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Pre-Primary Education as a Right: The Supreme Court's Article 21A Challenge

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POLITY**SOCIAL ISSUES**

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Pre-Primary Education as a Right: The Supreme Court's Article 21A Challenge

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WHY IN NEWS

On **April 14, 2026**, the Supreme Court sought written replies from the Union and state governments on a PIL seeking recognition of **free and compulsory pre-primary education (pre-nursery and nursery, ages 3-6)** as a fundamental right under **Article 21A**. The petition argues that NEP 2020's own vision of Early Childhood Care & Education (ECCE) as the foundation of learning makes statutory silence on pre-primary schooling untenable.

ARTICLE 21A — THE CURRENT CONTOURS

Article 21A (inserted by the **86th Constitutional Amendment Act, 2002**; effective April 1, 2010) states:

“The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine.”

The RTE Act, 2009

The enabling legislation is the **Right of Children to Free and Compulsory Education Act, 2009** (commonly, “RTE Act”). Its scope:

- **Age bracket:** 6-14 years (corresponding to Classes I-VIII)
- **25% reservation** in private unaided schools for economically weaker sections
- **Pupil-teacher ratio** standards (30:1 at primary; 35:1 upper-primary)
- **No detention policy** up to Class VIII (since diluted by the 2019 amendment)
- **Neighbourhood schools** concept — children should have a school within walking distance

What Article 21A does NOT cover:

- Pre-primary education (ages 3-6)
- Higher secondary education (Classes IX-XII, ages 14-18)
- Higher education

NEP 2020 — THE POLICY SHIFT

The **National Education Policy 2020** — approved by the Union Cabinet on July 29, 2020 — explicitly restructured education into a **5+3+3+4** model:

STAGE	AGE	CLASSES	DURATION
Foundational	3-8	Pre-primary (3 yrs) + Class I-II	5 years
Preparatory	8-11	Class III-V	3 years
Middle	11-14	Class VI-VIII	3 years
Secondary	14-18	Class IX-XII	4 years

The “foundational stage” begins at age 3 — bringing **3 years of pre-primary (Anganwadi/Balvatika/pre-nursery)** into the formal educational structure.

NEP 2020 aims for **universal ECCE by 2030** with specific interventions:

- **Anganwadi centre upgrades** under the Poshan scheme
- **Balvatika** in government schools as pre-primary infrastructure
- **NCPFECCE** — National Curricular and Pedagogical Framework for Early Childhood Care and Education

The Policy-Law Gap

Despite NEP 2020’s bold restructuring, **no parallel legislative amendment** has been made to:

- Article 21A (still covers only 6-14)
- The RTE Act (still applies to Class I-VIII only)

This is the gap the current PIL seeks to close.

WHY PRE-PRIMARY MATTERS — THE EVIDENCE

Neuroscience of Early Childhood

- **~85% of brain development** occurs in the first 6 years
- **Critical periods** for language acquisition (birth to age 5), attachment (birth to 3), numeracy foundations (age 3-6)
- Deprivation in these years has **lifelong consequences** — no educational intervention after age 8 can fully compensate

Returns on Investment

Economist **James Heckman (Nobel 2000)** showed that the return on \$1 of government investment varies dramatically by age of intervention:

STAGE OF INVESTMENT	RATE OF RETURN (PER \$ INVESTED)
Pre-birth (maternal nutrition, prenatal care)	\$8-10
Ages 0-5 (ECCE)	\$7-13
Ages 6-18 (K-12 schooling)	~\$2-3
Adult skilling/retraining	~\$1 or less

In other words, **pre-primary education has the highest economic return of any educational investment** — yet it is precisely the stage Indian law doesn't guarantee.

CURRENT PRE-PRIMARY LANDSCAPE IN INDIA

The ECCE Ecosystem

PROVIDER	COVERAGE (APPROX.)
Anganwadi Centres (MoWCD, ICDS)	~1.4 million centres; ~60 million children reached for some ECCE
Balvatika (in government schools under NEP)	Started post-2020; limited rollout
Private pre-schools (nursery, KG)	Urban-concentrated; ~20-25% of 3-6 age group in private system
No access	~30-40% of children aged 3-6 have no structured ECCE at all

Anganwadi Quality Concerns

- Originally designed for **nutrition and health monitoring**, not pedagogy
- Average Anganwadi worker honorarium: ₹4,500-9,000/month (varies by state)
- Infrastructure: ~30-40% of centres lack dedicated building
- Pedagogical training for workers: Highly variable; mostly absent

THE CONSTITUTIONAL QUESTION

Arguments For Including Pre-Primary in Article 21A

- ① **Article 45 (Directive Principle):** Post-86th Amendment, reads: *“The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”*
— This strong directive is arguably an incomplete obligation without enforcement
- ② **Unnikrishnan v. State of AP (1993):** SC had earlier read a right to education into Article 21 (right to life) for children up to 14. The same logic could extend to younger children
- ③ **NEP 2020 as State commitment:** The policy itself has recognised 3-8 as foundational. Rights should align with this restructuring
- ④ **Article 39(e), (f) & Article 47:** Directive Principles on nutrition, health, and child welfare support early intervention

Arguments Against (Likely Government Position)

- ① **Fiscal burden:** Universal pre-primary would add an estimated ₹1.2-1.5 lakh crore/year to education budgets
- ② **Infrastructure gap:** Existing RTE (6-14) targets are not fully met; expanding further without first consolidating is premature
- ③ **Structural fit:** ECCE’s distinct pedagogy (play-based, non-academic) differs from formal schooling
— fitting it into a “right to education” framework may distort it
- ④ **Federal tension:** Education is on the **Concurrent List**; states bear most education spending

INTERNATIONAL COMPARISONS

COUNTRY	PRE-PRIMARY AS LEGAL RIGHT
France	Compulsory from age 3 since 2019
UK	30 hours/week free for 3-4 year olds (in England)
Finland	Right to ECCE from age 10 months; pre-primary compulsory at 6
Sweden	Right to preschool from age 1
Singapore	Heavy state subsidy but not a legal right below age 6
Japan	Free pre-school for 3-5 year olds (since 2019)
USA	Pre-K not a federal right; states vary widely
India	Article 21A stops at age 6; DP Article 45 is non-enforceable

Most OECD countries have moved toward pre-primary rights over the past decade, often driven by economic studies of ECCE returns.

RELATED SUPREME COURT PRECEDENTS

CASE	YEAR	PRINCIPLE
<i>Mohini Jain v. State of Karnataka</i>	1992	Right to education implicit in Article 21 (but limited by economic capacity)
<i>Unnikrishnan v. State of AP</i>	1993	Free education up to 14; beyond 14, subject to State's economic capacity
86th Amendment + RTE Act	2002/2009	Codified the <i>Unnikrishnan</i> principle
<i>Society for Unaided Private Schools v. UoI</i>	2012	Upheld 25% EWS reservation under RTE
<i>Pramati Educational Trust</i>	2014	RTE applicable to unaided minority schools (partial)
<i>Anandi Mukta Sadguru Shree Muktajeevandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani</i>	1989	State's affirmative duty to provide essential services

THE BROADER DEBATE — RIGHTS-BASED VS WELFARE-BASED APPROACH

The **rights-based approach** says: pre-primary education is a fundamental right; State must provide it; courts can enforce.

The **welfare-based approach** (current Indian practice) says: pre-primary care is a State objective under ICDS, Anganwadi; State provides what it can within resource constraints.

The difference matters for:

- **Justiciability** — can parents sue the State for pre-primary access?
- **Fiscal priority** — welfare schemes get cut during budget tightening; fundamental rights enjoy stronger protection
- **Accountability** — rights-based approach creates clearer accountability chains (courts, commissions)
- **Quality standards** — rights require defined quality; welfare is often quantity-focused

The current SC matter may not result in a full reading-in of Article 21A to cover 3-6 years — but could direct the government to articulate a concrete timeline for implementing NEP 2020's foundational-stage promise.

UPSC RELEVANCE

PAPER	ANGLE
GS2 — Polity	Article 21A; 86th Amendment; RTE Act 2009; DPSP Article 45; fundamental vs welfare rights
GS2 — Governance	NEP 2020; ECCE; 5+3+3+4 structure; Balvatika; ICDS/Anganwadi
GS2 — Social Justice	Right to education; urban-rural divide in pre-primary access; ECCE quality gaps
GS3 — Economy	Education expenditure; Heckman curve (ECCE returns); fiscal burden analysis
GS4 — Ethics	Intergenerational justice; State's duty to children; rights-based vs welfare-based governance
Prelims	Article 21A: 86th Amendment, effective April 1, 2010 , covers ages 6-14 · RTE Act 2009 · NEP 2020: 5+3+3+4 structure · Foundational stage: ages 3-8 · Article 45 (DPSP) covers 0-6
Interview	"Is pre-primary education better handled through rights-based enforcement or welfare-based expansion? What does India's Anganwadi model teach us?"

Inserted by **86th Constitutional Amendment Act, 2002** · Effective **April 1, 2010** · Covers **ages 6-14** · Enabling law: **RTE Act, 2009**.

Ages 6-14; Classes I-VIII · **25% EWS reservation** in private unaided schools · Pupil-teacher ratio norms · Amendment 2019 modified "no detention" up to Class VIII.

Approved Cabinet **July 29, 2020** · Structure: **5+3+3+4** · Foundational stage: **ages 3-8** (pre-primary + Class I-II) · Target: universal ECCE by **2030**.

~**1.4 million Anganwadi centres** under ICDS (MoWCD) · Balvatika under NEP · ~**30-40% of 3-6 children** have no structured ECCE.

Pre-primary investment returns **\$7-13 per \$1** · Highest among all educational investments.

Mohini Jain (1992) · Unnikrishnan (1993) · Society for Unaided Private Schools (2012, 25% EWS upheld) · GS2: Polity + Social Justice.

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