

## Education Sector Hotline

November 09, 2016

### VIEWS BY NISHITH DESAI ASSOCIATES ON NEW EDUCATION POLICY AND LIBERALIZATION OF EDUCATION

Dear All,

We are pleased to bring to you our articles on The New Education Policy and Liberalization of Education, published in the 17th Anniversary Edition of EducationWorld.

In the articles, Mr. Nishith Desai, founder of Nishith Desai Associates, has given his wish list for the New Education Policy, whilst Mr. Vivek Kathpalia and Ms. Aarushi Jain have discussed the need for Liberalization of Education in India.

We hope you will enjoy reading these articles.

#### NEP 2016 NISHITH DESAI WISH LIST

Nishith Desai is founder and managing partner of Nishith Desai Associates, a Mumbai-based transnational legal and tax counseling firm.

1. NEP 2016 should be results oriented. Clear action plan and timelines should be set out to achieve the objectives of NEP 2016.
2. Little importance is being given to quality of education delivered. NEP 2016 should also focus on attracting talented teachers who are given constant training.
3. Uniformity in the regulatory framework countrywide will address issues of overlap in regulations, and encourage greater private sector participation.
4. Supply side focus to increase private investment in education. This will result in improved access and automatically lower tuition fees.
5. Syllabuses need to be revamped to provide for skills-based learning and vocational training, to make students employable.
6. Education policy should focus on making learning a fun-filled activity.
7. Pre-primary and primary syllabuses/curriculums should include soft skills and focus on virtues and habits such as tolerance, integrity, integration, hygiene, cleanliness etc.
8. NEP 2016 should allow for-profit enterprises in higher education. Haryana already allows schools to be promoted by for-profit companies.
9. Private unaided education institutions should be allowed full liberty in their operations.
10. NEP 2016 should reduce the number of regulators, and make the process of granting approvals transparent and faster.
11. NEP 2016 should enable easy entry of foreign education institutions.

#### INDIAN EDUCATION NEEDS LIBERALISATION TONIC

The best people to ascertain whether Indian education has been sufficiently liberalised — as has Indian industry since 1991 — is the country's 300 million students' community. They are the ones suffering the brunt of an archaic, dysfunctional education system. Unfortunately, little is being done to correct it.

The doubling of India's annual GDP growth rate since 1991 proves that liberalisation and freedom of operations are the key drivers for growth of industry. Similarly over the years, the Union government has introduced policies to liberalise the education sector. Initiatives such as 100 percent foreign direct investment, and encouraging domestic private investment in education are notable developments. However, the plain truth is that substantial and effective liberalisation of 21st-century India's over-regulated education system is a distant dream.

Education falls under the concurrent list of the Constitution of India. Therefore both the Central and state governments can legislate on this subject. While under this constitutional arrangement education could have received impetus from the Central and state governments, in effect it has resulted in a multiplicity of regulators and plethora of laws and stipulations. The end result is that complexities and compliances have disillusioned and disincentivised foreign and domestic investors from entering Indian education.

Currently, the only segment of the education sector which isn't regulated by government is early childhood or pre-primary education. Because they are unregulated, private pre-primaries and play schools have mushroomed countrywide. These schools are managed by individuals (owners and franchisees), and have created employment for thousands of teachers. However, there's a strong lobby in favour of regulating pre-primary schools and imposing

## Research Papers

### Clinical Trials and Biomedical Research in India

April 22, 2025

### Structuring Platform Investments in India For Foreign Investors

March 31, 2025

### India's Oil & Gas Sector— at a Glance

March 27, 2025

## Research Articles

### 2025 Watchlist: Life Sciences Sector India

April 04, 2025

### Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

### INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

## Audio

### CCI's Deal Value Test

February 22, 2025

### Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

### Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

## NDA Connect

Connect with us at events, conferences and seminars.

## NDA Hotline

[Click here to view Hotline archives.](#)

## Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia |

admission, teacher recruitment, tuition fee approvals and registration rules and regulations upon them.

In a positive initiative to boost pre-primary education, Tamil Nadu has notified an enabling Code of Regulations for Play Schools 2015, governing preschools imparting informal education to children in the 1.5-5.5 years age group. Other states should follow suit.

In the K-12 education space, barring a few exceptions such as Haryana, which allows private limited companies to establish for-profit schools, other states require educational institutions to be registered as not-for-profit entities, discouraging private educators from investing in this sector. Moreover, enactment of the Right of Children to Free & Compulsory Education (RTE) Act, 2009, which makes it mandatory for private schools to allocate 25 percent capacity in primary schools to children from poor households in their neighbourhoods at government-prescribed fees, has added to the financial burden of private K-12 schools. And if this isn't enough, several state governments (Maharashtra, Rajasthan, Tamil Nadu) have enacted legislation to regulate the tuition fees of private schools, interfering with the operational freedom of private education providers. Although such interference is against judgements of the Supreme Court, such legislation is still being enacted countrywide.

In higher education, a mere 20 percent of youth in the age-group 18-24 (cf. 50-80 percent in OECD countries) are in colleges and universities. This is primarily because the education provided by most higher ed institutions in India is outdated and isn't designed for employability. Thus, students either skip higher education or if they can afford it, study abroad, resulting in an outflow of foreign exchange and a 'brain drain'.

Private foreign educational institutes are keen to invest in India's higher education segment. With their vast resources, experience and proven capabilities, these institutions can give a huge boost to our languishing colleges and universities. However, despite prolonged debate and several draft Bills, India still doesn't allow foreign institutes to establish campuses in India.

The University Grants Commission recently notified the UGC (Promotion and Maintenance of Standards of Academic Collaborations between India and Foreign Educational Institutions) Regulations, 2016. Being a 2016 regulation, it was reasonable to expect the rules to be in tune with the changing times. However, the notified regulations still focus on the traditional concept of on-campus education and stress archaic norms such as minimum duration of study, etc. The lack of clarity in this notification has created greater ambiguity for collaboration arrangements between foreign and Indian institutes.

All these factors, instead of resulting in progression of education, are pushing it back to pre-liberalisation times. A few initiatives such as bringing uniformity into the regulatory framework countrywide to avoid overlap of regulations, allowing for-profit entities to operate in this sector to incentivise private education providers, granting recognition to education delivered online etc, will go a long way in liberalising Indian education for the greater good of India's children and youth.

---

This article was published in Education World dated November 08, 2016. The same can be accessed from the [link1](#) & [link2](#).

---

— [Aarushi Jain](#), [Vivek Kathpalia](#) & [Nishith M. Desai](#)  
You can direct your queries or comments to the authors

---

## DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

NewsX

April 01, 2025

**Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business**

March 19, 2025

**SIAC 2025 Rules: Key changes & Implications**

February 18, 2025