

# RGICS

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## RGICS LEGISLATIVE BRIEF

(November 16, 2017)

The Right Of Children To Free And  
Compulsory Education (Second  
Amendment) BILL, 2017

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## The Right Of Children To Free And Compulsory Education (Second Amendment) Bill, 2017

### KEY MESSAGES

- Scrapping the policy of No detention does not guarantee a rise in the learning levels unless other key hindrances are addressed like poor implementation of CCE, low student teacher ratio, etc. **Failure of implementation should not be conflated with failure of policy.**
- Transition rates of school students vary from state to state and associating low transition rates with the ineffectiveness of the NDP undermines other factors which are barriers to a student, especially a girl's education. **The phenomenon of poor learning outcomes and transition to high schools is the product of many factors which influence learning, and should not be conveniently attributed the no-detention policy.**
- It is unwise to return to a **system of education which has already been scientifically proven to be outdated as it is based solely on the pass-fail calibration**, evaluated on stringent academic indicators and excludes the growth and development of a child on non academic grounds.
- Outcomes of the policy have varied from state to state and do not reflect a universal pattern. **The states that have performed comparatively better on the education parameter have been supportive of the NDP** while other states with poorer implementation have demanded its repeal.

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### **PART I. INTRODUCTION**

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right.<sup>1</sup> This covers primary (classes 1-5) and upper primary (classes 6-8) levels, which collectively constitute elementary education. Thus the consequential legislation envisaged under Article 21 A is the Right of Children to Free and Compulsory Education (RTE) Act, 2009 which underlines a rights based framework wherein the State is obligated to provide free and compulsory education which every child in the age group of 6-14 is entitled to as his/her fundamental right.

An integral and innovative provision introduced by this Act was the No detention policy which essentially implied no examinations in the traditional sense and instead mandated a process of Continuous and Comprehensive Evaluation (CCE) to assess and evaluate the student's learning. Section 16 of the RTE mandates that no child can be detained or held back in a class until the completion of his/her elementary education. The corollary of this is continuous and comprehensive evaluation prescribed in Section 29 (h).<sup>2</sup> CCE was asserted by several educationists and academics as a non threatening procedure without the fear of failure in a child's mind, thus enabling him to learn and perform better. In 2012, the Ministry for Human Resource Development (MHRD) formulated its official position on the NDP as follows:

*“The ‘no detention’ provision is made because examinations are often used for eliminating children who obtain poor marks. Once declared ‘fail’, children either repeat grade or leave the school altogether. Compelling a child to repeat a class is demotivating and discouraging”.*

This was thus welcomed as a positive change to the exam centric Indian system of education apart from promoting low drop outs from children from poorer families and enhancing the pedagogy. However implementation over the years has not reflected the desired improvements in the quality of education system that it purported that create. Prof Vasudev Devnani Sub-Committee which submitted its report last year recommended reintroducing the conventional examination model from class 5 onwards. It was also suggested by various political parties as well members of education Boards that the No detention policy be scrapped and a more competitive structure of examinations be introduced in all levels or at least partially in elementary school. Thus the second amendment to the RTE Act of 2008 had been tabled by the HRD minister in August 2017 and is pending in the lower house of the Parliament. It is tabled for discussion in the Winter Session 2017.

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<sup>1</sup>[http://mhrd.gov.in/sites/upload\\_files/mhrd/files/document-reports/AssmntCCE.pdf](http://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/AssmntCCE.pdf)

<sup>2</sup><https://thewire.in/8637/dont-make-the-no-detention-policy-a-scapegoat-for-poor-learning-outcomes/>

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### **PART II: THE DEBATE AROUND NO DETENTION POLICY**

The RTE Act, 2009 has been considered and applauded all across as a landmark child right based legislation for its principle of universal school access and initiating a culture of learning without the fear of failure. It brought about a paradigm shift in the Indian education system by introducing a policy of no detention in elementary schools, aimed at transforming the learning space in schools from examination driven and results oriented to a continuous evaluation of a child's overall growth. The focus of the No detention policy in RTE was to ensure no child is forced to drop out of school due to poor performance or detention in the same class. The assessment methodology was shifted from an annual exam to CCE. The following provisions were inserted in the Act to promote the No Detention Policy and CCE.

#### **RTE specific provisions on No detention policy and CCE**

Section	Sub Section	Provision
16		No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education
29	(h)	Comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same
30	1	No child shall be required to pass any Board examinations till completion of elementary education
	2	Every child completing elementary education shall be awarded a certificate in such form and such manner as may be prescribed
24	1	A teacher appointed under sub section 1 of section 23 shall perform the following duties namely- <ul style="list-style-type: none"><li>• Maintain regularity and punctuality in attending school</li><li>• Conduct and complete curriculum within the specified time</li><li>• Assess the learning ability of each child and accordingly supplement additional instructions</li><li>• Hold regular meetings with parents and guardians and appraise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information and perform such other duties as may be prescribed</li></ul>
	2	A teacher committing default in duties shall be liable to disciplinary action under the service rules applicable provided reasonable opportunity of being heard shall be affected to such teacher

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The Sub Committee formed by the Central Advisory Board of Education to study the impact of No detention policy on education of children have highlighted that these provisions are misconstrued by different sections in diametrically opposite ways to imply the following<sup>3</sup>-

- There shall not be any examination from Class I to VIII and all children will be passed till class VIII without fail resulting in a care free attitude among students to study and that of teachers to teach.
- There shall be examinations continuously to test the child's knowledge at short frequency in place of traditional system of examinations on Quarterly, Six monthly and annual basis and thereby the CCE has increased the stress and anxiety among children.

The Sub Committee has identified the following as the rationale behind the No Detention Policy<sup>4</sup>-

- To provide quality education to every child in the country with a guarantee to ensure expected learning outcomes within the academic year with required support systems.
- To provide a stress free environment to the child and motivate and encourage him/her to learn instead of focusing on clearing exams and obtaining marks
- Enhanced pedagogy, CCE, better infrastructure remedial classes and monitoring process will help create a scientifically approved method of learning and shift from the exam oriented approach.

However, due to the skewed understanding and interpretation of the Act, these objectives have not materialized. Reducing dropout rates and achieving higher levels of learning were the major goals of the NDP. But the Act was soon highlighted as a glaring example of lack of preparedness to implement such a policy. Based on the high enrolment and low dropout rates in elementary education, it can be inferred that children are being retained in schools for longer. But it remains debatable if the policy has succeeded in achieving its stated objectives or has in fact opened up larger lacunae. While drop outs decreased in elementary school, it has been on the rise systematically in high school. It has promoted low accountability of teachers, lower learning outcome and poor implementation of the CCE structure of exams.. States have reported a lack of motivation in both teachers and students as there is no incentive for performing better, leading to deteriorating performance level. As the competency of teachers declined, children from the very sections of the society intended to benefit out of this Act lost out since they could not afford tuitions. It is argued that bringing back examinations at the end of Class V and VIII would not only improve the quality of education by placing the onus on the teachers to put an extra effort through remedial teaching, it would also better equip the students for high school and ensure that they do not graduate from elementary school without any actual learning.

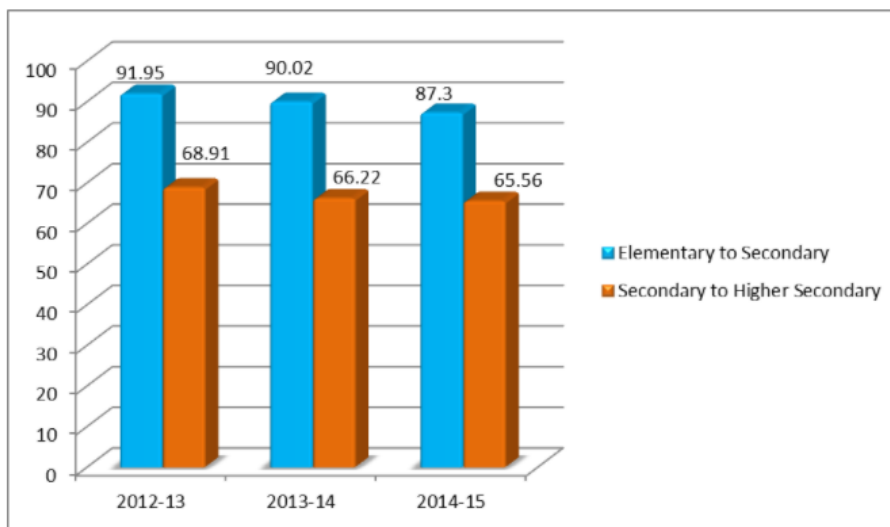
<sup>3</sup>[http://mhrd.gov.in/sites/upload\\_files/mhrd/files/document-reports/AssmntCCE.pdf](http://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/AssmntCCE.pdf)

<sup>4</sup>[http://mhrd.gov.in/sites/upload\\_files/mhrd/files/document-reports/AssmntCCE.pdf](http://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/AssmntCCE.pdf)

# RGICS legislative brief

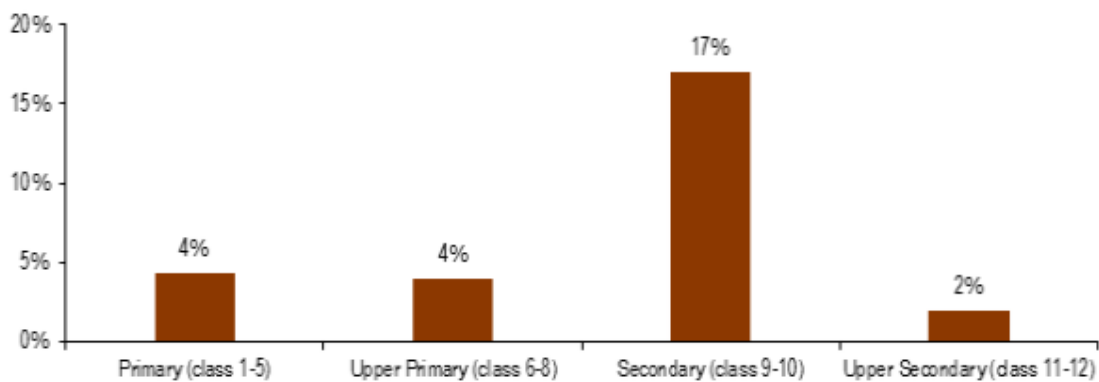
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### Transition rate of school students



Transition Rate of students (All India average) [as taken from U-DISE School Education in India report]

### Drop out rates of school students



Sources: Flash Statistics, District Information System for Education, 2015-16; PRS.

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### **PART III. POLITICAL CONTEXT**

Although no political party has officially declared a stand on the issue, it can be concluded from the announcements made by the state governments that most of them are in favor of repealing the policy. Regional parties like the Aam Aadmi Party (AAP) has made its stance clear against the NDP while states like Rajasthan has moved a Bill in the state legislature to amend the NDP as specified in the RTE Act since education is a state subject. Ironically, the states clamoring for the repeal of the NDP are the ones who have been marked the poorest in terms of implementation, pupil-teacher ratio and student absenteeism.<sup>5</sup> The only four states that have taken a position in favor of retaining NDP are Tamil Nadu, Andhra Pradesh, Telengana and Maharashtra. Incidentally, all these states rate high in terms of literacy as well as low gender disparity as compared to the BIMARU states which recorded an annual average dropout of 18%-20%, higher than the national average. Dropout rates of girls display the socio-economic position of girls in these societies as their dropout rates drastically increased to around 28%. In MP, 28% of girls in the age group 15-16 years were dropouts, compared to 19.4% of boys. In Gujarat, 22.5% of girls were dropouts compared to 16.3% of boys.<sup>6</sup> The disproportionately larger number of girl dropouts could point towards a possibility that the increasing dropout rates cannot wholly be attributed to the NDP.

The considerably better performance by the South Indian states in the education parameter should encourage the other states to emulate their model and develop a stronger education model in their own states. The success rates of NDP vary from state to state and do not universally reflect low student and teacher motivation and rising drop outs highlighting the fact that the positive outcome depends largely on policy implementation. The state governments should focus on the better management of the schools and it's functioning rather than attempting another change in policy. However, insistence of most state governments and major political parties will most likely ensure that the amendment is almost unanimously passed in the Lok Sabha.

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<sup>5</sup>[http://mhrd.gov.in/sites/upload\\_files/mhrd/files/statistics/ESG2016\\_0.pdf](http://mhrd.gov.in/sites/upload_files/mhrd/files/statistics/ESG2016_0.pdf)

<sup>6</sup>Annual Status of Educational Research Survey available at

[http://img.asercentre.org/docs/Publications/ASER%20Reports/ASER%202016/aser\\_2016.pdf](http://img.asercentre.org/docs/Publications/ASER%20Reports/ASER%202016/aser_2016.pdf)

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### **PART IV. KEY FEATURES OF THE BILL**

The Bill which mainly aims at scrapping the no detention policy and the continuous comprehensive evaluation system at elementary schools proposes the following key amendments:

- Amending Section 16 to re-instate regular year-end examinations for the students of fifth and eighth classes, in which they can be failed for poor performance.
- A re-examination is to be conducted for failed students, after additional instructions, within two months of the declaration of results.
- On subsequent failure in a re-examination, such students may be allowed to repeat the class by ‘appropriate government’ – indicating that governments at the Centre, State and Union Territories can come out with their own policies in this regard which may differ from each other. In no case are the students to be expelled till the completion of elementary education



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### PART V. KEY ISSUES

Analyzing the impact of abolishing the NDP should be done by taking into account two basic premises and scrutinizing the debates around them-

- Could detaining students improve their performance?
- Can NDP be the reason for children dropping out in higher classes?

This requires an analysis of two keys issues:

#### **I. Adverse impact on students' performance:**

At a time when the targets of the RTE remain unmet, it is important to examine whether detaining students could actually be the solution to better performance. As asserted by several educationists and academics, the no-detention policy (NDP) and CCE are based on sound principles of pedagogy and assessment, recognized world-wide.<sup>7</sup> While various government and other reports including the draft NEP 2016 raised concern about the poor learning outcome, the National Achievement Surveys has indicated the following factors as the main reasons behind school students' unsatisfactory learning curve<sup>8</sup> -

- Existence of a large proportion of schools not adhering to the guidelines laid down by the Act or are non complaint with the norms established.
- Student teacher absenteeism
- Serious gaps in teacher motivation resulting in deficiencies in the teachers' performance and quality of teaching
- Slow progress in use of technology and lack of requisite resources for proper implementation

According to this survey, with the exception of student absenteeism, no other factor is linked to the policy of no detention for poor learning outcomes of students. It essentially reflects loopholes in teacher training, regulation, management and monitoring. Activists in the education sector also believe that students are not be to be blamed for the poor performance and a reintroduction of the detention policy in primary schools would result in massive drop outs which the draft Bill does not have provision to handle. India has made significant strides in decreasing school dropouts and maximising access to education. An amendment such as this might reverse that entire progress.<sup>9</sup> The concept of NDP also has strong underlying equity considerations especially for children from low-income families, and girls since failure for these children implies dropping out as is outlined by the MHRD statement on No detention policy as well.<sup>10</sup>

<sup>7</sup> Nivedita Rao, Rethinking the No Detention Policy, PRS blog available at <http://www.prsindia.org/theprsblog/?author=1001005>

<sup>8</sup> National Achievement Survey, Class V (Cycle 3) Subject Wise Reports, 2014, [http://www.ncert.nic.in/departments/nie/esd/pdf/NationalReport\\_subjectwise.pdf](http://www.ncert.nic.in/departments/nie/esd/pdf/NationalReport_subjectwise.pdf)

<sup>9</sup> Jeet Singh, RGICS brief on Draft New Education Policy

<sup>10</sup> [http://mhrd.gov.in/sites/upload\\_files/mhrd/files/document-reports/AssmntCCE.pdf](http://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/AssmntCCE.pdf)

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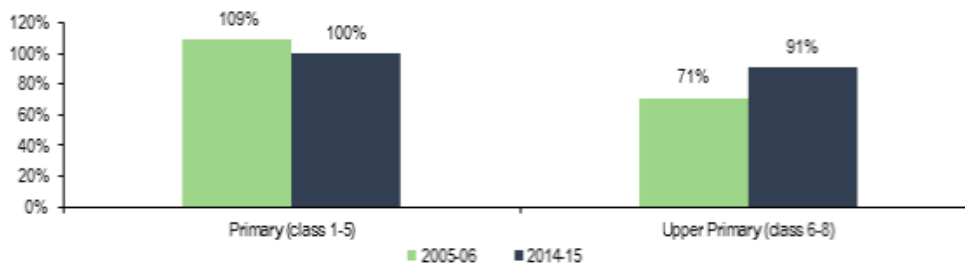
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It must also be remembered that the Right to Education Act does not just secure a child's right to be in school, but a group of rights that are invoked both before a child enters school and in school itself. These include rights against barriers to access, against harassment and discrimination, the right to learn in a safe building with adequate facilities, and the right to not be detained or expelled.<sup>11</sup> The provision of no examinations and thus no detention has been misconstrued by schools and teachers as implying no assessments. The specifications on CCE stipulated by the Act have not been met by most schools and teachers have not been adequately trained to carry out the same. CCE was conceptualised as an alternate system of assessment to evaluate every aspect of the child during their presence in the school and not just their academic ability on the basis of an annual exam. Under this scheme, the student's marks will be replaced by grades which will be evaluated throughout the year through a series of circular and extra-circular activities and grades will be awarded instead of the marks to the students. Many of these rights are inter-dependant and mutually reinforcing. It is in this context that 'completion of elementary school' must be understood. If properly executed, academics have validated the benefits of CCE over traditional mode of examination and detention. Thus, the solution to the problem might lie in improving the implementation capabilities of the schools rather than repealing a progressive policy.

### II. Low rates of transition:

Various studies including the graphs above reflect that the transition rate from elementary schools to high schools dip drastically while picking up slowly post high school although this trend varies from state to state. Consequent to the enactment of RTE, enrolment has been 100% at the primary level. But while enrolment has been universal at the primary level, low transition of students from one class to another at progressively higher levels has been noted. This has resulted in high dropouts at the secondary education level, with the highest dropout rate being 17% at the class 10 level.<sup>12</sup>

Enrolment in Elementary education (2005-2014)



Sources: Education Statistics at a Glance, Ministry of Human Resource Development, 2016; PRS.

Note: Enrolment over 100 % as seen in primary education signifies that children below and above the age of six are being enrolled at the primary education level.

<sup>11</sup><https://scroll.in/article/809092/why-india-will-grossly-fail-its-children-if-it-revokes-the-no-detention-policy>

<sup>12</sup> Education Statistics at a Glance, Ministry of Human Resource Development, 2016

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These graphs, depicting data of increasing dropouts post elementary school have been cited by the groups opposing NDP as the reason why NDP should be scrapped. The dropouts have been attributed to the low levels of learning, promoted by the system of NDP, which results in students failing once they reach high school. What the opposition narrative has not considered is that students around that age, especially girls drop out for several other reasons as well. There have been numerous reports addressing the high dropout rates among girls post puberty due to lack of toilets and other hygiene issues. Boys from poor families are often forced to drop out because of economic reasons or because they have to find other jobs to help their families. Lack of easy access to schools has also been cited as a reason. States like Rajasthan, Gujarat, and Madhya Pradesh have revealed a huge gender disparity as data suggests a larger number of girls dropout each year compared to boys. In MP, 28% of girls in the age group 15-16 years were dropouts, compared to 19.4% of boys. In Gujarat, 22.5% of girls were dropouts compared to 16.3% of boys.<sup>13</sup> It should also be taken into consideration that the drop out rates are far higher for students from Scheduled Castes and Schedule Tribes, which brings into picture the role of caste and class among other things in determining the reason behind rising drop outs.<sup>14</sup>

Education indicators are a function of several other factors such as socio-economic indicators, school infrastructure and the availability of teachers. This is evident from state-specific data on retention rates, which vary widely across the country and do not show a clear upward or downwards trend.<sup>15</sup> In view of the lack of clear evidence, the benefit of doubt must lie in favour of retaining the NDP. This is because of the vital role that it plays in eliminating the vocabulary of failure from the elementary education system, thereby securing the healthy emotional development of children. This is in keeping with India's international obligations under the United Nations Convention on the Rights of the Child.<sup>16</sup>

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<sup>13</sup> Annual Status of Educational Research Survey available at [http://img.asercentre.org/docs/Publications/ASER%20Reports/ASER%202016/aser\\_2016.pdf](http://img.asercentre.org/docs/Publications/ASER%20Reports/ASER%202016/aser_2016.pdf)

<sup>14</sup> [http://mhrd.gov.in/sites/upload\\_files/mhrd/files/statistics/ESG2016\\_0.pdf](http://mhrd.gov.in/sites/upload_files/mhrd/files/statistics/ESG2016_0.pdf)

<sup>15</sup> [https://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/59faaca564265feb54cae830/1509600430177/171101\\_Vidhi+Su+missions+to+the+PSC+MHRD+on+NDP.pdf](https://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/59faaca564265feb54cae830/1509600430177/171101_Vidhi+Su+missions+to+the+PSC+MHRD+on+NDP.pdf)

<sup>16</sup> Article 29(1)(a) of this Convention states that the education of the child should be directed to the 'development of the child's personality, talents and mental and physical abilities to their fullest potential.

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### PART VI. CONCLUSION

- NDP and CCE policies have come under criticism for its failure in raising the standards of learning in schools. Their objectives have been reversed as schools have instead recorded a decline in the learning level. States and schools have complained that NDP has contributed to a lackadaisical attitude amongst teachers, students and parents as there is no fear of failure and no incentive to perform well. However, the Geeta Bhukkal subcommittee while stating that NDP has worked as demotivator, also highlighted the ineffectiveness of using fear as a motivator. There is no evidence to suggest that detention has lead to better levels of learning but data suggests that it leads to adverse social and academic effects on a child .
- Arguments against the NDP reflect the prevalent misunderstanding about NDP that it proposes a system of no assessment. NDP goes hand in hand with the CCE structure which allows for students to be assessed on non-cognitive as well as non-academic areas of learning. In this way, a child need not be ‘failed’ simply because of non-performance on a narrowly defined and rigid set of indicators. In the absence of a comprehensive evaluation and trained teachers to implement, a non detention policy becomes meaningless. It invariably results in lower learning outcomes. The common belief that students learn only under the threat of failure reflects that the groundwork for such a policy is incomplete. But this does not mean the policy is flawed.<sup>17</sup>
- The disorganized and hasty execution of the NDP and CCE by an unprepared government is evident in the number of anomalies in the policy implementation. Another drastic step to reverse it without wider discussions and consultations would amount to a retrograde step. The foundation of the education system has to be made ready for reform. Efforts to strengthen the foundation should be made instead of blaming the existing cracks on a new policy. Measures recommended by the Geeta Bhukkal subcommittee to improve the education scenario must be taken into consideration. Schools must be better equipped with qualified teachers and other resources.

A reversal of a progressive policy should not have been the step taken by the government to improve the learning outcomes of a student. A possible re-introduction of examinations in class 5 and 8 should not result in a chaotic restructuring of the education system already grappling with lack of resources and training.

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<sup>17</sup><https://thewire.in/8637/dont-make-the-no-detention-policy-a-scapegoat-for-poor-learning-outcomes/>