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# RIGHT TO EDUCATION AND THE NEW EDUCATION POLICY: NEW CHALLENGES

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## CHAPTER 1: RIGHT TO EDUCATION: CONSTITUTIONAL PERSPECTIVE

### *Historical background*

At the time of the enforcement of Indian constitution, Article 45 as a directive principle was incorporated which is promising free and compulsory education for all children till the age of 14 years. And it was supposed to be attained within 10 years. But the state was responsible for an implementation of the guns of the constitutional promise that is free and compulsory that is free and compulsory education for all the children till age 14 years. But the state failed to do the same for next 5 decades. Thus, on 27<sup>th</sup> of August 2009 state notified the right of children to free and compulsory Education Act 2009. Also, it is 86<sup>th</sup> constitutional amendment came into the picture an article 21A was incorporated in Part III that is fundamental right of the constitution. This provision states that “The state shall provide free education to all children of the age of 6 to 14 years in such a manner as the state mean by law the determine.”<sup>1</sup> Though, the path of the right to education was not as simple and easy as we think. The main origin lies in the Vedic era.

### *Status: Fundamental Right*

Our Indian constitution is a document which is known to be committed to social justice. As per expert opinion, literacy forms the cornerstone for making the provision of equality of opportunity a reality. The Indian Constitution has therefore recognized education as the essence of social transformation, as is evident from its education specific Articles.<sup>2</sup>The judicial decision from which the right to education emanated as a fundamental right was from the one rendered by the Supreme Court in Mohini Jain v. State of Karnataka.<sup>3</sup>In this case the

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<sup>1</sup>A Arun, Right to Education- Article 21A <<https://www.legalserviceindia.com/legal/article-70-right-to-education-article-21-a-.html>> accessed on 15<sup>th</sup> November 2021.

<sup>2</sup>Bhawna Bawa, ‘Aims of Education according to NPE, 1986’ <<https://www.yourarticlelibrary.com/education/aims/aims-of-education-according-to-npe-1986/76808>> accessed on 15<sup>th</sup> November 2021.

<sup>3</sup>AIR 1992 SC 1858.

Supreme Court through a division bench comprising of justice Kuldip Singh and R.M. Sahai, deciding on the constitutional of the practice of charging capitation held that: ‘the right to education flows directly from the right to life.’<sup>4</sup> The right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education.’ The rationality of the judgment was further examined by 5 judge benches in the case of Unnikrishnan v. State of Andhra Pradesh<sup>5</sup> where the enforceability and the extent of the right to education was clarified in the following words: “The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development.” The same has also been reiterated by the Hon’ble Supreme Court in Bandhua Mukti Morcha, etc v. Union of India<sup>6</sup> specially referred to the earlier judgment made in this connection as under: “In Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi,<sup>7</sup> right to education at the secondary stage was held to be a fundamental right. In J.P. Unnikrishnan v. State of Andhra Pradesh,<sup>8</sup> a constitution Bench had held education up to the age of 14 years to be a fundamental right. It would be therefore incumbent upon the State to provide facilities and opportunity as enjoined under Article 39 (e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary.”

### ***Implementation***

The right to education forum’s stock taking report 2014 says that less than 10% of schools comply with on the norms of right to Education Act as well as standards across the country. As the enactment of Right to Education Act 2009 triggered significant developments what the concerns with regard to privatization of education remain same. Educational inequality has been their country for many years. As the act offers a first step towards an inclusive education system but no effective and smooth implementation is still a challenge for our country.<sup>9</sup>

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<sup>4</sup>Manmeet Singh. Right to Education’ <<http://www.legalservicesindia.com/article/1925/Right-to-Education.html>> accessed on 16<sup>th</sup> November 2021.

<sup>5</sup>AIR 1993 SC 2178.

<sup>6</sup>AIR 1984 SC 802.

<sup>7</sup>1991 SCALE (1)187.

<sup>8</sup>AIR 1993 SC 217.

<sup>9</sup><<http://rteforumindia.org/wp-content/uploads/2021/03/10th-Stocktaking-Report.pdf>> accessed on 17<sup>th</sup> November 2021.

***Right To Education Act, 2009***

On April 1 of 2010, the right of children to free and compulsory education act came into the force. This was considered to be a historic day for Indian as from this day only the right to education was given the same status as the right to life in our constitution has. Article 21A in Part III of the Indian constitution through the constitution (Eighty-Sixth Amendment) Act, 2002 was incorporated to ensure free and compulsory education under the age group of 6 to 14 years in a manner as the state may by law determines. RTE Act as well as article 21 of Indian constitution came into effect on first April 2010. No every child of the age of 6 to 14 years has the right of elementary education in a neighborhood school without paying any kind of fee all expenses which might be the hindrance for a child from completing and pursuing elementary education.<sup>10</sup> In order to carry out the provisions of this act local authority with the help of appropriate government will establish a school in a given area from the commencement of the act and in case institute is not established then time period of three years was given to establish the same. The central and state government has concurrent responsibility to provide funds in order to carry out the provisions of this act and make it effective. This Act is considered to be an essential step towards advancing accessibility to secondary and higher education. This act also comprises of particular provisions for vulnerable groups like child labor, migrants, children with particular needs and those who are socially, culturally, economically, backward. It is also expected that with enforcement of this act, the issues related to school dropout quality of education and availability of train teachers would be addressed in the short span of time. The enforcement of this Act would bring the country closer in achieving the goals and objectives of Millennium Development Goals (MDGs). RTE has been a part of DPSP under article 45 of the constitution of India and the same is not in foreseeable in the court of the law. But for the first time in India, we have made this right in foreseeable by incorporating the scene under part three of the constitution as article 21A. Thus, it empowers the children to have the right to education enforced as a fundamental right in India.

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<sup>10</sup>Avanse, Impact of The New national education policy <<https://www.avanse.com/blog/impact-of-the-new-national-education-policy-on-higher-education-sector/>> accessed on 14<sup>th</sup> November 2021

## **CHAPTER 2: NATIONAL POLICY ON EDUCATION, 1986**

### ***Kothari Commission***

First policy with regard to education was introduced in 1968 under the governance of Indira Gandhi. The government at that time formed an education commission of 17 members under UGC chairperson DS Kothari which is also known as Kothari commission.<sup>11</sup> On the recommendations of the Kothari commission, the first policy on education was introduced in 1968. The policy of 1968 called for a 'National school system', which clarified that all the students would have an access to education of comparable quality up to a given level irrespective of sex, caste and creed. In addition to this, it envisaged a common structure of education i.e., 10+2+3 which was welcomed and accepted by the whole country. It also incorporated the use of mother tongue as a medium of teaching in starting period of schooling. Further, it advocated the strengthening of research in the universities. Though, the policy of 1968 was not much successful and there were various reasons behind this like: shortage of funds, proper action with regard to the implementation was not brought out and at that period of time, education was listed under the state list and central government had a little role with regard to the implementation of the policy.

### ***Highlights of National Policy on Education, 1986***

NPE, 1986 clearly clarified the basic concept of national system of education which stated that all students are respective of location, sex, cost, creed have access to education offer compatible quality. In order to achieve this, the government will initiate lot of funded programs. Also, effective majors will be taken in the part of the common school system that was recommended in policy. The NPE 1986 has put special emphasis on the removal of discrimination in order to equalize the opportunity of education by fulfilling the special needs of those who have been deprived of so far. Few of the basic features of national policy on education, 1986 are:

- Common educational structure
- National curriculum frame work with a commoner
- Equal opportunity of education for all

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<sup>11</sup><<https://www.gktoday.in/topic/national-education-policies-1968-and-1986/>>accessed on 15<sup>th</sup> November 2021

- Minimum and basic levels of learning
- Understanding the diverse culture as well as social system of the society.
- Strengthening the national institutions.

Decentralization of education system was also introduced by national policy on education 1986. It made available sufficient funds for education and also introduced uniform pattern for education all over the country. It also reorganized curriculum of schools as well as educational programs. Also, free and compulsory education, early childhood care, reorganization of secondary schools and early childhood education were given more emphasis. Open University and distance education were also recognized and given importance. The uniform pattern of 10+2+3 pattern of education was also recommended for immediate implementation in all over the country. Proper availability of food and healthy environment were also given importance. Mandatory subjects like languages, mathematics, science and history etc. and few concepts like national as well as constitutional responsibility of citizens are prioritized to teach the students. More emphasis was given to skill-based learning. Equal opportunity for all was incorporated by giving special status to SCs, STs, women and physically weaker section of the society. IEDS scheme was also introduced for the students who fall under the category of physically weaker section of the society.<sup>12</sup>

The policy of 1986 performed better than an earlier policy of 1968 and the main reasons behind the same was that the introduction of 42<sup>nd</sup> Amendment in 1976 which shifted the subject of education from state list to concurrent list and this enabled the Centre to work on the subject and thus introduced number of schemes like Mid-day meal scheme, Sarva Shiksha Abhiyan etc. in order to implement the same in efficient manner.<sup>13</sup>

### ***Revised National Policy on Education, 1992***

The policy of 1986 was modified in the year 1992. It is a comprehensive framework which was brought to guide the development of education in the country. The principles of and NPE, 1968 was also incorporated in the new policy with some changes. New policy will

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<sup>12</sup>Journey of National Policy of Education 1968, 1986 and 1992 (Implemented in 2005), <<https://www.examrace.com/Current-Affairs/NEWS-Journey-of-National-Policy-of-Education-1968-1986-and-1992-Implemented-in-2005.htm>> accessed on 15<sup>th</sup> November 2021

<sup>13</sup>National Education Policies 1968 and 1986, <<https://www.gktoday.in/topic/national-education-policies-1968-and-1986/>> accessed on 15<sup>th</sup> November 2021.

emphasis on retention of the children in the school at primary level. Non formal education to be introduced and also the education should be mid compulsory till the age of 14 years. More attention should be given to the physically challenged minority and backward classes children for their development in education. In order to overcome the poor rate of illiteracy among female modern versus would be given on women's education. Establishment of central Advisory Board of education was also given important in order to review educational development and to find out the required changes to improve the education. In addition to this, proper infrastructure, accommodations, libraries would be provided in the institutions. These are the few additions as well as modifications that were incorporated in the new policy.<sup>14</sup>

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<sup>14</sup>NationalpolicyofEducation, 1986andPOA1992: ObjectivesandRecommendations, <<https://www.tetsuccesskey.com/2017/01/national-policy-of-education-1986-poa-1992.html>>

## **CHAPTER 3: NEW EDUCATION POLICY, 2020: A COMPLETE OVERHAUL IN THE EDUCATION SYSTEM OF INDIA**

### ***Reasons behind the Introduction of NEP***

Our Indian education system is following the traditional approaches as well as methodologies for more than 30 years. Technological advancement with the introduction of Internet has changed the whole world but the way to reach the advancement is still not changed. Thus, it was the need of an hour to bring a new policy with regard to an education with some modifications as per the new era. Finally New Education Policy was passed by the union cabinet on 29<sup>th</sup> July, 2020. Earlier the system of education was working as per the guidelines of NEP, 1986 as well as RTE Act, 2009 but lot of defects were found which were taking the system away from the Universal education goal. Thus, a great need was felt to modify the educational system. We do need a system which helps India in achieving the goal of self-reliance as well as success in global competitiveness. Remind in order to determine the growth of any country we need to consider working age population and its potential. In our country about 60% of population falls in the category of 10 to 60 years and thus for success they should be fully equipped with relevant skills which should be learnt during the period of elementary education. Policy aims to increase investment in education from 4.4% of GDP of India to 6% and if this policy is implemented efficiently that would help and change the lives for betterment of 290 million students.

### ***Highlights of NEP 2020***

Falling on the important points with regard to education Proposed by the new policy 2020:

- Inclusion of childhood education: Primary education will begin at the age of three instead of 6 years of the age. Main focus on equity and inclusion: the incorporation of socially economically disadvantaged groups mainly categorized as transgender, girls, and children with particular needs.
- Modified curriculum: NEP proposes to shift the structure of 10 + 2 to 5+3+3+4 patterns and primary education will begin at the age of three instead of 6 years of the age.<sup>15</sup> Reduction of contents of curriculum in order to give more time for critical

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<sup>15</sup><https://www.brookings.edu/blog/education-plus-development/2020/10/02/indias-national-education-policy-2020-a-reformist-step-forward/> accessed on 15<sup>th</sup> November 2021.

thinking and develop a child with different type of skills. The main challenge and implementation of these changes include no modification of curriculum, textbooks etc as per the National curriculum framework.

- Technology: policy puts emphasis on the inclusion of technology and developing digital infrastructure like digital classrooms, remote teaching models etc to bridge gaps in physical teaching and laboratory infrastructure is again a big challenge as many schools still lacking a proper set-up to support these tools. The cost with regard to establishing digital infrastructure might not be affordable for many institutions across the country. Developing digital learning tools in rural areas where Internet facilities are absent is again a great challenge. Thus, the government should work on developing though basic infrastructure first.
- Availability of teachers and training: the policy focuses on redesigning the school curriculum and for that there is a need to train concerned authorities and make them understand pedagogical needs to make smooth transition. Also, there is a need to focus on student centered learning instead of teacher centered learning to promote collaborative skills, decision making abilities, problem solving and critical thinking in the youth.
- Study suggested that more than two fifty million students would be expected to enroll in schools in India by the end of 2013. It means that we need 7 million more teachers to handle this student population inefficient way. As we know that teaching is one of the low paid professions in our country thus experimental learning as well as concept-oriented teaching will be a challenge. So, there is a great need to revise the teacher remuneration in order to implement NEP, 2020.
- Exam pattern: the new policy focuses on formative assessment instead of summative assessment. The main purpose of changing the assessment system is to promote continuous tracking of learning outcomes. And for this assessment there is a need of innovative evaluation approaches and assignments which involves technological interference as well as active participation of teachers and students. As for the study it is found that 75% are government schools out of 1.5 million schools in India.

And nearly 80% of the schools are budget private schools out of 40,000 private

schools. The continuous assessment framework might be a challenge to implement the new policy.

### ***Main objective***

NEP 2020 was introduced to advance our education system towards international standards. Although the implementation of an NEP2020 in a true sense will take lot of time but there is a hope that it will change the Indian education system and will make it in consonance with international standards. The main purpose of the NEP is to reform the education system and bridge gap between the present learning outcomes as well as those desired. The education system is to develop good human beings who are capable of rational thought as well as action. Also, it aims at producing productive, engaged as well as contributing citizens for forming inequitable, inclusive and plural society as per our constitution.<sup>16</sup>

In order to make the implementation of NEP successful at all levels, the government would need to create stakeholder incentives in order to have smooth and uniform implementation. Formulation of instruments in the form of legal, policy, regulatory and institutional mechanisms are also required. Building of reliable information repositories are also needed for better implementation.

Here are the policy's key targets as well as the deadlines set for some visions: -

- The entire policy will be implemented by the end of 2040.
- 100% Gross Enrolment Ratio (GER) from Pre-School to Secondary level by 2030.
- Teachers to be well prepared and ready for assessment reforms by 2030.
- Common standards of learning in public as well as private schools.
- Universalizing early childhood care as well as education by the end of 2030.
- Vocational training for at least 50% learners by the end of 2025.

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<sup>16</sup>Urvashi Sahni, Education plus development<<https://www.brookings.edu/blog/education-plus-development/2020/10/02/indias-national-education-policy-2020-a-reformist-step-forward/>> accessed on 15<sup>th</sup> November 2021.

## **CHAPTER 4: TRANSFORMING VISION INTO REALITY: A CHALLENGE**

### *School education system:*

National education policy of 2020 will be bringing lot of modifications in the education system of schools in India. The aim of the new policy is the universalization of education from pre- school to secondary level with 100% Gross Enrolment Ratio (GER) in school education by 2030. Following are some of the salient features with regard to school education system:

- **Open schooling system:** Through the open schooling system, the NEP 2020 will bring 2 crores out of school children back into the mainstream and improve the school education system of India.
- **Modification of school curriculum:** The current 10+2 system in the school will be replaced by a new 5+3+3+4 curricular structure corresponding to ages 3-8, 8-11, 11-14, and 14-18 years respectively. Under the school curriculum, this new system will bring an uncovered age group of 3 to 6 years. This is the age that has been recognized globally as the crucial stage for the development of mental faculties of a child. As per the new policy, there will be 12 years of schooling along with three years of pre-schooling period.
- **Foundational literacy as well as numeracy:** The new policy emphasizes on Foundational Literacy and Numeracy. There will be no rigid separation between academic streams, extracurricular, vocational streams in schools. From class 6, Vocational Education will start with internships.
- **Regional language:** As per the New Education Policy teaching up to at least Grade 5 will be in mother tongue or regional language. No language will be imposed on any student.
- **Holistic approach:** Assessment reforms with Holistic Progress Card (overall) and for achieving learning outcomes progress of the students will be tracked.
- **Teacher education:** NCTE (National Council for Teacher Education) in consultation with NCERT will formulate a new and comprehensive NCFTE(National Curriculum Framework for Teacher Education) 2021. The minimum degree of qualification for

teaching will be 4-year integrated B.Ed. degree by 2030.

*Higher education system:*

The NEP envisages a complete overhaul and re-energizing of the higher education system to overcome the challenges which are faced by the higher education system and deliver high quality education with equity and inclusion. The vision of the policy is to include the following changes into the current system:

- Consolidation and institutional restructuring: the main motive of NEP is to end the fragmentation of higher education make them multidisciplinary universities. It has been envisaged that every college would develop in two either constituent College of university or an autonomous degree granting college.
- Way towards more holistic and multidisciplinary education: this would aim to develop all capabilities of human beings like social, physical model, emotional in an integrated way. Value based education will also be included for the development of ethical humanistic and universal human values which is also a part of holistic education.
- Optimal learning environments and support: A number of initiatives along with suitable resources and infrastructure will be required to ensure learning environment must be engaging as well as supportive and enable the students to succeed.
- Indian higher education with international standards: research collaboration as well as student exchanges programs between Indian and global institutions will be promoted through special efforts in order to bring international standards in our education system.
- Trained teachers: teacher education is also very important in shaping the next generation. By the end of 2030, only educationally sound, multidisciplinary as well as integrated teacher education programs shall be in force. In order to maintain uniform standards for education of teacher's common admission to pre service teacher preparation programs shall be true suitable subject and aptitude tests conducted by NTA (National Testing Agency).
- Equity and inclusion in higher education: NEP 2020 visions ensure equitable access

to quality education to all students with all particular emphasis on socio economically disadvantaged groups.

- Transformation of the regulatory system of higher education: system of higher education will make sure that the distinct functions of regulation, funding, accreditation, and Academy standard setting will be performed by different independent what is and for these four independent verticals will be set up within one umbrella institution that is the higher education Commission of India. The four verticals of HECI will be the National higher education regulatory council, National accreditation council, Higher education grants council and General education council and these bodies will be based on transparent public disclosure and use technology extensively in order to reduce human interference good sure efficiency and transparency.
- Curbing commercialization of education: multiple mechanisms with some checks and balances welcome back and stop the commercialization of higher education.
- Increase GER to 50% by the end of 2035: new education policy aims to increase the gross enrolment ratio in higher education which includes vocational education from 26.3% to 50% by 2035.
- Financial support to students: the national scholarship portal will be expanded to foster and support the students belonging to SC, ST, OBCs.
- Open and distance learning program: this will be expanded to ensure the increase in GER. Online courses, funding for research and digital repositories are supposed to be improved for student services to confirm to the highest quality of education in classroom programs.
- **Main Challenges:**
  1. Opening universities every week is an extraordinary task: India today has around 1,000 of universities across the country. Doubling the Gross Enrolment Ratio in higher education by the end of 2035 which is one of the stated goals of the policy means that we must open one new university every week, for the next few

years.<sup>17</sup>In that case, opening one University every week on an ongoing basis is a massive challenge for the country.

2. The numbers are no less daunting in reforms to our school system: The National Education Policy 2020 intends to bring 2 crore children who are currently not in schools, back into the school system. Whichever way you look at it, accomplishing this over 15 years requires the setting up of around 50 schools every week.
3. Raising funds: Funding is again a big challenge in the Covid era from a funding standpoint; this is not a challenge for the faint-hearted. The National Education Policy 2020 envisages an increase in education spending from 4.6% to 6% of GDP, which amounts to around INR 2.5 lakh crores per year. This money will be well-spent building schools and colleges across the country, appointing teachers and professors, and for operational expenses such as providing free breakfast to school children. What makes things tricky is that this policy comes into being at a time when the economy has been battered by Covid-19 related lockdowns, government tax collections are abysmally low, and the fiscal deficit was high even pre-Covid.
4. Present focus on healthcare and economic recovery to lower: The execution speed Economists have been calling for large stimulus packages amounting to double-digit percentages of GDP, despite the strain on the exchequer.
5. Creation of a large pool of trained teachers in school education: the policy envisages a sweeping structural re-design of the curriculum a very welcome step. But in order to deliver this curriculum effectively, we need teachers who are trained in and understand the pedagogical needs.<sup>18</sup> Many of the curricular changes require substantial mindset shifts on the part of teachers, as well as parents.
6. Inter-disciplinary higher education demands for a cultural shift in higher

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<sup>17</sup>A reality check on NEP 2020: 6 major challenges in implementation <<https://www.indiatoday.in/education-today/featurephilia/story/a-reality-check-on-nep-2020-major-challenges-in-implementation-1711197-2020-08>> accessed on 16<sup>th</sup> November 2021.

<sup>18</sup>Ibid.

education: The National Education Policy 2020's focuses on inter-disciplinary learning is a very welcome step. The National Education policy 2020 has many initiatives to improve the quality and the broadness of the education system in India.

## **CHAPTER 5: NEP, 2020 - IS IT A REFORMIST STEP?**

The draft of NEP 2019 appears to be quite genuine reformative step in the right direction and conveys a sharp bias for action. Policy proposals such as providing greater room for student choice, shifting curricular focus from content to skills and essential learning, enhancing emphasis on foundational numeracy and literacy, building on learning outcomes and experiential learning, recognizing the relevance of liberal arts education at the senior level, providing flexibility in the examination system, and introducing a semester system at the senior level are indeed welcome. The flexibility as provided by the new education policy is very much relevant in present time and would attract more and more students. Long-awaited reforms in teacher education and a clear emphasis on their ongoing professional development are truly laudable in the present time.

Basically, the NEP is mainly focused on increasing the Gross Enrolment Ratio in higher education area which is presently around 26%. And this is quite less if we compare to other countries like Brazil, China etc. Thus, our government needs to introduce or bring some stronger policies for the development of educational infrastructure. Also, in the speech during the 2021-22 budget, Nirmala Sitharaman mentioned the need of great inflow of finance to attract talented structure in our country to build better infrastructures and formalize measures which will enable sourcing FDI. Though the new policy looks picture perfect but the key to its success is its implementation within the set deadline. We need to wait with patience in order to see how things would turn out in future.

## **CONCLUSION AND SUGGESTIONS**

In this paper the author has discussed about the historical background of right to education, the need of inclusion of new education policy, salient features of policy, issues and the challenges and implementation of the new policy in brief. The national education policy 2020 is considered to be the first education policy in 21<sup>st</sup> century which replaces the 34 years old national policy on education 1986. The policy is in consonance to the 2030 agenda for sustainable development which focuses to transform India into a global knowledge superpower and vibrant knowledge society by making both school as well as higher education more holistic, flexible, multidisciplinary which suited the present era and focused in bringing out unique capabilities of each individual. The objective of this study is to investigate the areas where the policy has proposed action, but they look very shabby. It is not possible to have a policy where we need to build a complete infrastructure. A total reform and a drastic change are to be considered during the implementation of this policy. As it is well known that education is a concurrent subject and the implementation of the proposal under the New Education Policy 2020 depends on the future regulations by the state as well as centre.

In order to implement NEP successfully at all levels the government will need to create stakeholder incentives so that the implementation is smooth and uniform. There is a need to formulate instruments in the form of legal, policy, regulatory and institutional mechanisms to regulate the policy efficiently. Also, the building of reliable information repositories is required to get reliable information. In order to maintain credibility through transparent actions and participation of all stakeholders are needed. Institutions will actually need to redefine the teaching as well as the learning process in order to have a proper implementation of NEP 2020 to actually see an output of transformation in reality.

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