

No Detention under the RTE Act: *The policy options*

Abstract

Since the introduction of the no detention policy (NDP) the annual dropout rate has halved, and 13 out of 20 states have experienced improvement in Board examinations, suggesting no negative consequences of no detention. *The proposed amendment to the RTE Act risks penalizing students for the system's failure and is discriminatory, risking disproportionate negative impact on the education of children from marginalized communities.* It ignores the existing Supreme Court verdict on the issue, has the potential to damage the internal coherence of the RTE Act, and is retrogressive with respect to India's international obligations on the Right to Education. The government should instead address the underlying systemic barriers to quality education. The paper also makes recommendations for state governments that intend to introduce detention to minimize the negative impact.

Context

Section 16 of the Right of Children to Free and Compulsory Education Act 2009 (henceforth RTE Act) states that no child can be detained or held back in a class until the completion of his or her elementary education up to class grade 8. The provision was introduced to retain in school those children who used to drop out due to fear or failure in examinations, and promote a joyful and fear free environment in schools by respecting children's pace of learning by practicing continuous and comprehensive evaluation.

The No Detention Policy (NDP) has come under criticism with some of the arguments being that it disincentivizes children from working hard, leads to lowered accountability of teachers, and fuels a nationwide decline in learning outcomes. In 2012 Central Advisory Board for Education (CABE) formed a Subcommittee on Assessment and Implementation of Continuous and Comprehensive Evaluation (CCE) to look at the experience of evaluation (the Bhukkal Committee) and submitted its recommendation in 2015ⁱ. As part of its deliberations, 28 States shared their views on the No Detention policy and 23 suggested modifications.ⁱⁱ However, there was no consensus as to what form that change would take. Subsequently, another Sub-Committee under the Chairpersonship of Prof Vasudev Devnani, Minister of Education, Government of Rajasthan recommended that if a child fails to clear class 5 or Class 8, additional instructions and another opportunity to improve should be given, failing which the child may be detained. In 2017, the central government formally proposed amendments to the RTE Act. The Bill proposes holding examinations at the end of grades 5 and 8. A child who fails will be given some remedial instruction, and the opportunity for a re-examination within two months. On failing again, the state governments may hold back the child in such manner as may be prescribed by them. The Bill was referred to the Parliamentary Standing Committee that has recommended that central guidelines be adopted to ensure uniformity of implementationⁱⁱⁱ. State governments will need to make an informed choice whether to scrap no-detention. This decision must not negatively impact children's enjoyment of the right to education.



The policy options

This section examines the evidence on the design and impact of the no detention policy with a view of identifying some possible policy measures.

Contrary to popular perceptions, 'no detention' has had positive impact

Since the introduction of no detention the annual dropout rate has halved^{iv}(from 8.61% in 2006-07 to 4.34% in 2014-15), the retention rate has increased by 9% (74.92% in 2008 to 83.73% in 2014-15) and the transition rate (Primary to Upper Primary) has increased by 7%. Of the 20 states which shared their results with the Bhukkal committee^v, 13 reported an increase in the pass percentage for class 10 exams since the introduction of NDP under the RTE Act. Thus, the NDP, along with other RTE provisions, has had no negative impact on academic performance, but has helped to retain children in school, and contributing to improved learning enabling them to complete the full cycle of schooling.

Relationship between detention and improvement of learning is tenuous

While the NDP has been held responsible for decline of learning outcomes, ASER data shows consistent decline, not just from 2010, but from 2005 when both board exams and detention existed^{vi}. One may infer that the current low performance is not caused by no-detention, but is part of a long-term trend that predates its introduction.

Furthermore, if the purpose of introducing detention is to improve learning, international research suggests that while detention may lead to small short-term improvements in achievement, it does not result in consistent long-term improvement in achievement. ^{vii} In contrast, repeating grade contributes to poor mental health outcomes and a negative attitude of students to school and learning, leading to poor long term social outcomes, results in students dropping out of school and decreases the likelihood that a student will participate in post-secondary schooling^{viii}. It runs counter to the aims of education under international law, viz, "to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. ^{ix} It also runs counter to the Universal Declaration of Human Rights (Art 26.2) that states "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms."

Indeed, top nations in reading, math and science like Finland, Singapore, South Korea, New Zealand, Japan, China and Canada ban or restrict grade retention. ^x Evidence from poor countries (e.g. Sub-Saharan Africa) likewise shows that detention does not improve learning ^{xi} and repeaters learning continues to progress slower compared to their classmates.

What is also more damning is that the proposed point of detention is within the primary school cycle. International research suggests that children who repeat grades in secondary schools perform better than those who repeat in primary school, although their performance still remains lower than that of non-repeaters^{xii}.

Detention is discriminatory with marginalized communities bearing disproportionate impact

The government's own data shows that detaining students is one of the significant reasons for school dropout in India. According to National Family Health Survey 4 (2015-2016) data, one of the top six reasons for school drop outs was "repeated failure" with 3.5 percent of the cases at national level. In the previous NFHS Survey, repeated failure in school was ranked higher than reasons like required-for-care-of sibling, required-for-outside-work for payment in cash or kind and required-for-work-on-farm/family business.^{xiii}

Repetition contributes to school dropout ^{xiv}. Children from Dalit and Adivasi communities are most likely to be affected since among those who secured less than 30% marks are from Dalit, Adivasi and Other Backward Caste backgrounds students^{xv}. This runs counter to Section 10 (f) of CEDAW that specifically binds governments to take steps to reduce dropout rates^{xvi}. Furthermore, rural schools having high enrolments from these communities have historically suffered from poor infrastructure and facilities. Linguistic minorities and Adivasi communities whose mother tongue is other than language of school instruction are anticipated to continue having lower learning outcomes, and are expected to have higher rates of detention. Children with disabilities will also underperform given the absence of inclusive education. No steps have been mentioned in the proposed amendments to provide either exemptions for children with disabilities or to ensure that reasonable accommodations would be made during testing of children with disabilities. As such, it risks violating relevant provisions under the UNCRPD^{xvii}. Poor performance risks becoming another excuse to push children admitted under section 12(1)(c) of the RTE Act out of private schools. Many of those who drop out are likely to turn to child labour. Getting to school is often a social struggle for children from marginalized communities and they should be supported in achieving learning outcomes, not pushed out by creating a climate of fear.

Abolition of NDP risks internal coherence of the RTE Act 2009

The NDP is part of a larger set of pedagogical reforms rooted in the National Curriculum Framework (NCF, recognized as the national curriculum under Section 7.6 of the RTE)^{xviii} that includes age appropriate grade placement, child centred pedagogy, fear free learning environment and formative assessment. Its abolition is likely to affect implementation of all these provisions. Abolition of screening procedures and admission in age-appropriate classes may lose its value if students are not given a chance to catch up. The decision to abolish no detention, risks contributing to the growth of private coaching industry. While the RTE Act continues to ban board exams, detention based on purely school-based exams could risk putting the continuation of students admitted under section 12 (1) (c) at risk of detention as a first step towards being pushed out of school.

It is a decision prompted by backlash against implementation of a wrong Continuous Comprehensive Assessment

A frequently expressed criticism of NDP has been that it led to no assessment of student learning. However, the RTE Act provides for children's learning to be monitored through an ongoing process of Continuous and Comprehensive Assessment (CCE). This is envisaged as an in-process evaluation of student comprehension, learning needs, and academic progress undertaken to enable teachers to identify concepts and skills that students struggle to acquire and enable them to modify teaching practices accordingly. Unfortunately, this was not implemented properly from the very beginning.

The Central Government notified the National Council of Educational Research and Training (NCERT) as the Academic Authority under the Act to lay down evaluation procedures for elementary education and it developed exemplars for CCE^{xix}. However, many states instead adopted a Central Board of Secondary Education pattern of CCE. This was developed for the secondary stage and not in conformity with the NCF 2005. Comprised of a series of tests, with little or no feedback to learners – a critical element for facilitating learning, this turned into a record keeping exercise, with a focus on measuring and not improving learning leading to a backlash against both NDP and CCE. ^{xx} Teachers were not sensitized to the original intention of RTE, or to its principles of learning. Nor did the already overworked teachers understand the rationale for this unnecessary and laborious 'CCE' exercise. CBSE itself has since withdrawn the provision^{xxi}. These and other gaps in CCE implementation must be addressed on priority basis by all states, irrespective of their decision regarding no-detention.

The amendment fails to provide concrete steps to improve teaching and learning

The stated Objects and Reasons in the Amendment Bill and the remedial measures proposed are not in tune with each other. The first reason given is that states 'raising the issue of adverse effect on the learning level' is problematic since, as described earlier, there is no real evidence linking the decline to NDP. The Bill aims "to improve the learning outcomes in the elementary classes". Yet, no methods for improvement of outcomes (of learning) are suggested in the Bill beyond the two months of remedial teaching individualizing the problem.

Systemic solutions are needed to address the systemic problem of quality. Given that the ASER reports indicate that nearly 50% children in class 5 do not have basic reading and mathematics skills, it will not be reasonable to detain half of India's students.

The recommendation to bring back detention fails to engage with tested pedagogical alternatives for enhancing academic achievement of low-performing students such as increasing instructional time, making curricula and educational systems more flexible, allowing low-performers to have additional time for catching-up with their peers. No new policies are being introduced that would require teachers to identify and support students at risk of dropout, especially from the early grades. International evidence

suggests individualized targeted support and services for poorly performing students who are being automatically promoted as a viable alternative to grade retention^{xxii}; this is not considered. The two months' remedial package being proposed would be too little and too late to compensate for half a decade of educational neglect. Other critical evidence-based alternatives to grade repetition include early grade and preschool programmes and programmes to enhance parental involvement in children's learning.

The overall focus on 'outcomes' deflects attention away from non-provision of inputs, paving the way for projection of inputs as being irrelevant to 'outcomes'. Poor quality of education and declining learning outcomes are inevitable in a school system where 50% schools lack headteachers, 8% of primary schools have only one teacher and 90% schools lack the minimum infrastructure laid down by the law ^{xxiii}. Good teaching requires teachers to be qualified, trained, motivated and supported. Ironically, the government through a recent amendment of the Act has extended the deadline for all teachers to attain the minimum basic professional degree whereas it is introducing detention of students with immediate effect. Ensuring teacher support systems like active Cluster Resource Centres and universal adherence to stipulated pupil-teacher ratios is critical for effective implementation of CCE. If done right, CCE could allow problem areas to be identified early, and teaching to be done based on students level.



NDP has already been upheld by the Supreme Court

Fundamentally, India's Supreme Court has already given its verdict on the issue. In its verdict in *Society for Un-Aided Private Schools of Rajasthan versus Union of India (2010)*, Justice S.H. Kapadia (then Chief Justice of India) has ruled^{xxiv} that "Challenge was also made to Section 16 of the Act stating that it will lead to indiscipline and also deteriorate the quality of the education, which I find difficult to agree with looking to the object and purpose of the Act. Holding back in a class or expulsion may lead to large number of drop outs from the school, which will defeat the very purpose and object of the Act, which is to strengthen the social fabric of democracy and to create a just and humane society. Provision has been incorporated in the Act to provide for special tuition for the children who are found to be deficient in their studies, the idea is that failing a child is an unjust mortification of the child personality, too young to face the failure in life in his or her early stages of education. Duty is cast on everyone to support the child and the child's failure is often not due the child's fault, but several other factors. No legal infirmity is found in that provision; hence the challenge against Section 16 is rejected".

Potential negative human rights consequences

India has legally committed to the International Covenant on Economic, Social and Cultural Rights (1966, ICESCR), an important human rights treaty that protects the right to education. Under Article 13 (2) (b) of ICESCR, India has a legal obligation to ensure that: 'Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.' The RTE Act implements this provision and extends the protection by making lower secondary education compulsory (ie. Upper Primary Education). However, the proposed amendment risks putting India in breach of its legal obligations to ICESCR by creating additional barriers to the completion of upper primary schooling.

According to the Committee on Economic, Social and Cultural Rights (CESCR), which oversees the implementation of ICESCR, 'The phrase "generally available" signifies, firstly, that secondary education is not dependent on a student's apparent capacity or ability (emphasis added) and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all^{xxv}.

This interpretation, although it does not explicitly prohibit testing and grade repetition, strongly implies that any testing based on capacity or ability would mean the state is not making secondary education available to all.

Given the empirical evidence on the deleterious impact of detention on children and the potential discriminatory impacts on marginalised groups, it can be convincingly argued that the proposed measure would constitute a retrogressive measure. Abolition of No Detention, especially without robust and binding strategies to mitigate the consequent negative impact, risks infringement of the fundamental right of children enshrined in human rights law and assured by our Constitution.

Fails to include critical design elements of detention policies

While the proposed amendments are problematic, many states have expressed the desire to abolish the NDP. The Parliamentary Standing Committee on HRD recommends the drafting of national guidelines for the implementation of detention that could minimize some of the the negative fallout of this decision. These (and any state orders that may be issued) should be robust, binding and draw upon the experience of countries that practice detention.^{xxvi} Some of the critical design elements to be included are

- Base it on holistic yearlong evaluation and pupil work during the year and not just performance on an end-year exam (e.g. in Spain and France).
- Give year long continuous opportunities for students at risk of failure to catch-up before the detention decision.
- Provide for formal mechanisms for parental and student views to be taken into consideration before making detention decision.
- Clear guidelines for teachers laying down a procedure how detention decisions are to be taken to avoid arbitrary decision making. Instructions to exercise extreme caution when making detention decisions, especially when students' prior achievement was relatively strong.
- Once detained, provide additional resources to children to cover the syllabus in the second year. Struggling students do not automatically catch up to their peers without targeting intervention.
- An under-performing child's name must be kept on the rolls and he/she must be given a chance to appear for the examination as and when she feels confident without a compulsory wait of one year.

The proposed amendment is silent on who will hold the proposed examinations. Any proposal from states to hold centralized exams at district or state level will run counter to Section 30 of the RTE Act which prohibits the conduct of board examinations.

While teachers are key decision makers on grade repetition process, most of them are unaware of the research on grade repetition^{xxvii}; this must be included as part of teacher training, both pre-service and in-service. School Management Committees should also be oriented accordingly.

Key Policy Recommendations

The proposed amendment fails to address the root causes of poor learning and risks penalizing students from poor and marginalized communities for the system's failure. The controversy misses the point that neither repeating a grade nor automatic promotion will improve students' academic skills – robust measures and investments to improve quality are needed to improve learning.

- a Given the absence of evidence for detention improving learning, states must retain the no detention policy and make urgent efforts to fully implement RTE.
- b States opting for detention must put in place measures (covering both government and private schools) to minimize deleterious impact of detention. They must:
 - i recognize NDP as a measure of last recourse
 - ii provide continuous year-long catch-up opportunities to students at risk of repetition
 - iii put in place a consistent definition of what constitutes failure leading to detention (e.g. all or some subjects and by how much)
 - iv enforce mechanisms for taking into consideration parental and student views in detention decisions
 - v provide failing students year long opportunities to retake exams
 - vi provide additional resources to cover the syllabus in the second year
 - vii ensure reasonable accommodation for persons with disabilities while undertaking any examinations
- c Governments must sensitize teachers, education administrators and School Management Committees to the evidence about detention
- d States must address root causes of poor quality education by
 - i ensuring optimum student-teacher ratio in all schools. All teachers must be qualified, motivated and well supported. This calls for filling of vacancies, strengthening pre-service and decentralized in-service training, reinvigorating of cluster resource centres, provision of on-site support and freeing teachers from non- teaching work.
 - ii enhancing implementation of CCE as a critical measure of identifying and supporting students' learning needs.
 - iii laying robust foundations by investing in early childhood and early grade learning interventions.
 - iv strengthening implementation of existing policy provisions critical to quality including accelerating RTE compliance of all schools, enhancing the budget allocation to education in line with the global EFA benchmark of 6% GDP, strengthening teacher training, ensuring timely supply of textbooks and learning materials to schools.
 - v ensuring zero discrimination and provision of safe and secure school environment in all schools.
 - vi strengthening education administration cadre to improve planning, monitoring and accountability in both government and private schools.



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