child's mother; father, brother, sister and father's sister and brother and mother's sister and brother.

opposing parties. Alongside, the previous list of 65 processes and 16 occupations have been cut down to 3 occupations 23 processes thereby excluding and categorizing occupations like *zari* work, carpets, e-waste, tanning amongst many others as *non-hazardous*.

In a developing country like India (male literacy rate **82%**, female literacy **65. 4%** as per Census 2011), sibling care has been identified as one of the most significant deterrents to girl's education by UNICEF. In cultures like South Asia and sub-Saharan Africa, traditionally girls provide a greater share of sibling care than the boys. Again, on the other hand, a research carried out by Child Line India organization in 2015 showed that 74% of the domestic workers in India are typically females (<http://www.ndwm.org/resources/Issues%20of%20Domestic%20workers%20workers%20in%20India.pdf>) However, the documentation of such informal engagements often fails, thereby denying a large number of children (especially girls) from their rights to education.

With such a background, this paper aims to engage in the impact of the CLPRA 2016 on girl's right to (free and compulsory) education. The Right to Education Act, introduced in 2009 to ensure *free and compulsory quality education* to children of 6 to 14 years has faced an array of criticisms from social sciences scholars questioning its implementation and effectiveness. To argue, there has been a minuscule 1% increase in girl's enrolment ratio from the year 2010- 2014 in the country despite the existence of a promising constitutional provision of quality education. (<https://assets.kpmg.com/content/dam/kpmg/pdf/2016/03/Assessing-the-impact-of-Right-to-Education-Act.pdf>). With such a statistical scenario, the current amendment of CLPRA 2016 by the virtue of its' provisional mention of 'helping family enterprise lies in a problematic stance in regard to the (dis)continuation of the prevailing gender gap in educational attainment in *democratic* India. Relying on cross country statistics on the extent of child labor, this paper demonstrates that the framework of the right to education (especially for the girls) has been challenged by the CLPRA 2016.

## 1. CLPRA 2016

Child labor legislation in India has been a seldom witness to changes. The first Changes in legislation on child labor in India have been infrequent and hard to come by. The very first comprehensive Child labor legislation came about in the year 1938 with the Employment of Children Act which based itself on a report of the Royal Commission of Labor, 1931. This act in its' content aimed at the abolition of child labor in specific hazardous occupations and processes while being active for about 30 years.

The Child Labor Prohibition and Regulation Act 1986 was designed by the Central government based on the recommendations made by the Gurupadaswamy Committee Report in 1979. This committee suggested that a complete elimination of child labor would not be feasible in the face of extreme poverty that India faces. Hence, in order to curb the extent of engaging children at work unlawfully, the CLPRA 1986 should aim to ban the employment of children in hazardous and exploitative forms of labor in various sectors of the economy.

However, it is to be noted that the amendment to the Child Labor (Prohibition and Regulation) Act 2016 is firstly a delayed response, ushering after 15 long years since elementary education was recognized as a fundamental right in the Indian Constitution and 5 years since the RTE came into effect. During the phase of this period, while census figures reportedly reveal a decline of child laborers in the country from 12, 666, 3777 in 2001 to 4, 353, 247 in 2011, these figures have been subjected to scrutiny in the courts. One of the major reasons for the same is the non-reporting of child laborers engaged in the informal sector (especially) which is inclusive of domestic chores, work in the fields and the like.

In regard to the educational prospects of child labor in the country, two specific provisions of the recent CLPRA 2016 seem to have based themselves on vague and shaky grounds. First is the provision of allowing children to *help* in family enterprises which have come under critique by many scholars, organizations and social activists. The Act, while making use of the term *help* leaves its' related aspects unanswered. What is the nature of help? How many hours of engagement by a child are considered help? How many hours of engagement by the child in the family enterprise are considered to be (exploitative) labor? Such vague usage of terms in the Indian legal terrain poses further questions on the effectiveness of the welfare driven Indian State.

On the other hand, the definition of family as incorporated into CLPRA 2016 entails the concerned child's **mother; father, brother, sister, father's sister and brother and also, the mother's sister and brother**. This definition of the family appears problematic due to the extension to include the parent's siblings as legal constituents of the family unit. The general underlying assumption behind such a definition is the very fact that the family is bound to protect the right of its children without having the State enforces legal norms and guidelines in order to protect the children from engaging in hazardous work. However, this very provision seems to

ignore the fact that in India 80% of the children are engaged in the informal sector through the family enterprise. (*IIT Guwahati Reports, 2011*)

Family enterprise in our country is inclusive of occupations like carpet weaving in Bhadohi and Mirzapur belt, making of glass bangles in Faridabad, intricate embroidery and the like. It is to be mentioned here that 50% of the work in Firozabad on glass bangles is done from home by predominantly female children (*IIT Reports, 2011*). Ignorance of such ground realities by the policymakers gives rise to questions like, is a certain lobby having greater influence weighing upon the politicians to sidestep the Indian realities for fulfilling self-interests? Thus, with the failure to address and define the very term help, this act in a way is legitimizing the use of child labor albeit in the manner of family enterprises.

ProChild Coalition, for instance, a network of academicians have been persistently disapproving the Bill in its' current form. Critics have accused the intention behind the amendment of the Act and posited that the ultimate aim of the CLPRA 2016 is to create jobs in order to meet manufacturing needs and not to protect the country's children. Against such backlashes, the defendants of the bill, like Mr. Shankar Agarwal, Secretary Ministry of Labor and Employment stated, *"All the amendments are being done keeping in mind three things—need of the times, workers' protection and creating an environment for more job creation," .... "Every year, the country needs to create an excess of 10 million jobs and for that manufacturing sector is key. The proposed labor reforms will help the pace of industrialization while keeping workers' rights intact."* (<https://thewire.in/53128/unveiling-the-facade-of-the-child-labour-act/>)

On the other hand, again, the Act does not provide any definition to define the *nature of hazardous* work being engaged in by the children. To mention, the very definition of hazardous work of the CLPRA lies in complement to the Factories Act 1987 wherein hazard has been defined from the viewpoint of the implications on adult factory workers and of risks of environmental pollution. Therefore to argue, if a hazard is the basic criteria for children to engage in employment activities, the need to define this very term becomes imperative.

In regard to the reliance on family enterprise being *non-hazardous*, data sources reveal that a majority of Indian children are drawn into employment in brick kilns, cotton industry, jute industry and the tea industry through the family itself (*UNICEF Report, 2011*). The impact of this provision is indeed aggravated when the *vulnerable* women population of the country is concerned; as the literacy rates in 2011 were **82.14% for males and 65.46% for females** respectively. (*Census, 2011*)

The sugarcane industry in the country is one of the many fields wherein children employment is widespread. Menial tasks like loading and unloading of sugarcanes, making sugarcane bundles for market etc. while being non- hazardous, clearly becomes a state of exploitation in the concerned employer-employee relationship. In the CLPRA 2016, there is no clause on a prohibition of cruelty and excesses committed on the child. On a general term, this very provision also nulls the entire list of 3 *hazardous* processes in which children employment have been strictly prohibited; the impact of which, it could be strongly assumed, would be borne by the female population of the country given the alarming gender disparity in literacy level prevalent in the country. (Table 3)

The Supreme Court of India has recognized the importance of every child's negative right against exploitation as well as the positive right to education. However, the implementation flaw has given way to continuous constraints. This is particularly evident when one looks at the gender gap in educational attainment of children in the country, especially in the rural setup. The lack of monitoring systems/ mechanisms at the ground root level has been a chief reason for the failure of many schemes targeted at assuring equal opportunities for all.

The promising Sarva Shiksha Abhiyan, 2002 introduced by former Prime Minister Atal Bihari Vajpayee to promote equal and universal education for children of the age group 6- 14 years has achieved a lopsided success because of two issues, vis a vis, insufficient funds and the lack of a monitoring system. The SSA with a budget of Rs. 18, 000 crore aimed at putting 3.4 crore children between 6-14 years of age in school until the year 2005. While 50% of the funds came from the Centre, 30% of the amount was borrowed from agencies like the World Bank, European Commission and the remaining was the State's contribution.

However, since its inception, only 50% of the target has been met with an expense of Rs. 12, 113 crores. On the other hand, approximately 1.35 crore children are still out of school. CAG reports revealed that Rs. 471 crore has been lost collectively by fourteen states altogether through excess payment of contingent grants, non-adjustment of advances and rupees 100 crores have been given to non-beneficiaries. The HRD Minister had been accused of relaxing follow up and monitoring of funds as there has been a

failure of an amount of 110 crore rupees from the external agencies. (<https://thewire.in/53128/unveiling-the-facade-of-the-child-labour-act/>)

Therefore, it is clearly evident that the recent CLPRA 2016 aims to allow work and education go hand in hand. However, keeping in mind India's socio-economic and political contexts, such an overarching goal might appear to be too ambitious currently, if not unattainable. In light of this background, some of the questions that call for urgent attention are: Is the new amendment viable enough to ensure their right to (quality) education? How does the State balance work time, play time and study time for them? What is the nature of transparency in the CLPRA 2016 in regard to verifying the *safe and non-hazardous* engagement of children only in their respective family enterprises?

## 2. The Extent of Child Labor

The International Labor Organization (ILO) estimates that 246 million children between the ages of 5 and 17 are currently at work. They are about 15 percent of the world's children, about 35 percent of children in Sub-Sahara Africa. Worldwide, more than 10 million children are employed in drug trafficking, sex work, and other hazardous work. The ILO further estimates that seven in ten of them are in agriculture, followed by services, businesses (22%) and industry (9%). Asia-Pacific claims the biggest share of child laborers (122 million) and then comes sub-Saharan Africa (49 million). (ILO Reports, 1998)

Child Right Information Network (CRIN) reports that globally, 1 in 6 children work fulltime and 218 million children are working worldwide currently of whom 126 million in hazardous conditions (Bose 1994:67). Most of these children are working to repay a debt they have not incurred. Around the world commodities that the children help to produce in the commercial plantations include cocoa, coffee, coconut, cotton, tea, rubber, tobacco, palm oil and sugar (Karmakar 1999:44).

Today, particularly after the approval of the Convention on the Right of the Child by the General Assembly of the UN in November 1989 and the subsequent ramification of the same by several countries including India in 1992, there has been an increasing awareness worldwide to guard the rights of the child. However, the dearth of relevant statistical information in the area of children employment has always been a stumbling block in fighting the problem worldwide. Amongst many others, the fact that the children are not properly 'visible' in the social accounting of the contemporary world puts limits to the availability of information on various aspects of abuse and misuse of children.

### 2.1 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 6.88 million 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 construction work 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.

### 2.2 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*).

### 3. 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. (CHRI, 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.

#### **4. 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. "*  
([http://164.100.47.134/lsscommittee/Labour/15\\_Labour\\_40.pdf](http://164.100.47.134/lsscommittee/Labour/15_Labour_40.pdf))

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-adeb-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'. (CHRGJ, 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 'shadow state, 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

Realization of the right to education allows for the full enjoyment of other civil and political rights, vis a vis, right to health, right to work, civil and political participation etc. Guaranteeing the constitutional right to education symbolizes commitment and a practical means in order to hold governments accountable for the same. Since the year 2005, the Indian welfare state has been a witness to a series of social acts legislating the citizen's rights to an array of socio-economic entitlements, vis a vis, education, transparency in information, work, food, forest conservation and of course, public services. Progressive judicial activism, expansion of the social foundations of the country's federal parliamentary democracy and the growing countermovement against the lopsided development process have contributed significantly to the genesis of India's welfare paradigm. (Ruparelia, 2013)

There have also been commendable strides made in the field of education in the country since the past decade. For instance, the Indian Government's report on the Rights of the Child, 2003 acted as an origin point of many other alternative reports prepared by the civil society groups and was submitted to the UN. This is to posit that the commitments of a nongovernmental organization, civil society, national and sub-national governments have demonstrated positive potential in regard to primary education, although effectiveness and quality of the universalization of education are yet to be looked upon.

However, in regard to the Indian experience of child labor and education, it can be posited that granting socio-economic entitlements the status of fundamental rights would not and have not led to obvious positive outcomes. For instance, the state of Himachal Pradesh which has experienced an increase in its literacy levels has shown a radical increase of children (5- 14 years) engaging as marginal workers. In Himachal Pradesh, the percentage of child workers has gone up from 5.4% in 2001 to 9.6% in 2011 irrespective of the Constitutional provision of Article 23, Article 45 and Article 21. (<http://www.legalserviceindia.com/article/I295-Subjugation-of-women-rights-lead-to-violation-of-human-rights.html>). Focusing on the opportunity cost of education, Lant Pritchett observes that when returns from education are low, the economic calculation and the human right desire may be at odds.

In this regard, Goodin's statement that a state which is sensitive to considerations of equality and fellow feeling but is indifferent to the needy sections of the society does not characterize itself as a welfare state. Merely judging the actions of the state without delving into its implications and effectiveness in limiting the 'domain of inequality' offers a problematic definition of the welfare state.

Similarly, in regard to children's (especially, girls) education within the fabric of the welfare Indian state, the most important legal hindrance arises from the lack of a single and incongruent definition of **who is a child**. As per the Juvenile Justice act 2000, a child is anyone who is under 16 years of age, while the RTE 2009 and CLPRA 2016 classifies children as belonging to 6- 14 years and under 14 years of age respectively. Therefore, by allowing the provision of children helping in the family enterprise that the previous Child Labor Protection and Regulation Act 1986 was silent on, the hands of the civil society today seems to have been blocked to protect the children forced into labor by this legal confusion.

Child labor is both a cause and consequence' of poverty and lack of education. Therefore, a very well designed intervention keeping in mind the various contextual complexities is crucial for breaking this cycle. But considering its multidimensional aspects, the interventions on education and training must be integrated with other interventions to effectively remove children from hazardous



work. This includes measures which must address poverty and underdevelopment, inadequate health and social policies, weak labor market institutions, inadequate legislation and an inadequate enforcement of laws. In order to address this vast range of issues, aspects of 'collaborative governance' need to be explored. The Ministry of HRD, WCD, Home and Rural Development needs to chalk out mechanisms to combine line departments for the scalability of this scheme with broader coverage across states for a more effective rehabilitation of child labor. A co-ordination committee might need to be set up at the central level to systematically monitor issues related to performance and divide equitably the work among the departments.

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## Annexure:

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

Type of Schools	Boys	Girls
Primary (I- 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: Prognosys IPC, 2012**

	ALL INDIA	5- 9 years of age (%)	10- 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

**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>

Figure 1: GLOBAL GENDER PARITY INDEX FOR GROSS ENROLMENT RATIO, Source: UNESCO Institute of Statistics

