

Issue

Brief

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Early Childhood Care and Education: ‘The Elephant in the Room’ No More

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Abstract

Early Childhood Care and Education (ECCE) in India is enshrined in the Constitution and mandated under the Right of Children to Free and Compulsory Education (RTE) Act 2009. Yet, its implementation remains tentative for many reasons, primary of which is the absence of a clear government guideline regarding with Ministry is tasked with policymaking and implementation. This brief attempts to offer an answer for the government. It examines the concept of ECCE under the Constitution and the RTE Act, and identifies the Ministry that should be given the duty of ECCE implementation. It highlights the renewed aspirations towards ECCE, as reflected in the National Education Policy of 2020.

The framers of the Constitution of India, which came into force in 1950, put their faith in the State to provide free and compulsory education for all children up to 14 years of age. Article 45 of the Constitution was a directive principle for the State to begin doing so within a period of ten years from 1950. Yet today, more than 50 years since, India has yet to fulfil its promise to its young children.

To be sure, there have been efforts to institutionalise early childhood education. In 1986, the government announced a National Policy of Education (NPE), which viewed Early Childhood Care and Education (ECCE) as an “important input in the strategy of human resource development” and committed the state to give more attention to the existing mechanisms of ECCE delivery in India.¹ Over a decade later, in 2002, the government passed the 86th Constitutional Amendment, comprising two insertions: Article 21-A which made the Right to Education (RTE) of a child between six to 14 years, a *fundamental right*; and Article 51A(k) that assigned the “fundamental duty” of educating a child to their parent or guardian. Additionally, the old Article 45 was substituted by a new one through the same Constitutional amendment which introduced the concept of ECCE. It provided for a directive to the State, whereby the State was at liberty to pass legislation to bring into effect the mandate of providing ECCE to children up to six years of age.

In July 2020 the Ministry of Education (MoE) released the National Education Policy (NEP) 2020,² which draws substantially from the Draft NEP 2019.³ The NEP 2020 rekindles the aspirations for ECCE, especially its educational aspect. However, until such time as the Constitutional principle is not translated into specific legislation, the government cannot be held accountable for failing to enforce its mandate to provide early childhood education.

The Legislative Mandate and its Enforceability

The Right of Children to Free and Compulsory Education Act 2009 (or the RTE Act) was enacted in 2009 and its primary objective is a verbatim reiteration of the aim of Article 21 of the Constitution.⁴ However, there has

been less discussion around one of the rather neglected provisions of the said Act, which imposed a legislative mandate upon the respective Central and State governments to provide ECCE, as provided for under Article 45 of the Constitution. The provision says:

“Section 11: With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.”

The Preamble of the RTE Bill refers to Article 45 as one of the components of the RTE Act, so passed.^{3,5} What was then enshrined under Article 45 of the Constitution as a *non-enforceable directive principle* was translated to an *enforceable duty* for the State to provide for ECCE, through Section 11 of the RTE Act. In turn, this created a corresponding *enforceable right* of the citizens to demand ECCE in the law, as a matter of statutory right.

a The Bill contains the preamble for the Act to be passed. Therefore, both ‘Bill’ and ‘Act’ are used here in their specific meanings. The preamble of the RTE Bill referred to Article 45, i.e. ECCE as one of the components of the Act to be passed.

ECCE and the Question of Governing Ministry

Sections 35 and 38 of the RTE Act provide for directions, guidelines, and rulemaking powers of the Union government as well as the appropriate Ministry for the implementation of the law. In practice, it is the Ministry of Women and Child Development (MoWCD) that has been responsible for early childhood care and education, specifically through the Integrated Child Development Scheme (ICDS) and the deployment of Anganwadi Centers (AWCs) in every state. As of 2021,⁶ there were 1.38 million AWCs in operation across the country—a number that may appear huge, but remains low compared to the massive need.⁷ Moreover, amongst the multitude of services related to early childhood care (i.e. health, nutrition, and immunisation, among others), the component of education has often been given low priority across the country.⁸

Perhaps the most crucial issue regarding ECCE pertains to which Ministry would be tasked to make the rules in accordance with the provisions of Section 11 of the RTE Act. While the entire Act appears to be about the *right to education* which is to be administered by the Ministry of Education (MoE), a closer examination reveals that it is not quite so, at least under the law.

The Ministries can administer and act only on the subject matters specifically allocated to them under The Government of India (Allocation of Business) Rules 1961 (hereinafter referred to as the “Rules”).⁹ These Rules provide for the distribution of subject matters among all the departments of each Ministry; the said Ministry, through its designated Department, can thereby make rules and administer them.

In the context of the subject of this brief, the matter of “elementary education” has been allocated to the MoE through the Department of School Education and Literacy. However, there is no mention in the Rules about the MoE being tasked to provide ECCE. It clearly shows that ECCE is not an allocated business of the MoE. Indeed, ECCE is a subject matter that relates to the MoWCD. The allocated business for the MoWCD provides for “care of pre-school children including pre-primary education.”

The government Rules are clear in assigning ECCE to the purview of business allocated to the MoWCD, and not the MoE. However, neither the MoWCD nor the MoE has a clear demarcation of each other's subject matters and have historically passed the responsibility of ECCE to the other. The consequences are dire for the young children of India, who are the intended beneficiaries of the law.

The allocation of business under the government Rules is of prime importance: it acknowledges the heads of expenditure (or the expense towards a specific subject matter); and it leads to the allocation of funds towards such head. ECCE in India has long suffered from scarce funding—in 2020-21, the public expenditure on early childhood care and education was a mere 0.1 percent of GDP.¹⁰ Existing programmes—for example, the ICDS—are also poorly governed and implemented.¹¹ Indeed, the draft National Education Policy (NEP) 2019 had noted the deficiency in the number of AWCs, and in the infrastructure and skilled workforce of the centres that are striving to remain operational.

The 2017 review¹² by the Comptroller and Auditor General (CAG) of the RTE Act refers to the law as being under the jurisdiction of the MoE (then Ministry of Human Resources Development or MHRD). The entire audit was conducted with respect only to the MHRD at the Central level, and not the MoWCD. This shows that the MoE, MoWCD as well as even CAG do not strictly recognise Section 11 of the Act i.e. ECCE as a subject matter of MoWCD. This shows confusion within the Government; in turn, this “confusion”—whether intended or not—translates on-ground to negligence.

Even assuming that ECCE is recognised to be a subject matter under the MoWCD, the ministry was not audited in the 2017 Audit Report of the RTE Act; this implies that there is no fund allocation to MoWCD specifically for ECCE that requires to be reviewed by CAG. Furthermore, as a consequence of the non-recognition of MoWCD's role for ECCE under the RTE Act, there would not be budgetary allocation in the subsequent financial years—this means Section 11 has no purpose. In fact, the budgetary allocation for the RTE Act itself is taken from that for the programme, *Sarva Siksha Abhiyan* (SSA,

now under the *Samagra Siksha Scheme*)—which is an umbrella program for school education extending from pre-school to grade 12 that focuses on school effectiveness, access, and learning outcomes. This makes things far worse for the prospects of effectively implementing ECCE.¹³

At the same time, however, the MoWCD has passed an ECCE Policy in 2013, after it issued a draft Early Childhood Education Framework in 2012. It is also responsible for the ICDS which administers the *Anganwadis*. According to MoWCD, ICDS has four pillars: early childhood care education and development; care and nutrition counselling; health services; community mobilisation awareness, advocacy and information; and education and communication. The Ministry's own data shows that there has been no significant spending on the first component, i.e. ECCE.¹⁴ As per the Notes on Demand of Grants for 2022-23, the actual expenditure under the ICDS Scheme in FY 2020-21 was INR 18203.87 crore, under the following sub-heads: Anganwadi Services (INR 15784.42 crore); National Nutrition Mission (INR 408.27 crore); Pradhan Mantri Matru Vandana Yojna (INR 1112.13 crore); Scheme for Adolescent Girls (INR 40.82 crore); National Creche Scheme (INR 11.60 crore); and Child Protection Services (INR 846.63 crore). No specific allocation out of the said amount has been made towards ECCE.

The Draft NEP 2019 visited the issue in great detail, highlighting the systemic and institutional issues that hobble the capacities of the Anganwadi system in delivering ECCE. Primary of these challenges is the lack of infrastructure. Compounding the difficulties is the overreliance by the Government and stakeholders on AWCs to deliver a multitude of functions with limited training and bandwidth. The gap between expectations and resources results in poor quality of service delivery in AWCs, especially in the field of education.

While there is no clarity yet on budgetary allocations, the draft NEP 2019 provided some direction on the inter-ministerial division of responsibilities related to the provision of early childhood education. It acknowledged the government's shortcomings, particularly through the ICDS mechanisms. The policy calls for greater attention on ECCE through an expanded institutional system. It outlines the following strategies: a) strengthening and expansion of AWCs; b) co-location of AWCs in primary schools; c) co-location of pre-primary grades in existing primary schools; and d) increased standalone pre-primary

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schools. The draft NEP 2019 committed to curricular and pedagogical reforms and recommended the extension of the RTE Act to include ECCE under its ambit. The NEP 2020—which was finally passed in July 2020—carries this vision, and notes that a clear demarcation between the education and non-education aspects under ECCE will be a key step forward.

It is important to recognise ECCE as a statutory obligation of MoWCD so that all stakeholders have clarity about who is responsible for implementing the law; it also ensures accountability. While the responsibilities of providing pre-school education (ECE or early childhood education) can be undertaken by the MoE as proposed by NEP 2020, the overall charge of the entire gamut of ECCE (including the ‘care’ components) should be retained with MoWCD. The MoE in that case would be deriving its powers and functions from the MoWCD for this limited purpose of providing pre-school education, to be in coherence with the Business Conduct Rules.

As the ecosystem is currently set up, ICDS tends to dilute the concept of ECCE as an essential obligation of the state, as it makes it the responsibility of nine ministries and departments¹⁵ rather than a sacrosanct responsibility of MoWCD alone, as written in the government Rules. The result is an overlap of policies between MoE and MoWCD in relation to ECCE. For instance, as per law, ECCE, inclusive of pre-primary education, is a business allocated to MoWCD. However, it is the MoE that has framed policies regarding pre-primary education under the banner name of Integrated Scheme for School Education, *Samagra Shiksha Scheme* (SSS) in 2018 by subsuming the erstwhile Centrally Sponsored Schemes of SSA, Rashtriya Madhyamik Shiksha Abhiyan (RMSA), and Teacher Education (TE).¹⁶

This was before the advent of NEP 2020, when the MoE was given no explicit charge of either ECE or ECCE. The 2018 directive of the SSS is cognisant of the proposals made by the NEP 2020 towards integrating pre-primary education into the ambit of formal school education.¹⁷ NEP 2020 is thus crucial for giving greater attention, for the first time, on strengthening the education pillar of ECCE. The responsibility is being given to MoE to ensure a curricular restructuring that will place pre-school squarely in the ambit of school education.

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The intent to strengthen the teaching workforce—as outlined in NEP 2020—on pre-school education also exhibits clear and a long-due commitment towards ECCE in India.

These steps will be key to correcting the current state of early childhood care and education in the country, and finally abide by the government Rules and adhere to the constitutionality of the RTE Act's Section 11.

“Early childhood care & education in India has long suffered from scarce funding—in 2020-21, the state gave it a mere 0.1 percent of GDP.”

The Mess Around Reparations

Various decisions of High Courts have highlighted the failure of the government to implement the letter and spirit of Section 11 of the RTE in relation to ECCE. For instance, the Bombay High Court, in *Dr. Jagannath S/o Shamrao Patil v. Union of India & Ors*¹⁸ explicitly directed the State authorities to formulate guidelines under Section 11. Essentially, however, the onus is on the Central Government, as argued in the earlier sections of this brief.

The solution appears to be as fundamental as the problem itself. The first step should be to recognise which Ministry has been allocated to provide for ECCE—and that would be the MoWCD. As discussed earlier, in consonance with NEP 2020, the responsibilities of pre-school education or ECE can be undertaken by the MoE but the overall charge of ECCE should be retained with the MoWCD. To make the latter happen, a subsequent legislative amendment needs to be made to the business conduct rules.

An important distinction also needs to be clarified between legislation and policy. NEP 2020 is a policy document and mostly directional or aspirational in nature. While it does provide a clear and strong intent towards formalising pre-school education and streamlining it, the implementation is another matter altogether. In order to operationalise the spirit of the policy, legislative changes are needed to both the RTE Act as well as the business conduct rules.

Another key step would be to recognise and popularise the concept of ECCE being a vital part of the RTE Act as that of elementary education provided under the Act, something which the Draft NEP 2019 has emphasised. It would then be consequential to such a recognition, that budgetary allocation specifically for ECCE be made, either through the simultaneous repeal of overlapping and diverging schemes including SSS as well as ICDS, or through having different sets of budgets for different heads under ECCE.

This strategy would serve two purposes: it would avoid waste of financial and other resources; and it would direct the resources specifically towards pre-school education. It will also be imperative to formulate a definitive policy/guidelines/ directions/ Rules strictly under Section 35 and 38 by the MoWCD and the local authorities and State Governments in terms of Section 11 of the RTE Act.

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The fundamental aim of this approach would be to create *justiciability*: i.e., the right of an aggrieved person to approach Court(s) in order to hold the appropriate and responsible ministry accountable for its inactions, ineffective implementation and non-compliances in providing ECCE. In terms of rules, the ECCE has certainly come a long way from being non-existent under the Constitution initially, to being a non-justiciable directive principle under amended Article 45, and to finally being a part of the RTE Act under Section 11 as a justiciable provision. The right to enforce the concept of ECCE under Section 11 is crucial to bringing ECCE to the fore in Indian policy and lawmaking. This can be done only by assigning accountability to a Ministry; the strategies outlined in the preceding paragraphs will help.

In turn, such an official clarity will have an impact on all other stakeholders in the domain of ECCE: they will from hereon be clear as to who is indeed responsible for providing early childhood care and education.

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Conclusion

Early childhood care and education has historically been neglected in India. The National Education Policy 2020 has come at the right time and provides a beacon of hope that adequate attention will henceforth be paid to ECCE. However, NEP still remains essentially an aspirational policy, and not an enforceable legislation. For substantive changes to happen in the domain of ECCE, the country's lawmakers need to step up and, first, revisit Section 11 of the RTE Act in light of the increased advocacy for ECCE.

It is also crucial to understand that while ECCE adopts a more holistic approach to the overall development of younger children, the mandate and expertise of delivering education lies with the MoE and not MoWCD. This would need to be adequately translated into practice, not just through laws but also through adequate financing¹⁹ and standardised policies. 

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