



# Vidhi

Centre For Legal Policy

BETTER LAWS. BETTER GOVERNANCE

## SUBMISSIONS TO THE PARLIAMENTARY STANDING COMMITTEE ON HUMAN RESOURCE DEVELOPMENT

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*AMENDMENT OF THE NO DETENTION POLICY IN THE RIGHT OF  
CHILDREN TO FREE AND COMPULSORY EDUCATION (SECOND  
AMENDMENT) BILL, 2017*

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## SUBMISSIONS

- I. The Vidhi Centre for Legal Policy (“Vidhi”) is an independent think-tank based in New Delhi doing legal research and assisting Government in making better laws. Vidhi has done legal research on the Right of Children to Free and Compulsory Education Act, 2009 (“RTE Act”) over the last three years (2014-2017) and has published and contributed to independent research reports and made independent submissions to Government. An overview of its work in the area of education is set out below:
  - A. Independent Report on Regulation of Private Schools in India (2017)<sup>1</sup>;
  - B. Independent Report on Right to Education and Minority Rights (2016);<sup>2</sup>
  - C. Submissions to the Ministry of Human Resource Development (“MHRD”) on the New Education Policy (2016)<sup>3</sup>; and
  - D. Contributions to the State of the Nation: RTE Section 12(1)(c) Reports (2015, 2016 and 2017).<sup>4</sup>
- II. Vidhi wishes to make the following submissions to the Parliamentary Standing Committee on Human Resource Development on the partial reversal of the No Detention Policy (“NDP”) in the Right of Children to Free and Compulsory Education (Second Amendment) Bill, 2017 (“the Bill”).
- III. Since the enactment of the RTE Act, several government and non-government entities have carried out studies to assess its functioning. Through these assessments, data is collected on a range of parameters, including learning outcomes, retention, transition and drop-out rates for each class. So far, all conclusions with respect to the success (or failure) of the NDP have also been based on this data. However, no specific and focussed studies have been undertaken to rigorously examine the implementation and impact of the NDP.
- IV. We have briefly summarised the data from the Unified District Information System for Education (“U-DISE”) School Education in India Reports, developed by the National University of Educational Planning and Administration (“NUEPA”). An analysis of this data demonstrates that it is inadequate to draw any conclusions about whether the NDP should be retained or not.

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<sup>1</sup> Available at <<https://vidhilegalpolicy.in/reports-1/2017/5/1/regulation-of-private-schools-in-india>>

<sup>2</sup> Available at <<https://vidhilegalpolicy.in/reports-1/2016/1/19/right-to-education-and-minority-rights>>

<sup>3</sup> Available at <<https://vidhilegalpolicy.in/reports-1/2016/10/13/submissions-to-the-ministry-of-human-resource-development-on-the-new-education-policy>>

<sup>4</sup> Available at <<http://www.centuralsquarefoundation.org/wp-content/uploads/2015/08/State-of-the-Nation-RtE-Section-12-1-c.pdf>> and <<http://centuralsquarefoundation.org/wp-content/uploads/2017/08/SOTN-Report-2017.pdf>>

### A. Average Annual Drop-out Rate:

The average drop-out rate represents the average of grade-specific drop-out rates in Primary Grades (i.e. grades I to V). For the year 2014-15, it was calculated by considering grade-wise enrolment in 2013-14 and 2014-15 and grade-specific numbers of repeaters in 2014-15.

This data shows that there has been a steady decline in the drop-out rates between 2003-04 and 2014-15. The enactment of the RTE Act in 2009 (and the introduction of the NDP) did not have a significant impact on these rates. It is therefore difficult to conclude what the effect of these changes has been on drop-out rates.

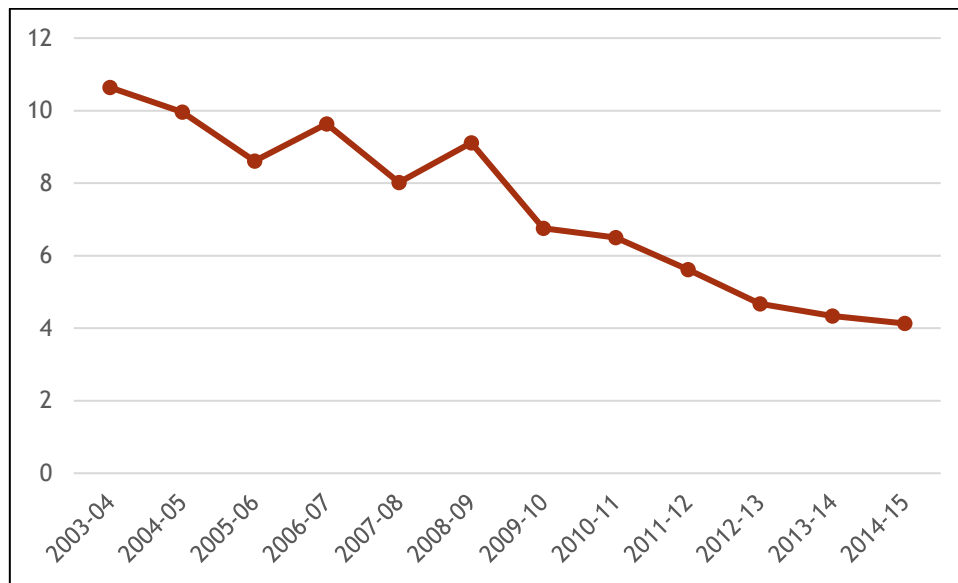


Fig 1: Average Drop-Out Rates at the Primary Level

Some data is also available on the drop-out rates at the upper primary level (i.e. grades VI-VII). Since this data was only collected post the enactment of the RTE Act, it is difficult to ascertain the impact of the introduction of the NDP on drop-out rates at the upper primary level. However, there has been a general decline in these rates since the RTE Act came into force, as Fig 2 below demonstrates.

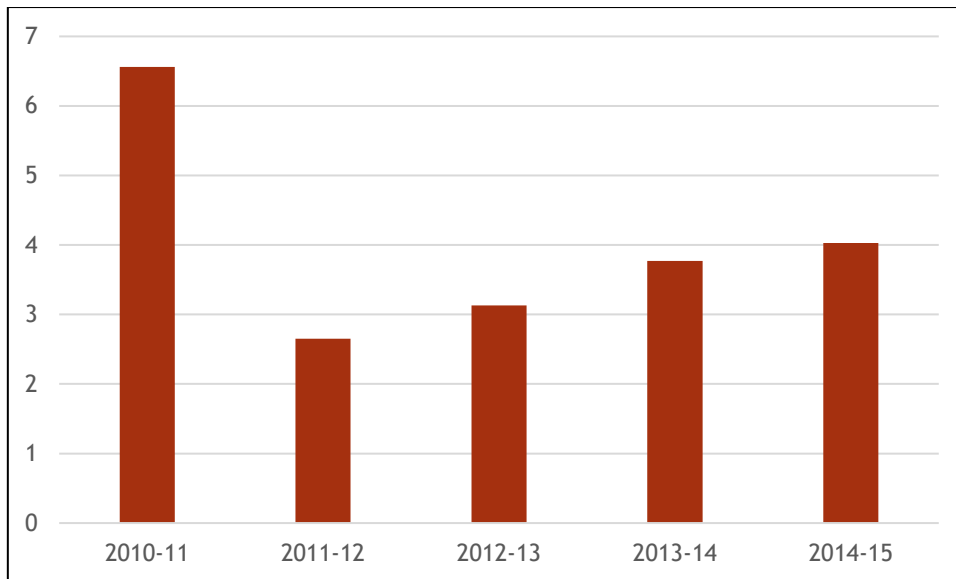


Fig 2: Average Drop-Out Rates at the Upper Primary Level

**B. Retention Rate:**

The retention rate at the primary level is the enrolment in Grade V (minus repeaters) in a year as a proportion of the enrolment in Grade I four years back. Data on retention rates is an indicator of how many students who enrol in schools go on to complete a primary level of education.

At the national level, as with drop-out rates, retention rates have also seen an upward trend. This rate has gradually and steadily increased from 53.43% in 2003-04 to 84.21% in 2015-16.

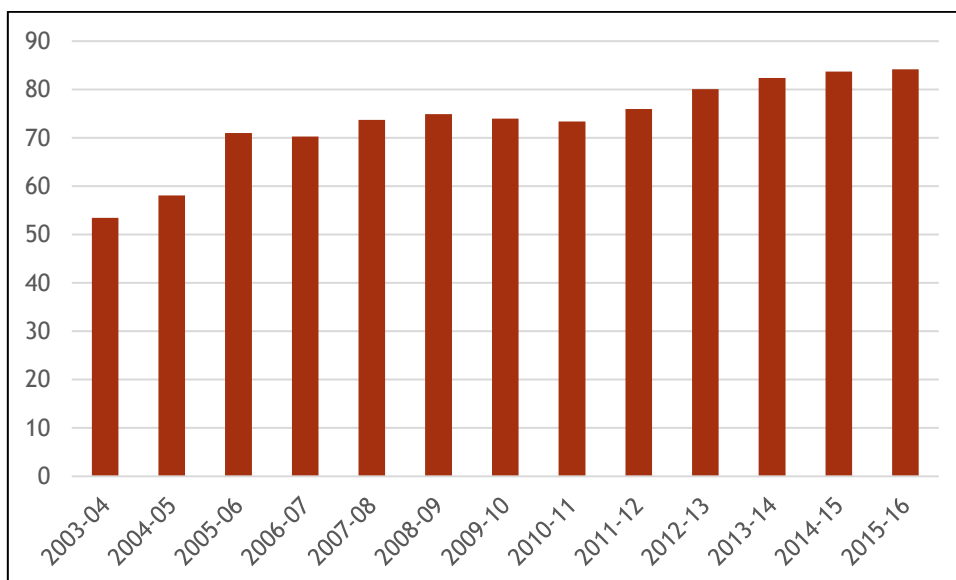


Fig 3: All-India Retention Rates at the Primary Level

As we have argued before,<sup>5</sup> these 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. As an example, we have plotted retention rates from Uttar Pradesh and Gujarat in Fig 4. It is evident that no clear correlation can be made between these rates and the NDP.

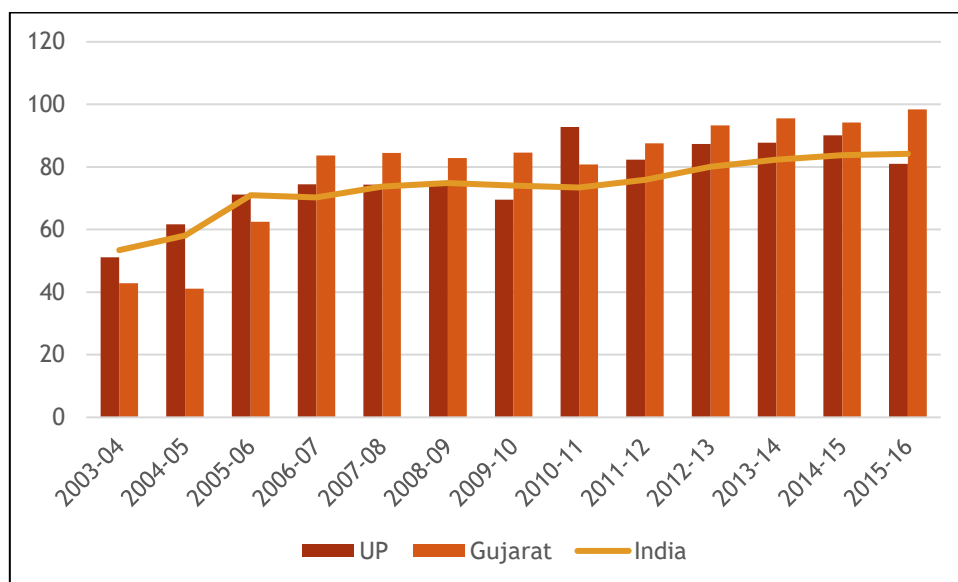


Fig 4: Retention Rates in UP and Gujarat

### C. Transition Rate:

Finally, we look at transition rates as an indicator of standards of education. This is the number of pupils admitted (new entrants) to the first grade of a higher level of education in a given year, expressed as a percentage of number of pupils enrolled in the final grade of the lower level of education (i.e. Grade V) in the previous year. Therefore, it indicates the proportion of students who actually graduate from Grade V to Grade VI.

At the national level, transition rates have increased from 74.15% in 2003-04 to 90.14% in 2015-16. As shown in Fig 5 below, there has been only a marginal increase in these rates since the enactment of the RTE Act.

<sup>5</sup> Shruti Ambast and Akriti Gaur, 'Don't Make the No-detention Policy the Scapegoat for Poor Learning Outcomes' *The Wire* (17 August 2015) <<https://thewire.in/8637/dont-make-the-no-detention-policy-a-scapegoat-for-poor-learning-outcomes/>> accessed 1 November 2017.

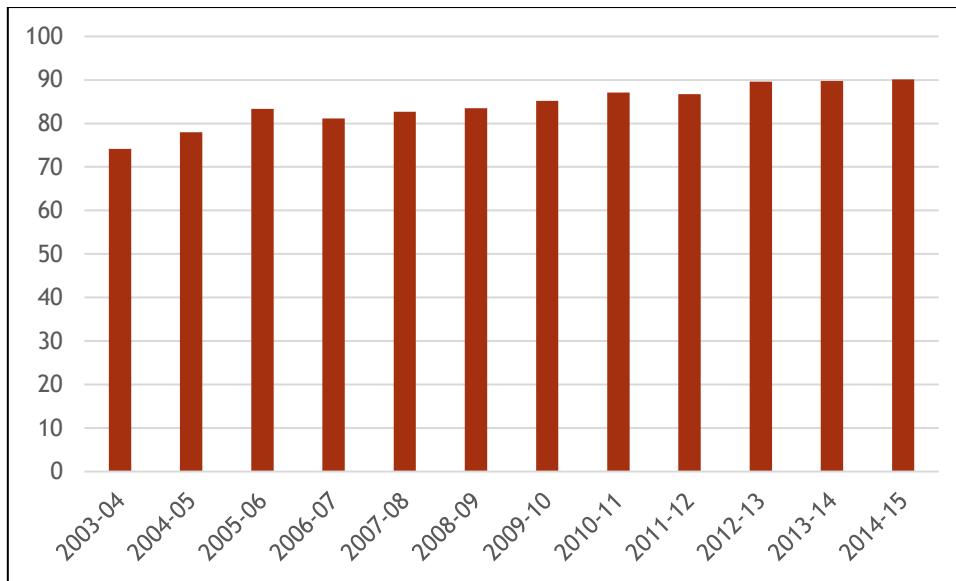


Fig 5: All India Transition Rates at the Primary Level

Just like retention rates, transition rates also show variance from state to state. It is difficult to determine from this data if the introduction of the NDP has caused any changes.

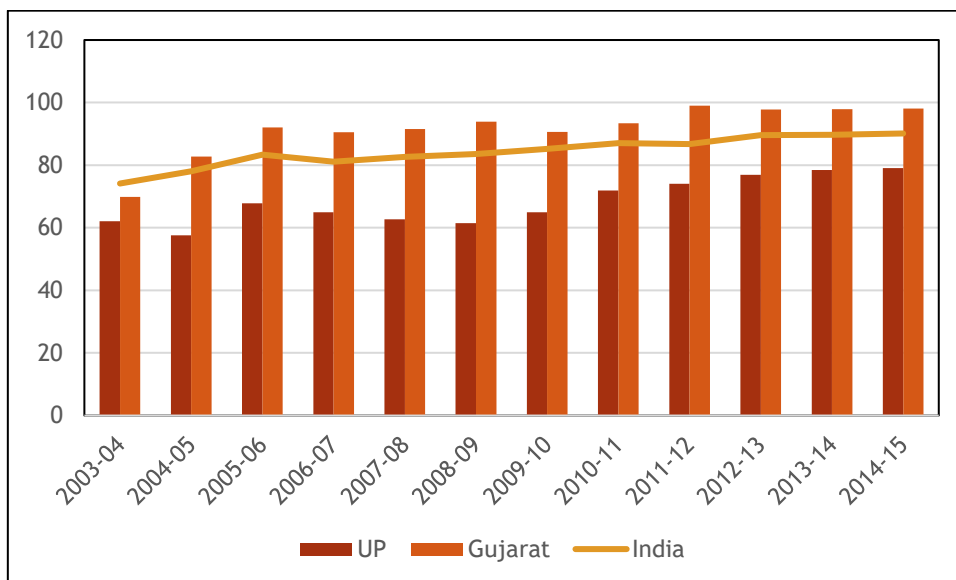


Fig 6: Transition Rates at the Primary Level in UP and Gujarat

It is therefore clear that more detailed and rigorous studies will be required to determine if the NDP has had a positive or negative effect on these outcome indicators.

- V. In the absence of clear evidence that the NDP is strongly correlated with poor learning outcomes and high dropout rates, 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. 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.’ General Comment No.1 on the Aims of Education and drawn up by the Committee on the Rights of the Child elaborates on this provision in the Convention and states that education ought to help realise and build a child’s dignity, self-esteem and self-confidence.<sup>6</sup> The NDP is geared towards fulfilling these aims. Any reversal of the NDP that reintroduces systems of assessment based on ‘pass’ and ‘failure’ are likely to have a damaging effect on such self-esteem and self-confidence, thereby placing India potentially in breach of its obligations under the Convention.

- VI. As stated earlier, poor learning outcomes cannot be attributed solely to the NDP. Several experts have pointed out that factors like inadequate teacher training or poor implementation of comprehensive and continuous evaluation also have an important role to play in determining learning levels.<sup>7</sup> No change to the NDP should be made without simultaneous structural reforms to teacher training and achievement of the prescribed pupil-teacher ratio.<sup>8</sup>
- VII. Divided opinions over the NDP show that there is a need to think more rigorously about evidence-based law-making, especially in the context of the RTE Act, where the law must be guided by scientifically sound monitoring and evaluation (General Comment No 1 of the Committee on the Rights of the Child also makes this recommendation<sup>9</sup>). Rather than enter into a debate on the merits and demerits of the NDP (we have already expressed ourselves in favour of its retention), we wish to take this opportunity to draw the attention of the Standing Committee to the process that ought to be observed before a step of this magnitude is taken.
- VIII. Any appropriate government that desires to make an amendment to the NDP must base its decision on evidence regarding the effectiveness or failure of the policy. This evidence may be obtained in the following ways:

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<sup>6</sup> CRC/GC/2001/1 (17 April 2001).

<sup>7</sup> See e.g., Gunjan Sharma, *Reversing the Twin Ideals of Right to Education: No Detention and Continuous and Comprehensive Evaluation*, *Econ & Pol Weekly* Vol LI No 9 (February 27, 2016) 85.

<sup>8</sup> Gaur and Ambast (n 5).

<sup>9</sup> (n 6). At para 22, the Comment states that ‘the Committee calls upon State parties to devote more attention to education as a dynamic process and to devising means by which to measure changes over time.’

- A. The appropriate government could obtain the opinion of the State Advisory Councils constituted under Section 34 of the RTE Act on the advisability of amending the NDP.
  - B. The State Advisory Council should make its recommendations based on the research and review conducted by the National Advisory Council (“NAC”). Rule 30 of the Right of Children to Free and Compulsory Education Rules, 2010 (“the Rules”) state that the NAC shall review the implementation of Section 29 (which deals with the curriculum and evaluation procedure and is closely linked to the success and failure of the NDP), shall commission studies and research for the effective implementation of the Act, and prepare reports relating to the reviews, studies and research undertaken by it. The NAC is therefore to undertake or commission research on the effectiveness of the NDP.
  - C. In fact, the Rules could be amended to explicitly allow the appropriate government or the SAC to request the NAC to conduct research on various aspects of amendment policy.
- IX. The appropriate government may take a decision to amend the NDP only after observing the above procedure. Any such amendment must be accompanied by a reasoned decision that takes into account the research and recommendations obtained from expert bodies.
- X. If an amendment is made to the NDP, it must be accompanied by the following safeguards:
- A. It must have a sunset clause. Any amendment to Section 16 of the RTE Act must also state that the permission granted to schools to detain students will lapse after a fixed period from which the amendment came into force. The duration of this period may be determined by expert bodies like the SAC, NAC and the National Council of Educational Research and Training (“NCERT”) and must allow for a reasonable evaluation of the amended NDP.
  - B. If at all detention is permitted, terms like ‘pass’, ‘fail’ or any other similar terms that may have a damaging effect on a child’s self-esteem and self-confidence should not be allowed to form part of the vocabulary of the evaluation procedure. The notified academic authority under Section 29 should develop an appropriate form of assessment that treats detention not as a failure, but as a support measure to help realise the child’s full potential.



- XI. An amendment of the NDP should only be introduced after a comprehensive consultation to determine the manner in which detention ought to be regulated. Some of the factors that such regulation ought to take into account are:
- The years in which such detention may be permitted;
  - The maximum number of times that a child may be detained;
  - The duty of teachers to identify children at risk of being detained and the subsequent obligation to provide special training or additional instruction;
  - The final authority to determine whether or not a child should be detained. This could exclusively be the teacher heading the class in which the child is studying, or all the teachers providing instruction to the child, or all the teachers of the school. The role of School Management Committees in making decisions on detention could also be considered;
  - The duty to inform and consult with parents before making a decision to detain a child;
  - The duty to counsel a child who has been detained to prevent psychological or emotional damage;
  - The factors that ought to be taken into account in determining whether or not a child should be detained. The NCERT could take an active role in framing guidelines in this regard;
  - The possibility of appealing a decision of detention and the process that such appeal should follow.
- XII. These factors have been drawn from a study on detention regulations across countries in Europe,<sup>10</sup> most of which permit grade repetition. Naturally, there are vast differences between the educational systems in Europe and India and not all of the above provisions may be relevant or suited to the Indian context. Nevertheless, they are still important questions that must be considered before making an amendment to the NDP.
- XIII. The current Bill only addresses two questions: the year of education in which children may be detained and the opportunity that they must be given to avoid detention. As the above list, there are several questions that the MHRD has not applied its mind to while introducing this amendment. No change to the NDP should be made until these questions have been thoroughly discussed.

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<sup>10</sup> European Commission, 'Grade Retention during Compulsory Education in Europe: Regulations and Statistics' (Education, Audiovisual and Culture Executive Agency 2011).



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