
Right To Education And Its Recognition In India

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Abstract

Right to Education under Article 26 of Universal Declaration of Human Rights(UDHR) its influence in recognition of Right to Education under Indian Law(affordability and availability) comparison with other countries. Right to Education is a introductory mortal Right. Constitution of India imposes the obligation on the government to give education to the citizens. Rights are furnished in Part III of the Indian Constitution as abecedarian rights. The Constitution guarantees six abecedarian rights to Indian citizens and right to freedom of educational rights is one of them. Right to education is included in the right to life preserved in Article 21 of the Constitution of India which provides right to live with quality. A person cannot be assured of mortal quality unless his personality is developed and the only way to do that is to educate him. The Statutory or Constitutional Amendment Act, 1976 included the subject 'Education" in the Concurrent List of the VII Schedule of the Indian Constitution which enables the Union Government to make law on this subject. Right of Children to Free and Compulsory Education Act, 2009 passed by the Indian Parliament on August 4, 2009, came into force from 1st April 2010. The Act promises to insure education for all children between 6 and 14. The main purpose of this exploration paper is to point out the government succeeded in its motive by passing the Right to Education Act or has failed in furnishing right to education.

Keywords : *Universal Declaration of Human Rights (UDHR), Fundamental Right, Human Right, Right to Education, Statutory or Constitutional Amendment Act , Concurrent List.*

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“ Education is not preparation for life; education is life itself.”

- John Dewey

I. Introduction

Right to Education is a introductory mortal Right. Mortal or Human rights are thick, interrelated and interdependent. Mortal rights are rights that are introductory in nature and entitled to every human being, irrespective of his nation, hearthstone, coitus, public or ethnical origin, colour, religion, language, or any other status. Similar rights would include right to life, equivalency before the law, freedom of expression, the right to work, right to social security, right to education, collaborative rights, similar as the rights to development and tone-determination, etc. President Franklin Roosevelt of USA, in his notorious communication to the Congress in 1941, for the first time used the term ‘mortal rights’ and stressed that the world should be innovated on four essential freedoms – freedom of speech, freedom of religion, freedom of want, and freedom of fear. One of the most important human or mortal rights are “Right to Education”. The significance of education in the life of a human being cannot be valued. It is significant to make a child mentally strong and active citizen. Education is must for the development of a country. Education is like a candle which enlightens and removes the darkness of ignorance. It is only with the education that ignorance passes down and knowledge spreads. The introductory right that is defended by the term human or mortal right is right to life with quality. A mortal rights- grounded approach to education is thus needed since it assures every child a quality education that respects and promotes her or his right to dignity and optimum development.

The right to education is pronounced precedence on the docket of the transnational community since right to education is not only a human or mortal right in itself but also is definitive for the exercise of all other mortal rights. A number of mortal rights covenants accepted and honored internationally, identifies right to education as a abecedarian aspect for development and social metamorphosis.

In 1948, the UN General Assembly espoused the Universal Declaration of Human Rights Which had 30 papers utmost of which had been drafted by Rene Cassin who was latterly on awarded Nobel Prize in 1968. This Universal Declaration of Human Rights has been the most outstanding and the most abecedarian corner in the history of the conception of Human Rights in the world. The 30 articles or papers of the Declaration together form a comprehensive statement covering profitable, social, artistic, political, and civil rights. Every time 10th December is celebrated as Human Rights Day.

II. International Recognition of Education as a Human Right

There are a large number of human or mortal rights problems, which cannot be answered unless the right to education is addressed as the key to unlock other human rights.¹ The right to education is easily conceded in the United Nations' Universal Declaration of Human Rights (UDHR), embraced in 1948, which states:

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit." - Article 26(1).

"Education shall be directed to the full development of the human personality and to the strengthening of respect for Human Rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace."- Article 26(2).²

The right to education is one of the abecedarian rights placarded in the UDHR under Article 26. It is considered by the Declaration not only as a right in itself but also as a means of promoting peace and respect for mortal rights and fundamental freedoms generally.

¹ View of Ms. Katerina Tomasevski, former United Nations Special Rapporteur on the right to education, who further developed the concept of '4 As' according to which education can be a meaningful right if it is made available, accessible, acceptable and adaptable.

² Available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [last visited on 25th Oct, 2022].
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piecemeal from UDHR, right to education is affirmed, threatened and promoted in multitudinous transnational mortal rights covenants, similar as as the following:

- Convention concerning Perception in Respect of Employment and Occupation (1958) - Article 3³
- Convention against Discernment in Education (1960)
- International Covenant on Economic, Social and Cultural Rights [ICESCR] (1966) - Article 13
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1981) –Article 10
- The United Nations Convention on the Rights of the Child (1989) – Article 28 & 29.⁴

The right to education has thus long been acknowledged by these transnational covenants as encompassing not only access to educational provision, but also the obligation to exclude demarcation at all situations of the educational system, to set minimal norms and to ameliorate quality. With respect to connection of these covenants or treaties in India, it is worthwhile to mention that India is a State party to the ICESCR, the CERD Convention, the CEDAW Convention and the Convention on the Rights of the Child.

The prominent organizations or associations around the world struggling for creation of Right to Education are:

- I. United Nations Educational, Scientific and Cultural Organization (UNESCO)⁵
- II. United Nations Children's Fund (UNICEF)
- III. World Bank
- IV. International Labour Organization (ILO)

³ Available at <https://www.ilo.org/> [last visited on 24Oct 2022].

⁴ Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> [last visited on 25th Oct 2022].

⁵ UNESCO leads the global Education for All movement, aiming to meet the learning needs of all children, youth and adults by 2015.

III. Right to Education and Indian Constitutional Perspectives

Human or mortal rights in Indian Legal Parlance means the rights relating to life, liberty, equivalency and self-esteem of the individual guaranteed by the constitution embodies in the transnational covenants and enforceable by courts in India. According to Justice V.R. Krishna Iyer:

Human rights are those irreducible minima, which belong to every member of the human race when pitted against the State or other public authorities or group or gangs and other oppressive communities. Being member of the human family, he has the right to be treated as human, once he takes birth or is alive in the womb with a potential title to personhood.⁶

Therefore human rights have a special significance in this changing world development.

To certify global and transnational covenant on education, intense struggle is made and essential amendment are brought in constitution of India to maintain educational right to all citizen in light of global principle. The Indian constitution has provisions to make sure that the state provides education to all its citizens. The Indian constitution in its original enactment defined education as state subject. In 1976, the 42nd Constitutional amendment was added and education befitted a concurrent list subject which enables the central government to legislate it in the manner suited to it. The Fundamental Rights and Directive Principles of State Policy (DPSP)&Ultimate Duties of the Indian Constitution provide the framework for rights to education.

A. Right to Education and Human Fundamental Rights (Part III)

Article 21A⁷ : The Right of Children to Free and Compulsory Education Act (RTE, Right to Education): The Right of Children to Free and Compulsory Education Act' or 'Right to Education Act also known as RTE', is an Act of the Parliament of India legislated on 4th August 2009, which describes the modalities of the significance of free and obligatory education for children between 6 and 14 in India under Article 21A (Article 21 is the Fundamental Right to Life under Right to

⁶ V.R.Krishna Iyer, *The Dialectics and Dynamics of Human Rights in India – Yesterday , Today and Tommorrow – Tagore Law Lectures*, (Calcutta: Eastern Law House, 1999) 54

⁷ Dr.J.N.Pandey , *Constitutional Law of India* 377 (Central Law Agency, Allahabad, 57th edn,2020).

Freedom) of the Indian Constitution. India derive to be one of 135 countries to make education a indispensable right of every child when the act came into force on 1 April 2010. “The State shall give free and mandatory education to all children of the age of six to fourteen times in similar manner as the State may, by law, determine”.

B. Right to Education and the Directive Principles of State Policy (Part IV)⁸

Article 41: Right to work, to education and to public assistance in certain cases. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of joblessness, old age, sickness and disablement, and in other cases of undeserved want.

Article 45: Right for Early Childhood Care and Education (ECCE) to all children until they complete the age of six years. This composition is considered as a directive principle of state policy. It states “The State shall endeavour to give, within a period of ten years from the inception of this Constitution, for free and unavoidable education for all children until they complete the age of fourteen years”.

The Government of India has included ECCE as a statutory provision through the amended Article 45 (as per the 86th Amendment of December, 2002 and passed by Parliament in July 2009) which directs that “the State shall endeavour to deliver Early Childhood Care and Education for all children until they complete the age of six years”.

Article 46: Promotion of the profitable and educational interests of the Scheduled Castes, Scheduled Tribes and other weaker sections: The State shall promote with special care the educational and monetary interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall shield them from social injustice and all forms of exploitation. It is laid down in Article 46 as a directive principle of State policy that the State should promote with special care the educational and profitable interests of the weaker sections of the people and protect them from social injustice.

⁸ Khabirul Alam, “Human Rights and Right to Education in India” 5 *IJRAR- International Journal of Research and Analytical Reviews* 2185[2018]

Any special provision that the State may make for the educational, economic or social advancement of any backward class of citizens may not be challenged on the ground of being biased. Special sweats are being made for education of the backward classes. Literacy, hotel installations, vihara domestic seminaries, relaxed models for admission, reservation of seats are determinations to achieve universal education in case of backward classes.

C. Right to Education and Fundamental Duties (Part IVA)

By the Constitution (Eighty-Sixth Amendment) Act, 2002, (w.e.f 1.4.2010) adding a new clause (k) under Article 51A (fundamental or abecedarian duties), making parent or guardian responsible for furnishing occasion for education to their children between six and fourteen ages.

IV. Objects of Right to Education⁹

- As RTE drafted to give free and essential education to every child of this country so as to know one left behind to get social justice.
- As the statistics tell us that the rate of literateness in India is cumulative actual low so to boost up and made India as a developed frugality there must be an augmentation of knowledge position.
- To make available backing to the weaker and economically backward class so they also have some social metamorphosis.
- As the right to education is a elementary human or mortal right so to insure this, RTE authorizations the educational structure of the country.
- As studies show that there is huge sex perception in education, girls will not be allowed to study further due to her expenditure of marriage, but after making education free and required the fraction gap is covered to some extent.
- Children with disability treat as valueless as their parents find them as a burden but disability comes with aptitude and government by this act give grievances to those

⁹ Available at <https://blog.iplers.in/right-to-education-3/> [last visited on 25 Oct2020].

children who are impaired, and give them backing and 10,000 per annum, so that they will also have life.

- Through this act people apprehensive of the significance of education in one's life to mark up their performance towards a better future.
- RTE, primarily aims that in India no child is deprived of having the right to education, as education plays an important part so if you invest in it nowadays the interest over it will be handsome in the future.

The Indian Constitution is known to be a document committed to social justice. As per expert opinion, knowledge forms the foundation for making the provision of equivalence of occasion a reality.¹⁰ The Indian Constitution has thus honored education as the crux of social metamorphosis, as is apparent from its education specific papers.

The judicial decision from which the right to education radiated as a fundamental right was from the one rendered by the Supreme Court in *Mohini Jain vs. State of Karnataka*.¹¹ In this case the Supreme Court through a division bench comprising of honesties Kuldeep Singh and R.M Sahai, deciding on the constitutionality of the practice of charging capitation remuneration held that:

'the right to education flows directly from the right to life. The right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education.'

This rationality of this judgment was further examined by a five judge bench in *J.P. Unnikrishnan vs. State of Andhra Pradesh*¹² 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."

¹⁰ Consultation Paper on 'Literacy in the Context of the Constitution of India', Advisory Panel on Promoting Literacy, Generating Employment, Ensuring Social Security and Alleviation of Poverty, September 26, 2001.

<http://lawmin.nic.in/ncrwc/finalreport/v2b1-5.htm>

¹¹ (1992) 3 SCC 666

¹² (1993) 1 SCC 645

The same has also been reiterated by the Hon'ble Supreme Court in *Bandhua Mukti Morcha, etc. vs. Union of India*¹³ specifically appertained to the earlier judgments made in this connection as under

“In Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi, right to education at the secondary stage was held to be a fundamental right. In J.P. Unnikrishnan v. State of Andhra Pradesh, a constitution Bench had held education upto 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 avert exploitation of their juvenile due to impecuniousness and fancy.”

V. Initiatives Taken by the Indian Government to Promote Right to Education, Before the RTE Act

- **The Five time or year Plans** - Ever since India gained independence, experimental plans for a period of five years are being developed by the Planning Commission with the participation and benefactions from all the countries. It is palpable that through the five time plans, the first being initiated in 1951, till the most recent one (Eleventh Plan: 2007-12), there have been nonstop sweats to strengthen the base of education in India by civilizing the quality of education communicated through several programs and schemes, introducing reforms in content and evaluation and encouraging exploration.
- **Sarva Shiksha Abhiyan (SSA)**, was started in 2001, to deliver education to children between 6–14 years by 2010. The programme focuses specifically on girls and children with challenged social or fiscal backgrounds. The SSA also aims to run practical structure and pertinent source material in form of free schoolbooks to children in remote areas.
- **Mid-Day Meal Scheme (MDMS)** was launched in 1995 to enhance registration, retention, and participation of children in primary schools or seminaries, instantaneously enlightening their nutritive status.
- **National Policy on Education (NPE)** was introduced in 1968. There have so far been principally two comprehensive statements of the National Policy on Education, viz. those of 1968 and 1986. The nationwide policy of education (1986) and program of action (1992) lay down the objects and features of Indian education policy similar as creation of equivalency,

¹³ JT 1997 (5) SC 285

common educational structure, education for women's parity, adult education etc.

- **District Primary Education Programme (DPEP)** This programme was initiated in 1994, with an goal to provide access to all children to primary education through formal primary seminaries or its comparable through replacements. Thereby in 1994 the Ministry of Human Resource Development delegated the task of designing and developing statistics system, to National Institute of Educational Planning and Administration (NIEPA), New Delhi.¹⁴
- **District Information System for Education (DISE)** This is the first database software created by NIEPA in 1995. This software was again redesigned as per recommendation from SSA, to give electronic data and statistical analysis of the several data.¹⁵

Targets of the Eleventh Five Year Plan

- Universal registration of 6–14 age group children including the hard to reach section.
- Substantial enhancement in quality and norms with the ultimate ideal to achieve norms of Kendriya Vidyalayas (KVs) under the Central Board of Secondary Education (CBSE) pattern.
- All gender, social, and district gaps in enrolments to be excluded by 2011–12.
- One time pre-school education (PSE) for children entering primary academy.
- Dropout at primary position to be eradicated and the dropout rate at the elementary level to be reduced from over 50% to 20% by 2011–12.
- Universal exposure of technology at Upper Primary Schools by 2011–12.
- Significant upgrading in literacy conditions with emphasis on learning rudimentary expertise, verbal and quantitative.
- All Education Guarantee centres to be converted into regular primary institutes.
- All States/UTs to implement NCERT Quality Monitoring Tools.

¹⁴ The National University of Educational Planning and Administration (NUEPA) was established in 1962 by the Ministry of Human Resource Development, Government of India. However in 1979 renamed as the National Institute of Educational Planning and Administration (NIEPA), Available at <http://www.nuepa.org/> [last visited on 25thOct 2022]

¹⁵ On January 22, 2010 NUEPA came out with a publication named *Flash Statistics: Elementary Education in India: Progress towards UEE* to provide State-specific indicators on different aspects of Universalisation of Elementary Education (UEE). The publication is based upon the DISE 2008-09 data received from as many as 1.29 million schools spread over 633 districts across 35 States & UTs.

The Eleventh Five Year Plan especially focuses on SCs, STs, subgroups, and pastoral women and also on low knowledge States, ethnic areas, other underprivileged groups and adolescents. The Eleventh Plan also aims to support IGNOU, prevailing State Open Universities and the States setting up new Open Universities.

VI. Challenges and Accessibility of Education in India:

After numerous schedules of meetings, drafting and modifying the right to education act was made which is a genuine instrument to full fill the introductory demand and securing social justice for every child. This policy work on 4A's which tells about what education means to them and their present situation in the situation of this dogma.

- **Availability** – In that sense education is free and the government is bound to fund the education and expert instructors in his/her subject and well qualified are there and sufficient infrastructure able to support educational agenda.
- **Accessibility** – Means the education is for all, there is no sense of demarcation especially to support the weaker section of the society.
- **Acceptability** – That the value of education is suitable, there is no discriminative and culturally adequate, and subject to some quality; that the academy place which is inoffensive and tutors are well skilled.
- **Adaptability** – That education dynamic and develop with the changing requirements of society and its people and contribute to overcome the inequalities, similar as sex or coitus demarcation.

No doubt right to education is a fundamental right in India but still there are a number of challenges in approachability of education, which are deliberated as under:

i) Out of School Children:

It is a reality that the number of out-of-school children has declined from 25 million in 2003 to 8.1 million in medial 2009. The most significant enlargements have been in Bihar, Jharkhand, Manipur and Chhattisgarh. The proportion of out-of-school children in extremely populated states like Uttar Pradesh, West Bengal, Orissa and Bihar remains a cause of concern.¹⁶The number of out of school or academy children is a challenge before the government. With further than one-third of its population below 18 years, India has the largest youthful population in the world. Out of every 100 children, 19 continue to be out of school. According to UNESCO's report on progress in primary education, around 7.74 crore children around the world are out of school. Three-fourths of these out-of-school children live in 15 countries including India, Bangladesh, Pakistan, Indonesia, China, Brazil and the African nations. With one-third of the world's illiterate, the report places India 105th among 128 nations.¹⁷

ii) Financial Constraints:

Vacuity of funds is a challenge in availability of education. The backing for the mechanisms and structures, the Act demands are the biggest challenges gaping at the central and state governments in the operation of the Right to Free and Compulsory Education of Children Act,. Funding of the Right to Education Act, which is done through the Sarva Shiksha Abhiyan (SSA) is another area of concern. The enactment of RTE saw the support of Rs 2.31 lakh crore for execution of RTE-SSA. The total reserves providing in the Eleventh Plan amounted to Rs 78,000 crore, a figure that is not much advanced than the original approved disbursement of Rs 71,000 crore, without provision for RTE-related payments. There is a significant deficit of funds required for execution of the RTE-SSA programme, especially as the first two years called for the heaviest costs, including hiring of added instructors, improvement of substructure and executive changes needed to move to the new rights-grounded government. Due to staff absences, the release of assets is delayed, eventually leading to under-spending of allocated funds. This is a problem in itself. The government has spent just 70% of the funds allocated for the SSA and RTE in 2010-11 compared to 78% the prior year.

iii) Insufficiency of Teachers:

¹⁶ Available at http://www.unicef.org/india/education_196.htm [last visited on 22Oct 2022]

¹⁷ Available at <http://infochangeindia.org/education/backgrounders/challenges-in-implementing-the-rte-act.html> [last visited on 22Oct 2022].

Vacant seats of teachers, non availability of teachers and slow process of enlistment of teachers are also a challenge before penetrating education. Two years after the Right to Education, 36% of school teacher posts lie vacant; several states do not meet the needed pupil: school teacher rate. According to the Union Human Resource Development Ministry, in 2010-11, 907,951 school teacher posts have been lying vacant in primary institutes across the country. Further, according to the ministry, in 45.76% of primary schools, the teacher pupil ratio is more than 1:30. Likewise, in 34.34% of upper primary schools in the country, the teacher-student ratio has been over 30. What's more, almost 25% of teachers in most states are para-teachers; in Jharkhand, for instance, almost half the teachers in schools are para-teachers. These educators are ill paid and nearly untrained in teachers training.¹⁸

iv) Lack of Structure

Lack of structure is also a challenge in approachability of education. In various schools across the country, schoolchildren from kindergarten to class five sit stuffed together in a single classroom. According to the RTE Act, a seminary must have at least one classroom for each school teacher, a room that serves as the office, headmaster's room and store, separate toilets for boys and girls, clean drinking water, kitchen, playground, library and a boundary wall or hedge by April 1, 2012. But over a quarter of all fundamental seminaries across India don't have enough classrooms. Not only in bucolic India but in numerous city areas as well, pupils have to sit out in the open, in the blazing heat or bitter cold wave, and have to sit on the bottom in the absence of any benches. One in every four schools or seminaries has no access to drinking water for children to quench their thirst. 46% of the country's elementary schools don't have a boundary wall, 37% don't have a playground, 16% don't have a kitchen and 29% don't have a library. 56% schools have no functioning restroom for girls. Nearly four out of every 10 schools in rural India have unfeasible toilets, because of a lack of water or any sanitation. These include not just government schools but private schools as well. The Right to Education Act requires that there should be at least one school in each neighbourhood, i.e. within a 3 km stretch. But the newest Sarva Shiksha Abhiyan report shows that this target is too far from being met.¹⁹

v) Poverty:

¹⁸ Available at <http://lib.ohchr.org/> [last visited on 24 Oct 2022].

¹⁹ Available at <http://www.cgpi.org/hi/node/2271> [last visited on 24 Oct 2022].

Poverty is also a challenge in access to education for all. Poverty is frequently given as an important reason for why learners drop-out of school. Incapability to pay academy charges, the costs of livery, shoes, transport, stationary, added to the occasion costs of what children might be contributing to domestic labour, eat down at stingy coffers and push children from school. Right to Education Act provides that private schools and special category schools will have to take 25% of their class strength from the weaker section and underprivileged groups of the society through a arbitrary selection process.²⁰

The schools will be refunded for this proportion of children by the state, at the state's cost estimates. But it is a challenge to apply 25% allowance of economically weaker section children in all private schools as mentioned in Right to Education Act. 40% of the population in India is living below poverty line. Child labour is also a obstacle in retrieving education. Poverty is the largest factor behind transferring children to work rather of seminary. According to the NSSO's rearmost statistics – about 4.5 million children of school-going age continue to spend their days working for a livelihood for themselves and their families, instead of attending school. There are several aspects to the problem.

VII. Conclusion

²⁰ Available at <http://socialissuesindia.files.wordpress.com/2010/07/right-to-education-act-2009.pdf> [last visited on 24 Oct 2022].

To quote Justice PN Bhagwati, Former Chief Justice of India:

“The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation.”

There is no mistrustfulness that education has a major character to play for protection and elevation of human or mortal rights. Education should be communicated to each and every one so that they understand the prominence of human or mortal rights. Equality shall be the primary consideration in conduct concerning children, respect for the views of the child are the general headlines of the Convention on the Rights of a child.

The present study signifies the status of education in the development of a nation. Corruption in education is universal in India and it should be removed from its root. The Right of Children to Free and Compulsory Education Act, 2009 is a far gravestone which secures the right to education for children of the 6 to 14 years of age group. By this Act, to educate the children has developed the responsibility of all stakeholders like state, parents and educators. What about the children below 6 years and above 14 years. No provision has been made in the advanced education for the economically weaker families. Therefore, liberal education and scholarship loans with fewer procedural formalities should be made available. With the free education the awareness should be on condition that the quality education and for this purpose the exploitation in the employment should be removed and for removing the harassment of the educators the finest way is the enlistment, which should be made as early as possible. In the success of every development resources play a vital part so in spreading education the problem of shortage of funds should be removed. Education should convey gender equivalence, respect for humanoid dignity and rights. The main purpose of the education should be to remove the redundancy from India.

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