



EVALUATING THE 5+3+3+4 EDUCATIONAL STRUCTURE: TRANSFORMATIVE POTENTIAL AND IMPLEMENTATION CHALLENGES

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ABSTRACT

The National Educational Policy, which was introduced in 2020, is famously known as NEP 2020.¹ It is inclusive of the 5+3+3+4 structure.² This provides for a drastic transformation in the Indian educational system. There is a serious lack of statutory policies and frameworks for its wider implementation and acceptance in Indian society. The article revolves around the hypothesis that the new policy of NEP would necessitate the evolution of comprehensive statutory legislation to codify uniform curriculum standards, and equitable access to education facilities and define early childhood education under Article 21A of the Constitution of India.³ The Right to Education Act of 2009⁴ Provides compulsory education for children between 6-14 years of age, leaving a large gap between primary and secondary education. The article further expands upon the role of the judiciary in expanding education as a fundamental right. Moreover, comparison with countries like Finland and South Africa. The article concludes by favouring the creation of a statutory and legal framework to ensure that the aims and goals of NEP are realised in a constitutionally sound and enforceable manner.

Keywords: National Educational Policy, 5+3+3+4 Structure, Early Childhood Education Under Article 21A, The Right of Education Act (2009).

NATIONAL EDUCATIONAL POLICY

In 2020, the Indian Government rolled out the National Education Policy (NEP), a bold initiative designed to transform the educational landscape of the country. One of its standout

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¹ Ministry of Education, National Education Policy 2020 (Government of India 2020).

² *ibid*

³ Constitution of India 1950, art 21A.

⁴ Right of Children to Free and Compulsory Education Act 2009, No 35 of 2009.

features is the new 5+3+3+4 model,⁵ This replaces the long-standing 10+2 schooling system.⁶ The 10+2 education system in India was introduced as part of the National Policy on Education in 1968. It organised school education into ten years of general schooling, followed by two years of higher secondary education. This structure breaks down students' learning into stages: primary stage (which include classes 1–5), upper primary stage (Classes included are 6–8), secondary stage (Classes 9–10), and senior secondary stage (Classes 11–12), typically for children aged 6 to 17. While it aimed to create a consistent framework across many Indian states and boards, like CBSE and various state boards, it largely overlooked early childhood education for kids aged 3 to 6. The system also leaned heavily on rote learning, academic rigidity, and early specialisation, which drew a lot of criticism over the years. As India's demographic and developmental needs changed, the shortcomings of the 10+2 model became clear, leading to the introduction of the New Education Policy (NEP) 2020. This new policy suggests a more inclusive and flexible 5+3+3+4 structure that aims to better align education with today's cognitive, social, and legal realities.

The innovative framework divides school education into four stages tailored to cognitive development: Foundational stage (ages 3–8), Preparatory stage (8–11), Middle stage (11–14), and Secondary stage (14–18). Early Childhood Care and Education (ECCE) has to be formally integrated into the school curriculum, promote holistic learning, and ensure that teaching methods are age-appropriate. While the policy holds great promise for change, it also raises critical questions about how enforceable it is, its alignment with the Constitution, and whether the legislative framework is ready to support it. Currently, the RTE Act, 2009, which was established under Article 21A of the Constitution, provides for compulsory as well as free education for children in the age group of 6 to 14. However, the NEP's new model extends this to cover ages 3 to 18, which goes well beyond what the law currently stipulates. This creates a notable gap between the policy's ambitious vision and the existing legal framework, meaning that implementing the policy relies more on executive decisions and state discretion than on enforceable rights or obligations. This disconnect raises several constitutional and legal issues, especially concerning equal access, the breadth of fundamental rights, and the necessity for clearer legislation.

⁵ Ministry of Education, National Education Policy 2020 (supra n 1) 1.

⁶ Ministry of Human Resource Development, National Policy on Education 1986 (Government of India 1986) para 5.5 https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/npe.pdf accessed 5 May 2025

THE LEGAL HYPOTHESIS

This article proposes the following legal hypothesis:

“The introduction of the 5+3+3+4 structure under NEP 2020 will require the development of statutory frameworks at both the central and state levels, leading to future legislation that will establish uniform curriculum standards, ensure equitable access, and legally define the parameters of early childhood education under Article 21A of the Constitution.”

This hypothesis stems from the understanding that while policies can be ambitious, they need legal support to be enforceable. Take NEP 2020, for instance; it’s not a law yet it hasn’t been approved by Parliament or state legislatures, and it doesn’t change the RTE Act. Because of this, it doesn’t have the legal authority to ensure consistent implementation across India’s federal system. This situation raises concerns about potential inequalities in access to education and its quality, which could infringe upon *Article 14* (Right to Equality)⁷ and *Article 21* (Right to Life and Dignity),⁸ Not to mention, it could weaken *Article 21A*.⁹ Additionally, the way education is structured in the Indian Constitution—allowing both the Union and States to create laws regarding education—adds another layer of difficulty. Some states might quickly adapt their policies to fit the NEP framework, while others may fall behind, resulting in a mixed bag of educational standards that could widen socio-economic gaps. Without a consistent legal framework, there’s a real risk that the policy could become fragmented, enforced inconsistently, or lose its effectiveness in practice.

EVOLUTION OF EDUCATION AS A LEGAL RIGHT IN INDIA

The journey of recognising education as a legal right in India has been quite a remarkable one, shaped by constitutional interpretations, judicial rulings, and legislative actions. At first, the Constitution only acknowledged the right to education as a Directive Principle of State Policy under *Article 45*.¹⁰ However, this provision was non-justiciable, meaning it couldn't be enforced in courts. A pivotal change occurred with the Supreme Court's groundbreaking ruling in *Unni Krishnan, JP v State of Andhra Pradesh (1993)*.¹¹ In this case, the Court concluded that the right to education is deeply intertwined with Article 21, which safeguards the right to

⁷ “Constitution of India 1950, art 14.”

⁸ “Constitution of India 1950, art 21”.

⁹ “Constitution of India 1950, art 21A (n 3).”

¹⁰ “Constitution of India 1950, art 45.”

¹¹ *Unni Krishnan, JP v State of Andhra Pradesh (1993) 1 SCC 645.*

life and personal liberty. The Court highlighted that the right to life includes the right to live with dignity, and education plays a vital role in that dignity. It ruled that education up to the age of 14 is a fundamental right, while education beyond that age would hinge on the state's economic resources and level of development. Following this decision, the 86th Constitutional Amendment Act of 2002 introduced Article 21A to the Constitution, officially recognising the right to free and compulsory education for children aged 6 to 14 as a fundamental right. In line with this amendment, Parliament enacted the Right of Children to Free and Compulsory Education Act in 2009 (RTE Act),¹² which brought Article 21A to life. This Act guarantees quality education, prohibits detention and corporal punishment, establishes infrastructure standards, and fosters child-friendly learning environments.

The RTE Act currently covers only children aged 6 to 14, leaving out early childhood education for those aged 3 to 6 and secondary education for kids aged 14 to 18. This gap has become even more pronounced with the introduction of the National Education Policy (NEP) 2020, which aims to provide education for all children from ages 3 to 18 through the 5+3+3+4 model. However, without any legal backing, this ambitious policy remains more of a dream than a reality, lacking the enforceable power it needs. Moreover, education falls under the Concurrent List, specifically Entry 25 of List III in the Seventh Schedule of the Constitution. This means that both the Parliament and the State Legislatures have the authority to create laws regarding education. While this setup offers some flexibility, it also leads to challenges in ensuring consistent implementation across different states. For example, even though the NEP 2020 is a centrally designed policy, its success heavily relies on cooperation from the states and the creation of relevant state-level laws. In conclusion, although we've made significant strides in recognising education as a legal right—transforming it from a directive principle to a justiciable right under Article 21A—there's still a gap between constitutional rights, how laws are implemented, and the vision laid out in policies. Closing this legal-policy gap is crucial for ensuring that education is genuinely inclusive, universal, and enforceable for every age group in India.

THE 5+3+3+4 MODEL: STRUCTURAL AND LEGAL SHIFTS

The New Education Policy (NEP) 2020 has really shaken things up in the world of school education, moving us away from the old 10+2 system to a fresh 5+3+3+4 model. This new setup is designed to match educational stages with the way kids grow and learn. Here's a quick

¹² RTE Act 2009 (n 4).

breakdown: - Foundational Stage (5 years): This part includes 3 years of pre-primary education for little ones aged 3 to 6, followed by Grades 1 and 2. - Preparatory Stage (3 years): This covers Grades 3 to 5 for kids aged 8 to 11. - Middle Stage (3 years): This includes Grades 6 to 8 for those aged 11 to 14. - Secondary Stage (4 years): This wraps up with Grades 9 to 12 for students aged 14 to 18. While this model is definitely a step forward and takes a more holistic view of education, it also highlights a significant legal gap in some key educational phases. Specifically, the Foundational Stage (ages 3–6) and the Secondary Stage (ages 14–18) don't have legal protection under the current Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), which only ensures education for kids between the ages of 6 and 14. This creates a disconnect between the ambitious vision of the policy and the legal protections that are actually in place. Expanding educational mandates without a strong legal framework can lead to serious issues around fairness and enforceability. As it stands, children in the foundational and senior secondary stages don't have a statutory right to education, which limits access to early learning and higher secondary schooling for those who need it the most.

LEGAL GAPS AND JURISDICTIONAL AMBIGUITY

One of the main hurdles we face is that the NEP is a policy document rather than a binding law. This means that its provisions can't be enforced unless they're turned into actual legislation. Consequently, we see a patchwork of implementation across different states, heavily influenced by political will, administrative capabilities, and available funding. For instance, while states like Delhi and Karnataka have made strides in expanding Early Childhood Care and Education (ECCE) programs,¹³ others are falling far behind. These inconsistencies pose a risk to Article 14 of the Constitution,¹⁴ which ensures equality before the law and equal protection under it. When educational access and opportunities vary based on geography or state policies, we run the risk of deepening educational inequality in a system that's already divided by language, caste, and class. Moreover, since education falls under the Concurrent List (Entry 25, List III of the Seventh Schedule), it creates confusion regarding legislative authority, particularly in areas like curriculum design, teacher hiring, and funding strategies. While the central government can set policies, their actual implementation relies on cooperation from the states, leading to a fragmented approach and legal ambiguity.

¹³ Ministry of Education, National Education Policy 2020 (n 1).

¹⁴ Constitution of India 1950, art 14 (n 7).

POTENTIAL JUDICIAL ACTIVISM AND THE PIL LANDSCAPE

India boasts a vibrant history of judicial activism, particularly regarding socio-economic rights, which paves the way for recognising Early Childhood Care and Education (ECCE)¹⁵ As an essential part of the constitutional right to education and life. While Article 21A of the Constitution ensures free and compulsory education for children aged 6 to 14, it leaves a significant gap for those younger than six. This brings up a crucial question: Can the judiciary step in to fill this void? The answer may lie in the Supreme Court's expansive interpretation of Article 21. In the landmark case of *Mohini Jain v State of Karnataka*,¹⁶ The Court established that the right to education is intrinsically tied to the right to life and human dignity. This viewpoint was further reinforced in *Unni Krishnan, JP v State of Andhra Pradesh*,¹⁷ Education up to the age of 14 was acknowledged as a fundamental right stemming from Article 21. Although Article 21A was later introduced to clarify this right, it doesn't restrict the judiciary's interpretative power under Article 21. Given the well-documented importance of early childhood development for mental, cognitive, and emotional health, it's quite plausible that the Supreme Court could interpret ECCE as part of Article 21, even if it's not explicitly stated in Article 21A. A Public Interest Litigation (PIL) could argue that denying early education violates a child's right to live with dignity, especially in socio-economically disadvantaged communities. Courts may be influenced by scientific evidence showing that early learning gaps are tough to bridge later on, underscoring the critical need for ECCE in the pursuit of equality.

In the case of *Francis Coralie Mullin v Administrator, Union Territory of Delhi*,¹⁸ the Court made a significant ruling that the right to life goes hand in hand with the right to live with dignity, which includes the basic substances necessary for the life of an individual. Since education plays a crucial role in realising that dignity and potential, it wouldn't be surprising for the courts to expand Article 21 to cover ECCE. We've seen courts issue ongoing mandates in areas like the environment, health, and food security—issues that are deeply connected to human development, indicating that a similar approach in education is quite reasonable. However, this kind of action would need to be approached with careful judicial activism to ensure that the judiciary doesn't overstep its role in the legislature. Still, in the absence of action

¹⁵ Ministry of Education, National Education Policy 2020 (n 1).

¹⁶ “*Mohini Jain v State of Karnataka* [1992] 3 SCC 666.”

¹⁷ “*Unni Krishnan, JP v State of Andhra Pradesh* (1993) 1 SCC 645 (n 11).”

¹⁸ *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

from Parliament, a little judicial encouragement could act as a constitutional spark for much-needed reform.

PRESCHOOL AS A RIGHT IN NORDIC COUNTRIES

In Finland, early childhood education is not just a nice-to-have; it's a legal right and a requirement. The Finnish Early Childhood Education and Care (ECEC) Act 540/2018¹⁹ Makes it clear that municipalities must provide early education to kids starting from the end of parental leave, no matter if the parents are working or not. The focus here is on child well-being and equality, backed by significant public investment. Norway follows suit with its Kindergarten Act of 2005,²⁰ This guarantees a spot in kindergarten for every child over the age of one. This law recognises early childhood care and education (ECCE) as a crucial stepping stone for lifelong learning. The government ensures that access is available, affordable, and of high quality, treating ECCE as a necessity rather than a luxury. In New Zealand, the Education Act of 1989,²¹ Updated in 2020, guarantees free early childhood education for 20 hours each week for all children aged 3 to 5. These examples highlight a growing acknowledgement of ECCE as a public responsibility and a legal right. Codified Rights in Developing Countries. Looking closer to India's context, countries like South Africa are making significant strides by constitutionally guaranteeing education. Section 29(1)(a) of the South African Constitution states that "everyone has the right to a basic education," without restricting this right to certain age groups.²² South African courts have interpreted this to include early learning, which puts legal pressure on policies to align with this right. Additionally, South Africa's Children's Act of 2005²³ Specifically mentions early childhood development programs and places obligations on both state and private entities to provide these services. While there are still challenges in implementation, this legal recognition lays a strong foundation for advocacy, budget allocation, and enforcement.

¹⁹ Early Childhood Education and Care Act 540/2018 (Finland).

²⁰ Kindergarten Act 2005 (Norway), Act No 64 of 2005.

²¹ Education Act 1989 (New Zealand), No 80.

²² Constitution of the Republic of South Africa, 1996, s 29(1)(a).

²³ Children's Act 38 of 2005 (South Africa).

LESSONS FOR INDIA

These global examples highlight that giving legal recognition to Early Childhood Care and Education (ECCE) is not only possible but essential, no matter a country's economic status. Here are three important insights:

Clear laws are crucial: Rights need to be enshrined in legislation, not just mentioned in policies.

Public funding is key for universal access: Relying solely on the private sector won't ensure fair early education for everyone.

Judicial support boosts implementation: When legislatures fall short, courts can step in to emphasise the importance of early learning rights. India has a strong constitutional and judicial framework that can support this progress. What's needed now is the political and legislative determination to turn the goals of NEP 2020 into enforceable commitments.

RECOMMENDATIONS: BUILDING A LEGAL FRAMEWORK FOR NEP 2020

1. The 5+3+3+4 structure introduced by the National Education Policy (NEP) 2020 marks a significant shift towards a more holistic, flexible, and age-appropriate approach to education. However, as we've discussed earlier, this model won't work fairly or effectively without a solid legal foundation. Creating a Model Legislation for 5+3+3+4 Implementation, the top priority is to draft a comprehensive Model Education Act that will give legal backing to the NEP's 5+3+3+4 framework. This new law should broaden the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) to include Early Childhood Care and Education (ECCE) for kids aged 3 to 6 and extend secondary education up to age 18. It must clearly outline the rights and responsibilities, quality standards, teacher qualifications, and budgetary duties for both the Centre and the States. Additionally, the law should incorporate a phased timeline for both national and state-level adoption, along with enforceable mechanisms like district-level education ombudspersons and independent compliance monitoring bodies. This legislative framework would ensure that education is recognised as a right for all age groups, rather than a privilege.

2. Integrating NEP Goals into the Constitution and Legal System. While the NEP 2020 is ambitious, its biggest shortcoming is the lack of legal enforceability. Therefore, we could propose a constitutional amendment to broaden the scope of Article 21A to include children from ages 3 to 18. Although amending the constitution can be politically tricky, even a

parliamentary statute that acknowledges ECCE and senior secondary education as enforceable rights would be a major step in the right direction.

3. Expanding NCPCR Mandate to Cover ECCE right now, the National Commission for Protection of Child Rights (NCPCR) is responsible for overseeing the RTE Act, but its focus is limited to children aged 6 to 14. To effectively protect and advocate for younger kids, specifically those between 3 and 6 years old, we need to legally broaden the NCPCR's role to include oversight of ECCE. This expanded role should involve: - Keeping an eye on the quality of Anganwadi's and private ECCE centres. - Establishing standards for foundational literacy and numeracy. - Looking into and resolving complaints related to access, exclusion, or abuse in ECCE. Only with proper institutional oversight can we elevate ECCE from being just a policy afterthought to a key developmental and legal priority.

4. Alignment with Sustainable Development Goals (SDG 4) India has committed to achieving Sustainable Development Goal 4 (SDG 4),²⁴ which emphasises "inclusive and equitable quality education" and "lifelong learning opportunities for everyone."² Specifically, Target 4.2 calls for access to "quality early childhood development, care, and pre-primary education" by 2030. By aligning our domestic education framework with these international commitments, we can strengthen both our legal and diplomatic motivations for reform. If India legislates the entire 5+3+3+4 education structure, we can not only meet our constitutional goals but also showcase our global leadership in upholding the right to education.

CONCLUSION

This article kicked off with the idea that while the shift to the 5+3+3+4 education model under NEP 2020 is ambitious, it won't truly achieve fairness or consistency without the right laws in place. After diving into the legal gaps, confusing jurisdictions, and looking at how other countries handle similar issues, it's clear that this idea holds strong. India's current legal setup, especially the RTE Act of 2009, feels outdated and doesn't align with what the NEP aims to accomplish. The lack of enforceable rights for kids aged 3–6 and 14–18, along with differences between states, really threatens educational equality as outlined in Article 14 and Article 21(right to live with dignity). Looking at examples from countries like Finland, South Africa, and New Zealand, it's evident that a solid legal framework is crucial for turning policy into reality. Additionally, if lawmakers don't step up, the courts might have to get involved,

²⁴ "United Nations, 'Sustainable Development Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all' (2015) <https://sdgs.un.org/goals/goal4> accessed 6 May 2025."

particularly through Public Interest Litigations (PILs) that reference Articles 21 and However, while judicial activism can be a quick fix, it can't replace the structural and financial backing that comes from proper Parliamentary legislation. In summary, NEP 2020 is a rare chance to create an inclusive and fair education system. But having a vision without the means to enforce it is just a dream. Parliament needs to take action to make the entire educational journey a legal right. Legal experts should get involved in drafting policies and engaging with the public, while civil society must rally to ensure education is recognised as a continuous right from ages 3 to 18. Only then can India shift from being a nation rich in policies to one that truly champions rights in education.