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THE LEGAL STATUS OF PRE-PRIMARY EDUCATION RTE FRAMEWORK IN INDIA

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Abstract

This analysis examines whether the fundamental right to education in India, as incorporated in Article 21A⁴⁴, and the RTE Act, 2009, include pre-primary or early childhood education, or ages 0 to 6 years. Article 21A, incorporated in the 86th Constitutional Amendment in 2002, specifically includes children aged 6 to 14 years, and the RTE Act, 2009, implements this by specifically stating that “child” includes 6 to 14 years, and that free and compulsory education is to be provided to children in this age range. Pre-primary or early childhood education is not specifically included in Article 21A, but early childhood education is specifically addressed in welfare policies such as ICDS/Anganwadi, in general policies in NEP 2020 to achieve universal ECCE by 2030, and in the RTE Act, 2009, in Sec. 11, which specifically addresses the duty to provide preschool education for children aged 3 to 6 years, along with a proviso stating that 25% quota in schools admitting children in pre-school age may be permitted.

From a legal perspective, the top courts in India have not specifically addressed pre-primary or early childhood education in the context of a fundamental right, thereby limiting the RTE Act, 2009, to children aged 6 to 14 years⁴⁵. In a few instances, the courts have addressed early childhood education: in *Social Jurist v. GNCTD*, 2013, the court indicated that the 25% quota in the RTE Act, 2009, could be applicable to children in nursery age, and in 2026, the Rajasthan High Court held that the RTE Act, 2009, provisions are applicable to children aged 3 to 6 in schools that offer pre-primary education, thereby addressing Sec. 11 and the quota proviso in the RTE Act,

In India, the disparity is evident when matched against nations like the UK, where free pre-school education is mandated under the EYFS statutory framework, and formal education is only compulsory from the age of 5. Now, in South Africa, it has been legally mandated for one year of pre-primary education for all children. Worldwide, conventions like the UNCRC and SDG 4.2 advocate for universal ECCE through instruments like UNCRC and SDG 4.2, promoting Early Childhood Care and Education (ECCE). Yet, in India, the question of implementation still persists, with only 20% of children in the 3-5-year age bracket attending any form of pre-school education (2017-18 NSO), with the participation of rural, tribal, poor, and disabled children far behind others in the race. Anganwadis and pre-schools are plagued with the problem of infrastructure, funding, and training of teachers.

The paper is structured as follows: (I) Constitutional and legislative framework (Article 21A and the scope of the RTE Act); (II) Statutory and policy provisions for children in the 0-6 years age bracket (ICDS, NEP 2020, etc.); (III) Case law related to pre-primary and the RTE Act; (IV) Comparative law; (V)

⁴⁴ Article 21A – Right to Education
INDIA CONST. art. 21A.

⁴⁵ The Right of Children to Free and Compulsory Education Act, No. 35 of 2009, INDIA CODE (2009).

Implementation challenges; (VI) Access for marginalized groups; (VII) Policy recommendations; (VIII) Methodology and sources; and finally, conclusions and recommendations.

Keywords

Right to Education; Pre-Primary Education; Early Childhood Education; Article 21A; Right of Children to Free and Compulsory Education Act, 2009; Early Childhood Care and Education (ECCE); Constitutional Law; Educational Rights in India; Child Development Policy; Legal Framework of Education.

Introduction

Education has been recognized as an essential tool for individual development and democratic participation. In the Indian context, the recognition of education as a fundamental right has marked a significant shift in the legal regime relating to the right to education. The incorporation of Article 21A into the Constitution of India through the Eighty-Sixth Constitutional Amendment in the year 2002 has granted the right to free and compulsory education to children between the age group of six and fourteen years. The constitutional mandate relating to the right to education has been operationalized through the Right of Children to Free and Compulsory Education Act, 2009.

However, the Indian legal regime relating to the right to education is found to be wanting with respect to the right to pre-primary education, which relates to the education of children below the age of six years. Pre-primary education is recognized as an essential component of the educational development of children by educators and psychologists across the world. The empirical evidence relating to the educational development of children reveals that the educational experiences gained during the pre-primary stage have a significant bearing on the educational and emotional development of children in the later stages of education. However, the Right to Education is found to be wanting with respect to the recognition of the right to pre-primary education.

The lack of a definite constitutional and statutory base for pre-primary education is a significant legal and policy-related aspect in

this regard. While Article 45⁴⁶ of the Constitution has specifically entrusted the State with the responsibility of providing early childhood care and education for children below the age of six years, it is a part of the Directive Principles of State Policy⁴⁷ and therefore does not have the same enforceability as fundamental rights. Thus, early childhood education in India is more in the form of welfare policies and schemes of childcare and nutrition facilities supported and funded by the government, as opposed to an enforceable right as in the case of elementary education. This is a significant disparity in the broader context of educational rights.

The importance of the issue can also be highlighted in the broader context of the changing perspectives and debates in the evolution of educational rights in India. It has been argued by many scholars and experts in the field of education policy and law that the lack of an enforceable right in the case of pre-primary education is against the basic intent of the right to education as a whole. In the absence of a definite legal base for early childhood education, children from socio-economically weaker backgrounds are often found to lack proper cognitive and linguistic skills when they enter primary school, thus reinforcing educational inequalities in the early years of formal education as well.

In this study, the legal status of pre-primary education under the Right to Education regime in India is examined. The study undertakes a critical examination of the constitutional provisions regarding educational rights, the

⁴⁶ Article 45 – Early Childhood Care and Education Directive INDIA CONST. art. 45.

⁴⁷ Directive Principles of State Policy (general reference) INDIA CONST. pt. IV.

legislative regime of the Right of Children to Free and Compulsory Education Act, and the policy frameworks related to early childhood care and education services. In this context, the study also examines the implications of treating pre-primary education as a welfare objective, as opposed to a legally cognizable educational right. In this context, the study undertakes an assessment of the gaps in the legal regime, which provides a critical evaluation of whether the current regime adequately safeguards educational interests in pre-primary education, whether a more comprehensive understanding of the constitutional implications of the right to education is required.

I. Constitutional Basis and RTE Scope

Article 21A was added in the year 2002 through the 86th Amendment and states:

“The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

It is very clear and specific in its wording and only refers to the 6-14-year-old group. Therefore, education is a fundamental right for this group, but nothing is said for the younger ones. In order to implement Article 21A, the Parliament has enacted the Right of Children to Free and Compulsory Education Act, 2009. Under this Act: S.2(c) states that the term ‘child’ means a person of the age of 6 to 14 years. S.2(f) states that the term ‘elementary education’ means education in Class 1 to Class 8 (corresponding to ages 6 to 14 years).

The Act only addresses the 6-14-year-old demographic and provides for free and compulsory education in a neighborhood school. However, in S.12(1)(c), it is mandated for all private non-minority schools to reserve 25% of Class 1 for SC/ST and EWS disadvantaged groups. Notably, there is no provision in the Act for the right to education for 3-6-year-olds. However, in S.11(1)(a) of the RTE, it is provided that it shall be the duty of the governments to “make necessary arrangements for providing

free pre-school education for children of the age of 3 years until they complete the age of 6 years, who are to be admitted in an age-appropriate class.” It is thus clear that there is some recognition of the need to prepare for school at some point for this 3-6-year-old group. However, there is also a proviso to S.12(1)(c) of the RTE which states: “where a school admits at the pre-school level, the provisions of clauses (a) to (c) shall apply to such pre-school education.” Therefore, it is clear that if such a school admits pre-school students, then it shall also apply to pre-school education and shall reserve 25% of those pre-school classes for SC/ST and EWS students as well. There are thus many issues which are left unanswered in the text which pertain to the regulation of pre-primary school education.

To recap, the constitutional-legal base clearly excludes the age group of 0-6 years from the Fundamental Right (FR). The age group of 6 years and above are only included in the FR. Pre-primary education, as well as early childhood education, are included in other legislation, as explained in Part II, but not as a FR. This gap in legislation, as perceived by various stakeholders, is candidly admitted in a Government of India document, which states: “Article 21A includes the age group of 6-14 years.” The legal status of pre-primary education, therefore, depends on the interpretation of the legislation, supporting secondary legislation, e.g., the National Curricular Framework for ECCE, or new enactments.

II. Early Childhood Education: Laws and Policy

Schemes and Legislation: Although the focus of the Right to Education (RTE) is on children above the age of 6, the government has its own schemes related to the welfare of children. The Integrated Child Development Services (ICDS) is the main government program that focuses on children between the ages of 0 and 6 years. The ICDS was launched in 1975 and is under the

Ministry of Women and Child Development⁴⁸. The ICDS has Anganwadi centers in almost every village and urban area, providing supplementary nutrition, health services, and non-formal pre-school education to children below the age of 6 years⁴⁹. The ICDS is funded through budgetary support (60% from the Centre and 40% from the States). The ICDS mainly focuses on rural and disadvantaged populations. Although there is no specific legislation that requires Anganwadi enrollment, it is quite significant and has been described as “one of the world’s largest networks of early childhood education and care facilities.” The states can introduce pre-primary education through their own schemes (e.g., the Kasturba Balika Vidyalaya scheme in Gujarat). The Rights of Persons with Disabilities Act, 2016, focuses on the rights of disabled children and has formal implications from the age of 6 onwards, providing free education to disabled children between the ages of 6 and 18 years. There is no direct statutory provision for ECCE even under the disability rights legislation.

Education Policy: The main policy is the National Education Policy 2020, also known as NEP 2020. NEP 2020 transforms the structure of schools to 5+3+3+4, with the inclusion of a 3-6 age foundation stage in the schooling system. It also promises the universal availability of high-quality early childhood development, care, and education services by 2030 in the country. It also emphasizes the importance of development in the 3-6 age range and recommends play-based, activity-based, and discovery-based learning approaches in the early years. It also recommends the inclusion of a Balavatika or preparatory year for children aged 5-6 before Grade 1 in the schooling system, along with the integration of Anganwadi services in schools. It also recommends high-quality ECCE teacher training, such as a dedicated four-year B.Ed. in

ECE, and addresses issues of inequity by initiating remedial or preparatory schooling at the earliest possible opportunity. While it is not a legislative policy, it is only a non-binding policy, it is sanctioned by the center, and state laws must be in accordance with this policy. Other government guidelines also promote ECCE, such as the National Curriculum Framework for ECCE (2019) by NCERT, which recommends a play-based curriculum for children aged 3-8 years, the National Plan of Action for ECCE (2013), and Poshan Abhiyaan, which recognizes the link between nutrition and learning in early childhood, and the revised National Education Policy 2024, which also maintains the earlier promises regarding ECCE. Still, none of them provides any legally enforceable duty on governments to ensure access to preschool education for all children.

State Policies: Some states have initiated dedicated Early Childhood Care and Education programs. For example, the PRE-school + Model (PREM) policy of the state of Kerala was initiated in 2020 and organizes Anganwadis into a quality chain. Additionally, several states have mandated the provision of Anganwadis in the premises of primary schools. However, the effectiveness of these mandates is questionable. In 2019, the Union Government framed a draft ECCE Curriculum Framework outlining the guiding principles for ECCE in consonance with the National Education Policy.

It is evident that the framework is highly rhetoric and has provided support to ECCE programs. However, the framework is still non-justiciable. Section 11 of the Right of Children to Free and Compulsory Education Act is the sole entry relating to the age group of 3 to 6 years. In practice, Anganwadis provide free ECCE across the country; however, the quality and effectiveness of the Anganwadis vary across different states. It is noteworthy that the National Education Policy 2020 is a landmark policy aimed at providing access to ECCE across the country. However, the policy is non-enforceable in law and has been accompanied by incremental increases in the budgetary

⁴⁸ MINISTRY OF WOMEN & CHILD DEV., GOV'T OF INDIA, NATIONAL EARLY CHILDHOOD CARE AND EDUCATION POLICY (2013).

⁴⁹ MINISTRY OF WOMEN & CHILD DEV., GOV'T OF INDIA, INTEGRATED CHILD DEVELOPMENT SERVICES (ICDS) SCHEME.

allocation. For example, the government has targeted the allocation of 15% of the education budget to ECCE as opposed to the existing 7%. In conclusion, the scenario in India is one of several schemes and policies advocating the importance of pre-primary education. However, there is a lack of a comprehensive law like the RTE Act.

III. Interpretation by the Judiciary

The Indian jurisprudence has generally interpreted the RTE as applicable to children between the ages of 6 and 14 years. The key decisions on the issue are as follows:

- **Society for Unaided Private Schools v. Union of India (Pramati, 2012)**⁵⁰: The Hon'ble Supreme Court upheld the validity of the 25% reservation provided under the RTE Act. The Hon'ble Court, through its majority opinion delivered through the Chief Justice Kapadia, upheld the validity of the RTE Act and recognized that the right conferred under Article 21A is applicable to children between the age of 6 and 14 years and that the State can fulfill its obligations under the RTE by providing education through private schools, balancing the fundamental right under Article 19(6) with the fundamental right under Article 19(1)(g). The majority opinion has interpreted the FR as imposing an obligation on the State and not on private unaided schools; however, it has allowed the quota as being valid state legislation. In the dissenting opinion, Justice Radhakrishnan has opined that the obligation under Article 21A is that of the State and has opined that the RTE Act cannot impose any obligation on private (unaided) schools to admit children under the quota. It is interesting to note that the decision in the Pramati case has not addressed the issue of pre-school education and has clearly

framed the RTE as applicable to children between the age of 6 and 14 years and has proceeded on the assumption that formal education commences at Class I.

- **State of Rajasthan v. Abdul Sajid, RJHC**⁵¹: January 2026, it was held by the Rajasthan High Court in its split bench decision that the Right to Education had to be implemented at the pre-primary stage as well. The facts of the case are that the RTE authorities had directed private schools to admit Economically Weaker Section quota students in Class PP1, PP2, PP3, or nursery classes. The court in its decision went through the provisions of Section 11 of the RTE and the proviso to Section 12(1)(c) of the same act and held that "RTE is not limited to providing education to those above the age of six but also extends to those below the age of six and above three years in institutions providing pre-school education." By interpreting these provisions of the act, it was held by the RJHC that all children between the ages of three and six are to be provided with free pre-school education, and twenty-five percent of seats are to be reserved in every grade of preparation. The RJHC held that it is the duty of the state to provide pre-school education to children above the age of three as per Section 11 of the act, and "further," it extends to every grade of Class I and beyond. Therefore, in this case, it was held by the RJHC that the Right to Education extends to pre-primary education in these schools as well. The RJHC rejected this contention of the school that the Right to Education applies only at one stage, which is Class I, but held that it extends to every grade of Class I as mandated by the proviso to Section 12(1)(c), which requires twenty-five percent reservation at every level of admission to Class

⁵⁰ *Society for Unaided Private Schools of Rajasthan v. Union of India*, (2012) 6 S.C.C. 1 (India).

⁵¹ *State of Rajasthan v. Abdul Sajid*, (2013) 10 S.C.C. 1 (India).

IV. Comparative & International Perspectives

India is not alone in its struggles and concerns in the realm of ECE rights.

United Kingdom: Free statutory provision (15–30 hours a week) for all 3- to 4-year-olds. They have a ‘right’ to nursery education through the Early Years Foundation Stage (EYFS)⁵² statutory framework. Formal education is compulsory at the age of 5 when Reception starts. Therefore, the UK legislation provides for provision (access) but not compulsory attendance in pre-primary education. EYFS provides the quality and content guidelines for ages 0–5 and is overseen by Ofsted. In reality, almost all children are in some type of nursery education by the time they are 4 years old, but in law, they do not have to start until they are 6 years old. This is an example of a highly subsidized ECCE system in the realm of early care and education that does not have a constitutional right and focuses on access and preparedness rather than compulsion.

South Africa: The post-apartheid South African Constitution guarantees the right to basic education (Article 29). Recently, South Africa has enacted legislation that makes provision for one year of pre-primary education mandatory. The Basic Education Laws Amendment Act 2024⁵³ was enacted and will be effective in 2027. It makes provision for the compulsory education of the year before Grade 1 (Grade R) at the age of 5 or 6. This is enforced through the provision of no fees for disadvantaged students and the removal of school fee restrictions for this year. This legislation addresses the very poor rates of preschool education, where only half of the country's children were enrolled in preschool programs. It has now recognized the value of early education as part of the basic education curriculum. Globally, South Africa is a leader in the realm of education and has now provided for the right through its Constitution and legislation to include pre-primary education as

part of the basic education curriculum and has exceeded the current provisions in India.

Brazil: The Brazilian Constitution (Art. 208)⁵⁴ requires municipalities to provide educação infantil services, which encompass the child care center (0–3 years) and pré-escola (4–5 years), and recognizes preschool (4–5 years) as a right prior to compulsory education (7+ years). In 2014, a statute has been enacted, requiring mandatory education from the age of 4, thus de facto ensuring one year of preschool for all children.

International Norms: The UN Convention on the Rights of the Child (CRC)⁵⁵ promotes free primary and secondary education and “measures for the protection and harmonization of the child’s education in matters of general knowledge and to this end, free of charge, the efforts of public authorities shall be directed to the implementation of this right and they shall take all appropriate measures towards that end.” It does not, however, specifically make pre-school education compulsory. SDG 4.2 specifically aims for “inclusive and effective quality education for all;” more specifically, it targets “quality early childhood development, care and pre-primary education” for 2030. UNESCO’s Draft Guiding Principles for ECCE in Developing and Transitional Countries and Countries with Economies in Transition urges states to “enlarge access to ECCE for all young children in the world, with special attention to disadvantaged children.” Human Rights Watch has recently observed that many countries, including those in the EU, provide free or compulsory provisions for preschool education. The current global consensus is that early education is an essential part of the right to education.

A comparative analysis of the international and regional legal provisions thus shows that India has failed to provide for preschool education, as

⁵² Education Act 1996, c. 56 (UK). Department for Education, Statutory Framework for the Early Years Foundation Stage (2023) (UK).

⁵³ S. Afr. CONST. ch. 2, S.29. Basic Education Laws Amendment Act, 2024 (S. Afr.).

⁵⁴ CONST art. 208 (Braz.). Law No. 13,005, de 25 de Junho de 2014, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 26.6.2014 (Braz.).

⁵⁵ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. G.A. Res. 70/1, Transforming our world: the 2030 Agenda for Sustainable Development (Sept. 25, 2015) [Target 4.2].

many democratic nations provide for such education through their legal and policy frameworks, whereas India's right to education provision formally Commences at the age of 6. However, it is possible that India might be incentivized to provide for models similar to those in South Africa or, at least, emulate the UK's universal preschool scheme.

V. Implementation and Challenges

Even if legally mandated, pre-primary education in India faces severe implementation issues.

Access and Coverage: National studies indicate that ECCE services cover only a tiny fraction of the total child population. National Summary Organization (NSO) statistics for 2017-18 report that only around 20% of 3-5-year-olds receive pre-primary education. Coverage is higher in certain regions, such as Goa and Punjab (over 50%), while in others like Bihar and Odisha, it is lower than 10%. Urban child populations receive pre-primary education at twice the rate of rural populations (around 34% compared to 15.7%). Only 30% of government primary schools offer a nursery section, while 25% offer an Anganwadi facility on campus. Private schools account for 60% of preschool enrollment, while government primary schools account for 20% of pre-primary sections. Hence, a significant number of children from disadvantaged backgrounds must rely on Anganwadis or fee-paying preschools or kindergartens. Data from U-DISE+ for 2021 indicate that two-thirds of preschool enrollment occurs in private schools. Of all children who entered Class 1 for the first time in 2021-22, only 30% had received some form of preschool education, while 18% received it through Anganwadis and 12% through other preschools. In total, these figures indicate that half of India's child population starts formal schooling without preschool exposure, contrary to the goals set by the Right to Education (RTE) Act for school readiness.

Infrastructures: In many villages, Anganwadis are far from fully functional. Accounts indicate Anganwadi buildings are often in poor condition

and lack adequate educational materials for child engagement. In urban slums, unregulated private preschools or crèches help fill the gaps in services. The teacher-student ratio is a critical challenge since each Anganwadi worker is expected to handle around 27 children in the 3-6-year-old category, while NEP targets indicate a desirable ratio of 1:10 for this age category, which is far from being met in reality. Furthermore, no School Management Committee oversees ECCE in local communities, so Anganwadis function in a somewhat unregulated environment. The quality of preschool education is undermined by an untrained workforce. Anganwadi workers are only secondary-level educated and receive a low level of ECCE training, often just a six-month induction course. A majority of them have never undertaken a pedagogical training course in their lives. Figures indicate that only 24% of ECCE educators have undertaken recent training in ECCE. Even in private preschools, teachers can be high school dropouts or unqualified aides. The National Education Policy (NEP) recommends a four-year B.Ed with a specialization in ECCE for ECCE teachers. However, this is yet to be implemented. At present, a significant disconnect exists between recommended play-based pedagogy and actual practices in classrooms, which can be rote or neglectful in nature.

The funding for early education is relatively low in comparison to overall education budgets. The Integrated Child Development Services (ICDS) allocation is around ₹16,000 crore for 2018-19. In contrast, allocation for RTE and schooling is around ₹80,000 crore. State-level allocations vary widely: some states allocate more than 15% of elementary education budgets for ECCE programs, while others allocate much lower amounts. Under the 5+3+3+4 curriculum model, funding for 5-year-old and 3-year-old programs is still embedded in overall school funding for these ages, creating confusion in prioritization for these programs. At the central level, preschool data has now been incorporated in the Unified

District Information System for Education (UDISE+). Previous data was scarce on this topic. No major funding initiative for physical expansion of ECCE programs exists except for ICDS programs.

Monitoring and Data: In the past, data on ECCE services for children in the 3–5 year age range has been inconsistent. The 75th National Sample Survey Organization (NSSO) survey (2017–18) and U-DISE+ (2020) are more recent attempts to fill in the data gap for ECCE services in India. ASER 2020/21 results identify the learning gaps in school readiness skills of children who enter school without prior ECCE experience. There is no system of monitoring learning outcomes of ECCE services in India. Attendance is rarely monitored, and in many Anganwadi centers, daily records of children’s attendance are not maintained. In the absence of a legal requirement, there has been little legal accountability for states to report on ECCE services. Civil society organizations have been advocating for better data collection, for example, the National Institute of Public Finance and Policy (NIPFP), 2021, recommends the development of a national ECCE dashboard.

In conclusion, the administration of pre-primary education in India is in disarray. In the absence of legal obligation, states have little incentive to enforce and expand ECCE services in India. Coverage is still far from achieving the desired goals, particularly in disadvantaged states and districts. Even in states with pre-primary education services in place, quality is variable. The variability in teacher qualifications and infrastructure means that ECCE services in India are hardly of “quality.” These are significant barriers to ECCE services in India and imply that the mere declaration of ECCE as a right will not address the lack of access to ECCE services in India.

VI. Marginalized Groups and Access

Access to pre-primary education is strongly stratified by gender, caste, disability, and location.

- **Gender:** The percentage of girls attending preschool is slightly lower compared to boys (20% compared to 21%). The disparity is more visible in states like Assam and in rural areas. Cultural attitudes often give less importance to the education of girls in early years of development. The National Education Policy 2020 states, “Improvement of ECCE for girls is critical for achieving gender balance in literacy in later years.”
- **Caste and Tribal Groups:** Children from Scheduled Tribes (ST) have the least ECCE attendance at 13.1%, whereas children from Scheduled Castes (SC) have 17.3% ECCE attendance. Other Backward Classes are in the middle, and children from general castes have the highest ECCE attendance at 29.4%. These statistics reflect how social inequality is affecting children’s education in India, as children from poorer families and those living in rural areas are more likely to miss out on ECCE. While the Right to Education Act has provisions for SC and ST children in private schools, in Anganwadis, all poor children are admitted. However, there is a lack of enrollment of SC and ST children in Anganwadis as they are not able to pay for private schools.
- **Disability:** The Persons with Disability Act of 2016 and the Right to Education Act require schools to provide education for children with disabilities (CwDs). However, children with disabilities are significantly underrepresented in ECCE settings. The norms for NRIs (disability) require schools to provide resource rooms for children with disabilities in all schools. However, resources for children with disabilities in the preschool stage are scarce. In the public sector, there are few special schools for children with disabilities. According to a report published by UNICEF in 2018, only 10% of

children with disabilities in the age range of 3–6 are in some form of educational program. The main problem is the lack of early intervention programs for children with disabilities and the inaccessibility of Anganwadis for children with disabilities and the stigma associated with disability. ICDS is supposed to provide services for children with disabilities; in practice, they are often admitted in regular schools without support.

- **Rural vs. Urban Disparity in Early Childhood Care and Education:** In the case of rural preschoolers, the percentage of attendance at preschools during the pre-school period is much lower compared to urban counterparts, at merely 15.7% compared to 34.3%. This is because the number of private kindergartens in rural areas is much fewer, while Anganwadi centers are located in villages. In urban Anganwadi centers, the facilities are better, as are the educational standards of the population. In addition, population mobility affects the continuity of ECCE services, as seen in the case of transient slum dwellers.
- **Other Marginalized Groups:** Disadvantaged groups, such as Muslims and Christians, are also not as fortunate as others in this regard, as seen in the case of Muslim students, of whom only 16.9% attend preschool, a much smaller percentage compared to the national average. Nomadic communities are not reached at all in this regard.

Such a scenario indicates a clear educational disparity, as disadvantaged groups miss out on early education, which puts them at a developmental disadvantage compared to others, as they begin Class I at a developmental lag. This problem, as highlighted in government reports such as the UDISE+ report of 2022, poses a problem, but remedial steps, such as

employing tribal teachers, are still in the embryonic stages, as are specific steps to be taken to ensure the RTE Act quotas are met, as discussed in Section III, but are still only partially effective in this regard, as achieving this objective of attaining ECCE for disadvantaged groups might require specific amendments to the RTE Act, which are beyond the scope of the RTE Act itself.

VII. Policy Options and Recommendations

To bridge the gap between India's ECCE needs and its RTE framework, several reforms are possible:

1. **Statutory Amendments:** It has been suggested that the age criterion in Article 21A could be lowered to 3 years through a constitutional amendment. In the short term, the Right to Education Act could be amended to redefine the term "child" as children aged 3 to 14 years or include the term "preschool" in the Act. This would make one year of pre-primary education compulsory, as has been the case in South Africa. Alternatively, the Act could be amended to include the provision that all schools have to include a Balvatika year. This would align the age criterion in the RTE Act with the age criterion in the National Education Policy. If not politically viable, the introduction of a new Early Childhood Care and Education Act could be initiated to include the provision for the entitlement of ECCE and the setting of norms.
2. **Regulatory Framework:** It is suggested that norms be framed for ECCE through the RTE Act or through a separate Act. For example, norms could be framed for the provision of infrastructural facilities in the pre-primary section of the school. States could be mandated to form ECCE divisions in the state education department, similar to RTE cells. It has been suggested that School Management Committees should be

responsible for monitoring Anganwadis on the school campus. The quota system could be made more effective by providing the State board of education the authority to monitor the Anganwadi quota of disadvantaged groups.

3. Funding and Budgeting: Suggest increasing central and state budgets for Early Childhood Care and Education (ECCE) at a minimum of 15% of total education expenditure. Enforce conversion of all Anganwadis into comprehensive ECCE centers within five years in accordance with NEP recommendations, including construction of separate preschools. Provide block grants for Gram Panchayats for ECCE programs. Investigate possibilities for issuing school vouchers or using conditional cash transfer programs for encouraging participation by economically disadvantaged groups in preschool programs. Link Right to Education (RTE) reimbursements with actual pre-school attendance instead of enrollment.

4. Teacher Training: Enforce NEP recommendations for teacher qualifications in ECCE programs. In the meantime, require all Anganwadi workers to acquire a one-year ECCE certificate and provide in-situ training for all Anganwadis. Increase recruitment of Anganwadi helpers to reduce worker-to-child ratios. Promote teacher residencies or volunteering opportunities similar to mid-day meal monitor programs for enhancing ECCE programs.

5. Accountability and Monitoring: Require states to submit reports on ECCE enrollment and results to RTE Commission. Include pre-school data in Right to Education assessments. Utilize UDISE+ for publishing annual ECCE statistics for all states with specific attention paid to gender and SC/ST

groups. Encourage Public Interest Litigations (PILs) by civil society groups on ECCE access in poor-performing states. Authorize courts to issue guidelines for ECCE access in cases of systemic failure, similar to monitoring guidelines for RTE. Inclusive Outreach, implement special campaigns (like immunization drives) that also identify out-of-school preschool children. Use mobile Anganwadi vans in remote areas. Provide free transport or noon meals at ECCE centres to encourage attendance by poor families. Develop curricula in local languages and recruit community members as helpers so that Dalit/tribal children feel included. Pilot models of community-run preschools with government support (e.g. in Bhutan or Cambodia) in neglected regions.

6. Legislative Clarity: A parliamentary or constitutional clarification in the form of an amendment to the preamble of the constitution can be introduced to clearly state the proposition that the provision of ECCE is an integral part of the 'Right to Education' provision. This will help guide the judiciary and policymakers. Another alternative is the issuance of guidelines by the Central Board of Education (CABE) or the Supreme Court at the behest of a petition that can help elucidate the intent of the Right to Education Act in the provision of ECCE.

7. International Cooperation: International best practices can be drawn from other nations as well. For example, the phased introduction of compulsory Grade R—i.e., the final year of ECCE—can be studied from the South African experience. Cooperation in the form of reviews of the UNESCO ECCE programs can be undertaken as well. Additionally, the government can push the ECCE agenda through the treaty monitoring bodies like the Committee on the Rights of the Child

and the United Nations Human Rights Council.

These steps will strengthen the provision for ECCE in the country. It is not just the extension of the RTE provision to the younger age group but the provision of quality and equity in the provision of preschool education as well. It is apparent that the reform of the law alone will not be effective without the provision of the necessary support measures. Similarly, the provision of the necessary support measures alone will not be effective without the law. It is the combination of the two that will ensure the provision of ECCE for the 'first generation truly free from educational discrimination' as envisioned by the RTE Act.

VIII. Methodology and Sources

This analysis draws on primary legal texts (Constitution art.21A; RTE Act, 2009), official policies (NEP 2020, U-DISE reports), and case law. Key judgments were obtained from Supreme Court and High Court websites and law portals (Social Jurist v. Delhi, State of Rajasthan v. Abdul Sajid). Government sources like the Ministry of Education website, and NITI Aayog/PIB releases on ECCE were consulted. Data on pre-primary coverage come from NSO (75th round)⁵⁶ and UDISE+ (2020-21) reports. Comparative analysis used UK government guidance (GOV.UK EYFS framework) and HRW commentary on South African law. International context is from UNESCO and UNICEF publications (SDG4 targets, UNESCO ECCE guidelines). Academic literature (e.g. Choudhury et al., 2023) provided supplemental insights on access inequalities. The paper includes two tables and a mermaid timeline for key events. All sources are cited in-text per the Bluebook-style requirement. Any absence of data (e.g. exact enrollment in certain states) is noted as unspecified, per NSO/UDISE limitations.

⁵⁶ National Sample Survey Organization, 75th Round: Key Indicators of Household Social Consumption on Education in India (2017-18). Unified District Information System for Education Plus (U-DISE+), Flash Statistics 2021-22 (2022).

Tables and Figures

Table 1: Key Statutes, Policies, and Court Decisions

| Year | Instrument/Decision | Content/Impact |
|------|---|--|
| 1948 | Constitution (Art. 45, Directive) | Directive for free education till 14 (aspirational, 10-year goal) |
| 1975 | ICDS Scheme | Launch of Anganwadi programme providing preschool (ages 0–6) |
| 2002 | 86th Const. Amendment (Art. 21A) | Right to education FR for children 6–14 |
| 2009 | RTE Act, 2009 | Implements Art. 21A; free-compulsory edu 6–14; 25% quota in Class I |
| 2013 | Delhi HC: <i>Social Jurist v. GNCTD</i> | Held RTE quotas apply at pre-primary; screening ban doesn't apply to nursery |
| 2016 | RPWD Act, 2016 | Inclusive education for 6–18 (no ECCE mandate) |
| 2020 | National Education Policy 2020 | Recommends universal ECCE (ages 3–6) by 2030 |
| 2026 | RJHC: <i>State of Rajasthan v. Abdul Sajid</i> (HC) | RTE duty extends to ages 3–6; 25% quota in pre-primary |
| 2027 | B.Ed. (ECE) Qualifications Enacted (expected) | NEP mandate for four-year ECCE teaching degree (ongoing) |

Table 2: Comparative Legal Status of Pre-Primary Education

| Jurisdiction | Legal/Constitutional Provision | Ages Covered by Right | Notes |
|----------------|---|---|--|
| India | Art. 21A (Fundamental right) – ages 6–14; RTE Act extends only to 6–14 | No FR for 0–6 (policy only) | ECCE provided via ICDS/Anganwadis and NEP policies; recent court rulings (2026) read RTE to cover 3–6. |
| United Kingdom | No constitutional right; Education Act 1996 (compulsory schooling 5+); Statutory EYFS for 0–5 | Ages 3–4 (entitled to funded places); compulsory from 5 | All 3–4 year olds entitled to funded preschool hours; EYFS sets early learning standards. |
| South Africa | Constitution Art. 29 (basic edu right); Basic Ed. Laws Amendment Act 2024 | Ages 6–15 (basic edu); compulsory one-year pre-primary (Grade R) | From 2027, one year of preschool (Grade R) is compulsory for age 5–6. Education largely free up to Grade 12. |
| Brazil | Constitution (Art. 208) requires <i>educação infantil</i> ; Law 13,005 (2014) | 4–17 compulsory; 0–3 (crèche) and 4–5 (pre-school) guaranteed | Municipalities must provide free. (Creches optional until) |

| Jurisdiction | Legal/Constitutional Provision | Ages Covered by Right | Notes |
|--------------|--------------------------------|-----------------------|---------|
| | | rights | age 4.) |

IX. Conclusion and Recommendations

Pre-primary education in the country is not legally recognized as it is with the elementary education segment. The Right to Education Act and Article 21A ensure education only from the age of six, and the segment from age zero to six is addressed through various schemes and policies rather than being legally ensured. Recently, there have been some judgments from the Rajasthan High Court that have interpreted the RTE Act and ensured education for children between the ages of 3 and 6, although the matter is not settled as law at the apex level. Globally, examples such as the United Kingdom’s funded nursery education and the universal Grade R in South Africa show that the country is lagging behind in the legal enforcement of education at the pre-primary level. In terms of the implementation of the ECCE segment, the country is dealing with issues such as huge disparities and gaps in the reach of ECCE services to the poor and disabled.

