



(REVIEW ARTICLE)



Early childhood care and education: A critical analysis

Manpreet Kaur *

Assistant Professor of Law, Rajiv Gandhi National University of Law (RGNUL), Punjab, India.

World Journal of Advanced Research and Reviews, 2023, 20(03), 1674–1680

Publication history: Received on 13 November 2023; revised on 21 December 2023; accepted on 23 December 2023

Article DOI: <https://doi.org/10.30574/wjarr.2023.20.3.2628>

Abstract

Early childhood care and education brings prosperity to a person's life, and is a blessing to his or her family and to society as a whole. These are the moments of the dawn of life in which the physical and mental health of the child develops. Skills can be developed in children through Early Childhood Care and Education. In these moments, if the child gets proper care, nutritious food, healthy environment, quality education and social security, then the future of him and the society also becomes secure. In this paper, a critical analysis is made of the legal framework relating to early childhood care and education in India. Despite various national policies and plans, India is still struggling to implement early childhood care and education system. Pre-schooling is not inclusive and children from marginalized sections of the society do not have access to crèches or kindergartens. In conclusion, the paper suggests some suggestions.

Keywords: Early Childhood Care and Education; Legal Protection of Pre-schooling Children; Right to Child Education; Fundamental Right to Education; National Policy on Child Education; Mother-Child Relationship

1. Introduction

Early childhood care and education brings prosperity to a person's life, and is a blessing to his or her family and to society as a whole. These are the moments of the dawn of life in which the physical and mental health of the child develops. Skills can be developed in children through Early Childhood Care and Education. In these moments, if the child gets proper care, nutritious food, healthy environment, quality education and social security, then the future of him and the society also becomes secure. The more successful the early childhood care and education system is, the easier it will be for a child to go through primary and secondary education. Early childhood education brings diversity to society and children lay the foundation stone of an inclusive society. If someone has been abused in childhood, then there is a possibility that that child too grows up and gets involved in some criminal activities. A secure childhood provides opportunities to a child to realize his/her own potential and does not need to be dependent on anyone in life.

According to UNESCO, "Early childhood care and education (ECCE), which addresses the period from birth to 8 years old, is important because it capitalizes on a period of rich brain development for children and, when it is of good quality, can help them achieve their full potential. It can lay the foundation for good health and nutrition, learning and educational success, social-emotional learning, and economic productivity throughout life." [1]

Scientists now believe that a young child's brain needs certain types of stimulation to develop properly. Without that stimulation, certain types of learning will not be possible when the child enters school. Likewise, with the appropriate stimulation, neural pathways are developed that can enhance a child's emotional, social, and intellectual abilities. The more these neural connections are stimulated during this early window of opportunity, the stronger they become. [2] That's why recreational activities in the childhood are very important in this context. Early childhood curriculum is also to prepare children to play, interact with and engage in age appropriate developmental activities that would assist with their later socialization process. [3]

*Corresponding author: Manpreet Kaur

1.1. Legal Framework on Early Childhood Care and Education in India

Early childhood care and education is for everyone. A child should not be discriminated against on the basis of caste, religion, region, creed, disability, colour, race etc. And if this happens in the society, it will deprive the children of equal protection of the laws. That is why Article 15(3) casts both positive and negative duties on the State to protect the interests of children. Positive duty means that the state itself has to take positive measures and initiatives so that no one is discriminated against due to social inequalities. Under the Constitution of India, it is the responsibility of the state to remove the existing inequalities by bringing changes in the society. Further, the right against exploitation and discrimination, which is enforceable against private individuals as well, is part of a larger scheme of fundamental rights jurisprudence guaranteed under various articles such as Articles 15(2), 17, 23, 24 and 21 of the Indian Constitution. Article 39(f) obliges the state to provide opportunities to children to develop in a healthy manner and to ensure their dignity and freedom by protecting them from exploitation.

Earlier, under the original Article 45, it was the duty of the State to endeavor to provide, within ten years from the commencement of the Constitution, free and compulsory education to all children up to the age of fourteen years. Article 45 being part of the Directive Principles of State Policy is non-justiciable. But gradually the Supreme Court began to read Article 45 in a liberal construction of the right to life guaranteed under Article 21 of the Constitution of India and recognized the right to free and compulsory education as a fundamental right which is now justiciable. The Supreme Court of India in *Mohini Jain v State of Karnataka*[4] relied on a collective meaning of Articles 21, 38, Articles 39(a) and (b), 41 and 45 which mandate the State to provide free and compulsory education to all at all levels of the education system. The court observed that the “framers of the Constitution were aware that more than seventy per cent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him.” The Supreme Court said that without recognizing the right to education as a part of the right to life under Article 21, a person cannot lead a dignified life. Further, the Supreme Court in *J.P. Unnikrishnan v State of A.P.*[5] reiterated the fact that ‘the right to education flows directly from right to life.’ But, unlike *Mohini Jain’s case*, the Supreme Court said that the right to free education is available only till the age of 14 years, after that it would be subject to the economic capacity of the state and its development.

Following the judgments of the Supreme Court, Article 21A, new Article 45 and Article 51A(k) were added to the Constitution of India by the 86th Amendment in 2002. As per Article 21A, the right to education has been made a fundamental right, but only for children between the ages of 6 and 14, and early childhood care and education has been kept outside the express provisions of the fundamental rights chapter. Under the new Article 45, early childhood care and education is still a part of Directive Principles of state policy which is non-justiciable.

However, currently even though Part III which guarantees fundamental rights does not explicitly guarantee early childhood care and education, it has to be read within the wider ambit of right to life or personal liberty guaranteed under Article 21 of the Constitution of India. The right to life or personal liberty is not only limited to the safety of our physical body, but there are other aspects of our life as well which make us a human being who is rational and has an innate ability to reason. In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*,[6] the Supreme Court held that right to life under Article 21 of the Constitution of India includes the right to live with human dignity. The Supreme Court said that the right to life includes the right to live with human dignity and it includes the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expression oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Similarly, in *Bandhua Mukti Morcha v Union of India*,[7] the Supreme Court held that Right to education is implicit in and flows from the right to life guaranteed under Article 21. The Supreme Court held that the right to live with human dignity enshrined in Article 21 read with clauses (e) and (f) of Article 39(e) and (f) and Articles 41 and 42 include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. And these basic necessities of life cannot be denied to anyone.

In *Rohit Singhal v Principal, Jawahar N. Vidyalaya*,[8] the Supreme Court said that children are the future of the planet earth and it is the responsibility of elders, parents and teachers to take care of the well-being and welfare of children. The Court further observed that the nation should invest in the child education system in order to create responsible adults who would be productive for a well-functioning society.

To implement the Right to Free and Compulsory Education guaranteed under Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009, which came into force on 1 April 2010. Section 11 of the

Act provides that in order 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. But many states have not yet made any rules under Section 11, which can regulate pre-schooling. This is diluting the quality of education in pre-educational institutions, and this pre-schooling is only for those who have resources and can afford the exorbitant fees of these institutions. This apathetic attitude of the state governments is dangerous for the children who belong to poor families or those who belong to socially and educationally backward classes and is keeping them out of the mainstream education system.

Increasingly, the Supreme Court has also held that the right to education also includes the right to safe schooling.[9] Institutions providing early childhood care and education, including both public and private crèches and kindergartens, must have safe and sanitary infrastructure. Such institutions should be prepared against any disaster and should always organize mock drills to prepare the staff and educate the children for disaster situation.

In addition, the Government has, from time to time, formulated several national policies and schemes to safeguard the interests of children, including early childhood care and education. These National Policies and Schemes are as follows:

National Policy for Children 1974: Under this policy children were declared as the 'supremely important asset' of the nation. The policy recognized that the state was bound to provide free and compulsory education to all children up to the age of 14 years.

The Maternity Benefit Act, 1961: The Supreme Court in the case of *Municipal Corporation of Delhi v Women Workers (Muster Roll)*[10] held that all women employees are entitled to maternity leave under the Maternity Benefit Act. Depriving them of maternity benefit is violative of Articles 14, 19 and 21 of the Indian Constitution

Child Care Leave: Female Government servants appointed to the Civil Services and posts in connection with the affairs of the Union are eligible for Child Care Leave (CCL) under Rule 43-C of the Central Civil Services (Leave) Rules, 1972 for a maximum period of seven hundred and thirty days during entire service for taking care of two eldest surviving children upto the age of 18 years.

National Policy for Education, 1986: It considered ECCE to be a critical input for human development and recognizes the holistic and integrated nature of child development.

Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992: It was enacted to provide for the regulation of production, supply and distribution of infant milk substitutes, feeding bottles and infant foods with a view to the protection and promotion of breast-feeding and ensuring the proper use of infant foods and for matters connected therewith or incidental thereto.

The National Nutrition Policy (1993): It recommended interventions for child care and nutrition during early childhood.

National Charter for Children, 2003: The State shall provide early childhood care for all children and encourage programmes which will stimulate and develop their physical and cognitive capacities. The State shall aim at providing a child care centre in every village where infants and children of working mothers can be adequately cared for. The State will make special efforts to provide these facilities to children from SCs/STs and marginalised sections of society.

National Plan of Action for Children, 2005: The guiding principles of the National Plan of Action for Children, 2005 are: To regard the child as an asset and a person with human rights. To address issues of discrimination emanating from biases of gender, class, caste, race, religion and legal status in order to ensure equality. The goals of Early Childhood care and education is to universalize early childhood services to ensure children's physical, social, emotional and cognitive development; to ensure that care, protection and development opportunities are available to all children below 3 years; to ensure integrated care and development and pre-school learning opportunities for all children aged 3 to 6 years; to provide day care and crèche facilities to parents in rural and urban areas.[11]

National Policy for Children, 2013: Through this policy the State is committed to take affirmative measures – legislative, policy or otherwise – to promote and safeguard the right of all children to live and grow with equity, dignity, security and freedom, to ensure that all children have equal opportunities.

Rajiv Gandhi National Crèche (RGNC) for Working Mothers Scheme, 2013: It provides day care facilities to children (age group of 6 months to 6 years) of working mothers. The salient features of the National Crèche Scheme are (i) Daycare

Facilities including Sleeping Facilities. (ii) Early Stimulation for children below 3 years and pre-school Education for 3 to 6 years old children. (iii) Supplementary Nutrition (to be locally sourced). (iv) Growth Monitoring. (v) Health Check-up and Immunization.

National Food Security Act, 2013: In *People's Union for Civil Liberties v. Union of India & Others*, [12] the Indian Supreme Court directly addressed food security in the Indian context and explicitly established a constitutional human right to food in India.

National Curriculum Framework for School Education 2023: Up to 3 years of age, the environment in which most children grow up is in the home with families, while some children do go to crèches. After the age of 3, a large proportion of children spend significant time in institutional settings such as *Anganwadis* and preschools. The guidelines and/or suggested practices to enable high-quality ECCE at home for the age-group of 0-3 would be developed and disseminated by the Ministry of Woman and Child Development (MWCD). [13]

National Education Policy 2020: Providing high quality preschool education in an organised setting for children above 3 years of age is one of the key priorities of NEP 2020. According to National Education Policy 2020, Early Childhood Care and Education (ECCE) ideally consists of flexible, multi-faceted, multi-level, play-based, activity-based, and inquiry-based learning, comprising of alphabets, languages, numbers, counting, colours, shapes, indoor and outdoor play, puzzles and logical thinking, problem-solving, drawing, painting and other visual art, craft, drama and puppetry, music and movement. It also includes a focus on developing social capacities, sensitivity, good behaviour, courtesy, ethics, personal and public cleanliness, teamwork, and cooperation. The overall aim of ECCE will be to attain optimal outcomes in the domains of: physical and motor development, cognitive development, socio-emotional-ethical development, cultural/artistic development, and the development of communication and early language, literacy, and numeracy. [14]

POSHAN Scheme: In 2018 the Prime Minister also launched a national nutrition mission called POSHAN Abhiyaan. This multi-sectoral nutrition programme has resulted in enhanced budgets and accelerated actions to improve feeding of young children. [15]

1.2. Early Childhood Care and Education: A Critique

However, not all children receive the same early childhood care and education. Compared to developed countries, very few children in developing countries have access to state-sponsored early childhood care and education. In the same way the children of rich families get more care, education and social security than the children of poor families. Girls benefit less from policies related to early childhood care and education than boys. Globally, only around 4 in 10 children are attending early childhood education programmes. [16]

Children from socially and educationally backward classes and other vulnerable communities struggle to get equal treatment in the early childhood care and education system.

The lack of inclusive infrastructure in mainstream schools makes children with disabilities feel as if they are not a part of society and demonises their individuality and dignity. This kind of exclusive institutional system divides the society forever.

Migration practices are increasing due to the spread of industrialization but the children of migrant workers are the main victims because they do not get a conducive environment where their early childhood care and education can be ensured. Eighty per cent of migrant children across seven Indian cities did not have access to education near worksites even as 40% of children from seasonal migrant households are likely to end up working rather than being in school, facing exploitation and abuse, according to the UNESCO's 2019 Global Education Monitoring (GEM) report. [17]

Early childhood programmes aim to enhance the survival, growth, and development of young children, particularly disadvantaged ones, by improving school readiness, enhancing educational achievement, and fostering socialisation through peer interaction and problem-solving skills. [18] However, children who live in poverty have their childhood taken away from them. Due to poverty, the families of these children force them to beg and do child labour. Even more unfortunate are those parents who sell or abandon their children because of poverty. Human traffickers make such street children beg or sell drugs or make them do other heinous acts.

But under the Juvenile Justice Act, which protects children in need of care and protection, for example those who are orphans, abandoned or surrendered or victims of crime, the state has failed to create adequate places of safety and other

necessary infrastructure where they can be provided with basic rights. Out of the 664 districts in the country, 32% lack children's homes, and 27 lack child protection units. [19]

Besides, a mother has a physical and spiritual relationship with her child from the time it is conceived in her womb. With the birth of a child, other relations also get connected, there is an atmosphere of happiness in the whole family, relatives and the neighborhood, but still the child looks for the shadow of the mother. Therefore, whatever support systems exist in our society for early childhood care and education can complement and not replace maternal parenting. For the mother to be able to raise her child according to her loving nature, it is necessary that the environment around the mother and the child should be healthy and full of opportunities. If mother and child have a healthy environment to spend time with each other, then there will be no problem in the care and education of the child. But as times are changing and social, economic, political and environmental problems are on the rise, it is smothering the breathing space of mother and child, which is adversely affecting early childhood care and education. In urban setup, where a mother is also working she has to stay away from her child as her workplace does not grant any type of proper maternity leave and childcare leave. Now because of being a nucleus family in an urban setup, the working mother has to put her child in a crèche or has to hire a babysitter. In all such cases, the child is in the hands of strangers and is a huge worry for the working mother all day long. Hearing the news that in many places babysitters or crèches are putting children to sleep by giving them sleeping pills, every human being gets scared of fear. [20]

Even in the parliament which is supposed to be the pillar of democracy, women parliamentarians are unable to give time to their children because the basic infrastructure of Parliament building is mainly based on male stereotypes and has failed to protect the right to family of women parliamentarians. It is necessary to make provision like child day care for the children of women Member of Parliament. Many studies showed the importance of caring facilities, including childcare facilities, breast-feeding rooms, and family apartments, in making it possible for legislators to combine care work with the role of legislator. In other workplaces, whether public or private, this problem is also common that child day care has not been made for women employees and even if it is made somewhere, it does not have enough staff and essential things. [21]

1.3. Suggestions

Early childhood care and education should be recognized as part of the fundamental right to education guaranteed under Article 21A of the Constitution of India. The fundamental right to free and compulsory early childhood education should be guaranteed in both public and private crèches and kindergartens. Private Crèches and kindergartens should be regulated under a special and comprehensive law.

- Providing opportunities for early childhood care and education should be made a fundamental duty under Article 51A (k).
- Maternity leave and child care leave should be unconditionally granted to women employees in all public and private workplaces.
- While providing early childhood care and education, a sense of belonging should be developed in children so that they can realize and develop their individual identity and dignity.
- The child should be engaged in learning and recreational activities and should have access to open public places like parks, gardens, playgrounds etc.
- While drafting all the policies related to early childhood care and education it is essential that the active involvement and participation of children is ensured.
- Children's privacy should be protected in all cases.
- Family participation in all decisions related to children should be a priority for institutions.
- The infrastructure providing early childhood care and education should be inclusive and have adequate skilled and trained personnel who are sensitive to their functioning.
- Social engagement of children and community participation will make the early childhood care and education system more democratic and transparent.
- Every child needs special attention as it is not about the quantity of early childhood care and education institutions but about their quality.
- The idea of an inclusive society demands that the mainstream education system should be accessible to all without any kind of discrimination.
- An independent monitoring mechanism consisting of judicial members and child experts should be set up at the local level to monitor the activities of the system and ensure that the child and his or her parents are notified and have access to effective legal remedies and compensation if any violations occur.
- Disciplinary action in case of misconduct or negligence and criminal action, if any, against the staff members of the institutions should be taken effectively.

- The recommendations of the 259th Report of the Law Commission of India must be implemented.

2. Conclusion

Early childhood development is a critical time for a child's growth and development. During this time, children learn essential skills and abilities that build their future. For a child's future wellbeing, parents, care-takers, educators, and policymakers must comprehend all the stages of early childhood development more efficiently than ever before. It is the need of the hour to recognise early childhood care and protection as a fundamental right, and fundamental duties should be imposed on the public and private institutions responsible for pre-school education to provide a healthy and safe environment around the children. Providing growth support, encouraging healthy behaviours, and identifying the complex socio-economic factors that stymie early childhood growth and development can help legislators, policymakers, and other stakeholders create a comprehensive legal framework to protect children's interests.

Compliance with ethical standards

Disclosure of conflict of interest

No conflict of interest to be disclosed.

References

- [1] "What you need to know about early childhood care and education" UNESCO available at <https://www.unesco.org/en/early-childhood-education/need-know#:~:text=to%20promote%20ECCE%3F-Why%20is%20early%20childhood%20care%20and%20education%20so%20important%3F,them%20achieve%20their%20full%20potential>.
- [2] "Early Childhood Education" Measuring Up , The State of Texas, available at: <http://library.cppp.org/files/10/Microsoft%20Word%20-%20Early%20Childhood.pdf>
- [3] Michael F. Shaughnessy and Kinsey Kleyn "The Importance of Early Childhood Education" January 2012, available at https://www.researchgate.net/publication/233763048_The_Importance_of_Early_Childhood_Education
- [4] [1992] AIR 1858, 1863 SC.
- [5] [1993] AIR 2178, 2232 SC.
- [6] [1981]2 SCR 516.
- [7] [1984] AIR 802, 811 SC.
- [8] [2003] 1 SCC 687.
- [9] *Avinash Mehrotra v Union of India &Ors* [2009] 6 SCC 398.
- [10] [2000] 3 SCC 224.
- [11] See National Plan of Action for Children 2005 available at: <https://www.childlineindia.org/pdf/National-Plan-of-Action-for-Children-2005.pdf>
- [12] Writ Petition (Civil) No. 196 of 2001 (India) (Nov. 28, 2001 interim opinion), ordered on November 28, 2001. See Lauren Birchfield & Jessica Corsi, *Between Starvation and Globalization: Realizing the Right to Food in India*, 31 Mich. J. Int'l L. 691 (2010). Available at: <https://repository.law.umich.edu/mjil/vol31/iss4/1>
- [13] See National Curriculum Framework for School Education 2023, p.7, available at <https://dsel.education.gov.in/sites/default/files/NCF2023.pdf>
- [14] See National Education Policy 2020, available at https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf
- [15] "Early childhood nutrition" UNICEF for every child, available at: <https://www.unicef.org/india/what-we-do/early-childhood-nutrition>
- [16] See "Early childhood education" UNICEF for every child, available at: <https://data.unicef.org/topic/early-childhood-development/early-childhood-education/#:~:text=Globally%2C%20only%20around%204%20in,4%20in%20sub%2DSaharan%20Africa>.

- [17] “40% of kids from migrant families don’t go to school” The Times of India, November 20, 2018.
- [18] “Why is Early Childhood Education Important?” available at <https://scalar.usc.edu/works/gender-equity-in-early-childhood-education/why-is-early-childhood-education-important>
- [19] “States, HCs to work together to improve juvenile justice infra” The Economic Times, Nov 08, 2016, available at <https://economictimes.indiatimes.com/news/politics-and-nation/states-hcs-to-work-together-to-improve-juvenile-justice-infra/articleshow/55311066.cms>
- [20] See “Nanny sedates baby, 'rents' him out to beggars” The Times of India, November 06, 2009, available at <https://timesofindia.indiatimes.com/city/bengaluru/nanny-sedates-baby-rents-him-out-to-beggars/articleshow/5201477.cms>; See “13-year-old ‘babysitter’ allegedly killed boy” The Times of India, January 08, 2019, available at <https://timesofindia.indiatimes.com/city/ahmedabad/13-yr-old-babysitter-allegedly-killed-boy/articleshow/67427661.cms>; See “Nursery staff arrested for giving sleep aid to toddlers” BBC News March 06 , 2018, available at <https://www.bbc.com/news/world-us-canada-43305335>
- [21] Josefine Erikson, Cecilia Josefsson, The Parliament as a Gendered Workplace: How to Research Legislators’ (UN)Equal Opportunities to Represent, *Parliamentary Affairs*, Volume 75, Issue 1, January 2022, Pages 20–38, <https://doi.org/10.1093/pa/gsaa049>