

Regulatory Vacuum in Pre-Primary Education and Child Protection in India

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Abstract—Early childhood education represents one of the most critical stages in a child's developmental trajectory. The period between birth and six years of age significantly influences cognitive development, emotional stability, and social behaviour. Despite its importance, the regulatory framework governing pre-primary education in India remains fragmented and inadequate. While statutory frameworks exist for elementary and secondary education, early childhood education institutions such as pre-schools and play schools operate within a largely unregulated domain.

This research paper examines the regulatory vacuum governing pre-primary education in India with particular focus on child protection, institutional accountability, and constitutional obligations of the State. The study analyses constitutional provisions, statutory frameworks, judicial pronouncements, and select state-level regulatory initiatives to determine whether the existing legal framework sufficiently safeguards children enrolled in early childhood education institutions.

The paper argues that the commercialization of pre-primary education, coupled with the absence of uniform safety standards and licensing requirements, poses serious risks to child welfare. It further contends that the State has a constitutional obligation to ensure that early childhood educational environments are safe, developmentally appropriate, and ethically governed. The paper concludes by recommending the enactment of a comprehensive central legislative framework regulating pre-primary education and establishing robust child protection mechanisms.

I. INTRODUCTION

Education has traditionally been viewed in India as an institution aimed at the holistic development of human potential. Ancient educational philosophies emphasised moral values, social responsibility, and intellectual growth. However, the rapid socio-economic transformations of the past few decades have significantly altered the landscape of education in India.

One of the most notable developments has been the expansion of early childhood education institutions. Urbanisation, changing family structures, and increased participation of women in the workforce have contributed to growing demand for structured early learning environments. As a result, pre-schools, play schools, and nursery schools have proliferated across metropolitan cities and smaller towns.

Despite this rapid expansion, the regulatory framework governing pre-primary education remains weak. Many institutions operate without proper licensing, infrastructure standards, or qualified teaching staff. The absence of regulatory oversight creates significant risks for young children who are placed in the care of such institutions during their formative years.

Several incidents involving negligence, abuse, and inadequate supervision in pre-schools have drawn public attention to the issue of child safety in early childhood institutions. These incidents highlight the urgent need for legal and policy intervention to regulate the sector and ensure institutional accountability.

This paper therefore examines whether the existing legal framework in India adequately protects children enrolled in pre-primary institutions and whether the State has fulfilled its constitutional obligations in regulating early childhood education.

II. LITERATURE REVIEW

Scholarly research has consistently emphasised the importance of early childhood education in shaping long-term developmental outcomes. Educational theorists such as Jean Piaget and Lev Vygotsky have argued that the early years of life are crucial for cognitive and social development.

Policy reports published by international organizations such as UNICEF and UNESCO have also stressed the

importance of regulated early childhood care and education systems to ensure child safety and development.

In India, legal scholars have highlighted the gaps in regulatory frameworks governing early childhood education. Studies indicate that the absence of uniform national standards has led to wide variations in the quality of pre-primary institutions across states.

The National Education Policy 2020 acknowledges the importance of Early Childhood Care and Education (ECCE) and recommends universal access to quality early childhood education by 2030. However, the policy does not establish a binding statutory framework for regulating private pre-schools.

Existing literature therefore identifies a clear gap between policy aspirations and the legal mechanisms necessary to implement effective regulatory oversight.

III. RESEARCH METHODOLOGY

This study adopts a doctrinal legal research methodology combined with elements of socio-legal analysis. The doctrinal approach involves examining legal texts, statutes, constitutional provisions, and judicial decisions relevant to child education and protection.

Primary sources include:

Constitution of India

Right of Children to Free and Compulsory Education Act, 2009

Protection of Children from Sexual Offences Act, 2012

Juvenile Justice (Care and Protection of Children) Act, 2015

Judicial decisions of the Supreme Court and High Courts have been analysed to understand the evolving jurisprudence relating to children's rights and educational regulation.

Secondary sources include academic literature, policy documents, research reports, and media documentation relating to child safety in educational institutions.

IV. CONSTITUTIONAL FRAMEWORK GOVERNING CHILD EDUCATION

The Constitution of India provides a strong normative foundation for the protection of children's rights and access to education.

Article 21 guarantees the right to life and personal liberty. The Supreme Court has interpreted this provision expansively to include the right to live with dignity and access to basic necessities such as education and safety.

In *Mohini Jain v. State of Karnataka* (1992), the Supreme Court held that the right to education is implicit in the right to life under Article 21. The Court observed that education is essential for the effective exercise of other fundamental rights.

This principle was reaffirmed in *Unni Krishnan v. State of Andhra Pradesh* (1993), where the Court recognised the right to education as a fundamental right flowing from Article 21.

Following these decisions, the Constitution was amended through the Eighty-Sixth Constitutional Amendment, introducing Article 21A, which mandates free and compulsory education for children between six and fourteen years.

Other constitutional provisions also support child welfare:

Article 15(3) allows the State to enact special laws for the protection of children.

Article 39(f) directs the State to ensure that children develop in conditions of freedom, dignity, and protection against exploitation.

Article 45 directs the State to provide early childhood care and education for children below six years of age.

These provisions collectively impose a constitutional obligation upon the State to ensure safe and supportive developmental environments for children.

V. STATUTORY FRAMEWORK GOVERNING EDUCATION AND CHILD PROTECTION

5.1 Right to Education Act, 2009

The Right of Children to Free and Compulsory Education Act, 2009 was enacted to implement Article 21A and provide a statutory framework for universal elementary education.

The Act establishes norms relating to infrastructure, teacher qualifications, pupil-teacher ratios, and child-friendly teaching methods. It also prohibits corporal punishment and mental harassment within schools.

However, the Act applies only to children between six and fourteen years of age. Pre-primary education institutions catering to children aged three to six years fall outside the scope of the Act.

This exclusion creates a significant regulatory gap in the governance of early childhood education institutions.

5.2 Child Protection Laws

Several statutes aim to protect children from abuse and exploitation.

The Protection of Children from Sexual Offences Act, 2012 provides stringent legal provisions to address sexual offences against minors and establishes child-friendly procedures for investigation and trial. Similarly, the Juvenile Justice (Care and Protection of Children) Act, 2015 provides mechanisms for the care, protection, rehabilitation, and social reintegration of children in need.

While these laws play an important role in protecting children, they operate primarily as post-incident remedies rather than preventive regulatory mechanisms governing educational institutions.

VI. JUDICIAL APPROACH TOWARDS CHILD WELFARE AND EDUCATION

Indian courts have consistently emphasised the importance of protecting children's rights and ensuring ethical standards in educational institutions.

In *Bandhua Mukti Morcha v. Union of India* (1984), the Supreme Court emphasised that the State has a constitutional obligation to ensure the welfare and development of children.

In *M.C. Mehta v. State of Tamil Nadu* (1996), the Court addressed the issue of child labour and reiterated that children must be provided opportunities for education and development.

In *Avinash Mehrotra v. Union of India* (2009), the Supreme Court held that safety in educational institutions is an essential component of the right to life under Article 21. The Court issued directions requiring schools to adopt strict fire safety and infrastructure standards.

These decisions demonstrate the judiciary's recognition that children's safety within educational institutions is a constitutional concern.

VII. COMMERCIALIZATION OF PRE-PRIMARY EDUCATION

The rapid expansion of private pre-schools has transformed early childhood education into a

competitive market-driven sector. Franchise-based play schools and corporate educational chains have emerged as prominent actors within the industry.

In *Modern School v. Union of India* (2004), the Supreme Court observed that educational institutions should not be treated as profit-making enterprises. The Court warned that excessive commercialization undermines the social and ethical objectives of education.

In the absence of regulatory oversight, many pre-primary institutions prioritise branding and profitability over child welfare and pedagogical quality.

Common problems observed in the sector include Admission of children below developmentally appropriate ages and Lack of trained early childhood educators and Poor infrastructure and safety standards or Absence of grievance redressal mechanisms or Such practices increase the risk of neglect and institutional failure.

VIII. STATE-LEVEL REGULATORY INITIATIVES

Some states have introduced regulatory frameworks to address the governance of pre-schools.

Chhattisgarh Model

The State of Chhattisgarh has introduced regulations requiring pre-schools to register with the District Education Officer. The rules prohibit admission of children below three years of age and mandate safe and hygienic learning environments.

Gujarat High Court Intervention

The Gujarat High Court has held that admitting children below three years to pre-schools is inconsistent with child development principles. Following the court's observations, the state government issued guidelines requiring trained staff and behavioural monitoring mechanisms.

While these initiatives represent important steps, the absence of a uniform national framework continues to create inconsistencies across states.

IX. INTERNATIONAL LEGAL FRAMEWORK

India is a signatory to the United Nations Convention on the Rights of the Child (UNCRC), which

recognises the right of every child to education, protection, and development.

Article 3 of the Convention requires that the best interests of the child be a primary consideration in all actions concerning children.

Article 28 recognises the right of the child to education, while Article 19 requires states to protect children from all forms of abuse and neglect.

These international obligations reinforce the need for a comprehensive regulatory framework governing early childhood education institutions.

X. RECOMMENDATIONS

To address the regulatory vacuum in pre-primary education, several reforms are necessary.

1. Parliament should enact a Pre-Primary Education Regulation Act establishing uniform standards for licensing, infrastructure, safety protocols, and staff qualifications.
2. Mandatory police verification and background checks should be required for all individuals employed in early childhood institutions.
3. Institutions should implement child protection policies and incident reporting mechanisms.
4. Regular inspections and safety audits should be conducted by designated regulatory authorities.
5. Statutory Parent-Teacher Committees should be established to ensure participatory governance and accountability.
6. Finally, teacher training programs should include modules on child psychology, early childhood pedagogy, and child protection principles.

XI. CONCLUSION

The protection of children within pre-primary educational institutions is a constitutional and moral responsibility of the State. The early years of life are critical for shaping a child's developmental trajectory and therefore require safe, nurturing, and well-regulated environments.

However, the current regulatory framework governing pre-primary education in India remains fragmented and inadequate. The exclusion of early childhood education from the Right to Education Act has created a significant regulatory vacuum.

While certain states have introduced limited regulatory measures, the absence of a uniform national

framework continues to pose serious risks to child welfare.

A comprehensive central legislative framework is therefore necessary to regulate pre-primary institutions, ensure institutional accountability, and safeguard the developmental rights of children in India.

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