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**Early Childhood Development
and Legal Entitlements**

August 2015

न्यायमूर्ति अजित प्रकाश शहा
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27 August 2015

Dear Mr. Sadananda Gowda ji,

The development of young children is nowadays recognized as a development and human rights issue of critical national importance. Early childhood development spanning from birth to the age of six years is the period that sees the most rapid growth and development of the entire human lifespan. It is during this period that the foundation of cognitive, physical and socio-emotional development, language and personality are laid.

In November 2014, some of the representatives of Alliance for Right to Early Childhood Care & Development and Mobile Crèches met the Commission to highlight the issue relating to the rights of children under the age of six years. Recognizing the importance and relevance of ECD from the perspective of national and human resource development, the Commission decided to take up the study. The Commission formed a Sub-Committee under the chairmanship of Prof. (Dr.) Mool Chand Sharma, Member, which, after several rounds of discussions and deliberations, came up with a draft Report on the issue. This draft was discussed further by the Commission and finalized as **Report No.259** titled “**Early Childhood Development and Legal Entitlements**”, which is enclosed herewith for consideration by the Government.

With warm regards,

Yours sincerely,

Sd/-

[Ajit Prakash Shah]

Mr. D.V. Sadananda Gowda
Hon'ble Minister for Law and Justice
Government of India
Shastri Bhawan
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Report No.259
Early Childhood Development and
Legal Entitlements

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CHAPTER - I

CONCEPT AND IMPORTANCE

1.1 The development of young children is now increasingly recognised as a development and human rights issue of critical national importance. The statistics on the malnutrition and neglect of young children in India today cannot be ignored, and their significance for the nation's overall human resources cannot be overemphasized. However, the State's response to the problem has been slow so far. It was in response to rising voices demanding greater attention from the State on the issue of 'Early Childhood Development (ECD)' that the Government came out with a comprehensive 'Nation Early Childhood Care and Education (ECCE) Policy, 2013'.

1.2 The National ECCE Policy, 2013, defines early childhood as '*the formative stage of the first six years of life*'. According to the globally and nationally held view, the 'Right to Early Childhood Development (ECD)' means the right of the child to survival, growth and holistic development, and the right to inputs that will make such development possible – care, love, nurturing, protection, health, nutrition, stimulation, play and learning.

1.3 Early childhood, spanning from birth to the age of six years, is the period that sees the most rapid growth and development of the entire human lifespan. It is during this period that the foundations of cognitive, physical and socio-emotional development, language and personality are laid. Brain development is most rapid during this phase - 90% of brain growth takes

place before the age of 5 years¹. It is also the phase of maximum vulnerability as deprivation can seriously impact a child's health and learning potential. Research has shown high risks of impaired development of young children due to malnutrition, disease, poverty, social exclusion and the lack of a conducive environment.

1.4 This critical period up to the age of six years is a 'window of opportunity', i.e., if the child receives favourable environmental inputs of health, nutrition, learning and psychosocial development, the chances of the child's brain developing to its full potential are considerably enhanced. If the environmental experiences are unfavourable and the child faces deprivation or emotional or physical abuse, the brain's development is negatively affected and the 'window of opportunity' is lost, often irrevocably. The concept of a right to Early Childhood Development (ECD) emphasizes that young children need simultaneous inputs of care, nutrition and health as well as opportunities for psychosocial development, play and learning in an enabling and protective environment.² Since development is interdependent and synergistic in nature, these inputs need to be provided to the child simultaneously across all stages of early childhood as the level of development in each stage affects the level of development in the next.

1.5 As per the 2011 Census, India has 158.7 million children in the age group of 0-6 years, comprising about 16% of the total Indian population. In the period 2008-2013, 43% of India's children under 5 were underweight and 48% had stunted growth.

¹ Giedd, Jay, N (2004), "Structural Magnetic Resonance Imaging of the Adolescent Brain", *Annals of the New York Academy of Sciences*, 1021 (1)77-85, doc:0:1196/Annals, 1308.009

²See Sections 3.4, 5.2.3 and 10.9 of the National Policy for Early Childhood Care and Education, 2013.

According to a World Bank Report published in 2013, the mortality rate of children under 5 years of age is 53 per 1000 live births³ and according to a 2013 UNICEF Report⁴, more than 60 million children under 5 are stunted. Less than half the women in the country are provided any form of support during their pregnancies, deliveries and lactation, which has a significant impact on a child's health and growth during the early part of its life. Moreover, a quarter or less of children in India receive adequate health care.

1.6 Despite these alarming figures, there is no clear legal articulation of the entitlements of these young children. The present legal framework remains wanting and weak as far as ECD is concerned, even though Article 45 of the Constitution directs that *“the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”*

1.7 It has been more than two and a half decades since India signed and ratified the Convention on the Rights of the Child, 1989, but the idea of justiciable rights for children, especially young children, has yet not taken shape. Until now, the State has addressed the needs of children through a fragmented approach based on targeted interventions, even though the Integrated Child Development Services (ICDS), conceptualized in 1972, had kept the integrated needs of children in mind and was designed as a programme to provide health, nutrition and early childhood care and education. Some of the current policies concerning young children are:

³ Available at <http://data.worldbank.org/indicator/SH.DYN.MORT>

⁴2013 UNICEF Report: *Improving Child Nutrition: The achievable imperative for global progress* based on National Family Health Survey, 2005–2006, and UNICEF Global Databases available at http://www.unicef.org/gambia/Improving_Child_Nutrition_-_the_achievable_imperative_for_global_progress.pdf

National Nutrition Policy, 1993, National Plan of Action for Children, 2005, National Early Childhood Care and Education (ECCE) Policy of 2013, and the National Policy for Children, 2013. These are undoubtedly well-intentioned and relevant policies/schemes, but being politico-executive initiatives they lack the status of law and don't create any justiciable rights in favour of beneficiaries. They only articulate promises.

1.8 Keeping in view the aforesaid, and recognizing the importance and relevance of ECD from the perspective of national and human resource development, the Commission has *suo-moto* undertaken the present study, '**Early Childhood Development and Legal Entitlements**'. The Commission feels that during a time when the world is debating the Post 2015 Sustainable Development Goals⁵, which include the guarantee of early childhood development⁶, the time is ripe to position the rights of young children within the development agenda and create appropriate legal entitlements with respect to ECD. It is hoped that suggestions and recommendations resulting from this study will go a long way in securing the constitutional objective of ensuring a healthy early childhood resulting into creating a rich national human resources.

1.9 The Report consists of seven Chapters. While Chapter I introduces the issue at hand, Chapter II

⁵<http://unsdsn.org/resources/goals-and-targets>

⁶Proposed Goals and Targets - **Target 3a.** All children under the age of 5 reach their developmental potential through access to quality early childhood development programs and policies.

Target 3b. All girls and boys receive quality primary and secondary education that focuses on learning outcomes and on reducing the dropout rate to zero.

Target 4c. Prevent and eliminate violence against individuals, especially women and children.

Target 5b. End preventable deaths by reducing child mortality to [20] or fewer deaths per 1000 births, maternal mortality to [40] or fewer deaths per 100,000 live births, and mortality under 70 years of age from non-communicable diseases by at least 30 percent compared with the level in 2015.

captures various International Conventions, Treaties and Declarations that concern the issue of ECD. Chapter III focuses on the constitutional context and its vision with regard to children including children below six years. Attempt has been made in Chapter IV to briefly examine the scope and nature of various policies and schemes in existence that deal with different nuances involved in ECD. This Report makes an attempt to suggest as to what kind of legal measures and binding entitlements be created dealing with ECD especially in respect of 'Health and Nutrition' and 'Care and Education' in Chapter V and VI, respectively. Towards the end, Chapter VII incorporates some of the suggestions and recommendations emerging from the Study. The Commission believes that acting on these suggestions would not only serve the cause of developing young children but would also go a long way in developing the nation's human capital.

1.10 In order to prepare this report, the Commission formed a sub-Committee under the Chairmanship of Prof. (Dr.) Mool Chand Sharma, Full Time Member of the Commission and comprising: Ms. Archana Mishra, Dr. Arun Sagar and Ms. Mandavi Jayakar from Jindal Global Law School; Dr. Bharti Kumar, Ms. Neha Singhal and Dr. Sophy K.J. from National Law University, Delhi; Ms. Sudeshna Sengupta, Ms. Devika Singh and Ms. Nikita Agarwal from Alliance for Right to Early Childhood Development.

1.11 Thereafter, upon detailed deliberations and discussions, the Commission has given shape to the present Report.

CHAPTER – II

INTERNATIONAL CONVENTIONS, TREATIES AND DECLARATIONS

2.1 International Conventions and Declarations have been effective in mobilizing world communities on various social, economic, political, civil rights and human rights issues. Early Childhood Development (ECD) has gained international attention only in the recent past, although most conventions in the past being of a general nature applied to all people including children. The Universal Declaration of Human Rights (UDHR) (1948), which represents the first global expression of universally protecting fundamental human rights, pronounced the special rights of the child for the first time by providing that *“Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”*⁷ The United Nations has played a prominent role in evolving ECD. In a General Discussion in 2004 dedicated to the theme of ‘implementing child rights in early childhood’, the General Assembly stated: *“having reviewed since 1993 the situation of child rights in almost all countries of the world, the rights of babies and young children are too often overlooked. This is so although it is widely recognized that early childhood is a crucial period for the sound development of young children and that missed opportunities during these early years cannot be made up at later stages of the child’s life.”*⁸ This chapter gives

⁷Article 25(2) of the Universal Declaration of Human Rights, 1948 available at <https://www.un.org/en/documents/udhr/> (accessed 9 June 2015).

⁸ A Guide to General Comment 7: ‘Implementing Child Rights in Early Childhood’ United Nations Committee on the Rights of the Child, United Nations Children’s Fund and Bernard van Leer Foundation, 2006, available at http://www.unicef.org/spanish/earlychildhood/files/Guide_to_GC7.pdf (accessed on 9 June 2015).

an overview of a few relevant international conventions and declarations which have promoted ECD.

2.2 The period after the First World War posed new challenges to several countries to protect society from the violence and upheaval in the society. The newly formed League of Nations (LON) established a Committee on the Child Welfare in 1919. In 1924, the LON adopted the Geneva Declaration, a historic document that recognized and affirmed for the first time the existence of rights specific to children and the responsibility of adults towards children.⁹ It established a five-point declaration which emphasized the basic requirements a society should meet in order to provide adequate protection and care for its children. The five points were: (i) child must be given the means needed for its normal development, both materially and spiritually; (ii) hungry child should be fed; sick child should be helped; erring child should be reclaimed; and the orphan and the homeless child should be sheltered and succoured; (iii) child must be the first to receive relief in times of distress; (iv) child must be put in a position to earn a livelihood and must be protected against every form of exploitation; and (v) child must be brought up in the consciousness that its best qualities are to be used in the service of its fellow men.¹⁰

2.3 However, the United Nations took over the Geneva Declaration in 1946 after the Second World War, and with the adoption of the UDHR several shortcomings of the Geneva Declaration were revealed. Thus, a specialized agency of the UN – UNICEF (present nomenclature - United Nations Children’s Fund) was

⁹<http://www.humanium.org/en/childrens-rights-history/references-on-child-rights/declaration-rights-child/> (accessed on July 15, 2015)

¹⁰Geneva Declaration of the Rights of the Child adopted 26 September, 1924, League of Nations, available at <http://www.un-documents.net/gdrc1924.htm>

established to promote care for the world's children. The Declaration of the Rights of the Child, which reaffirmed the notion that "mankind owes to the Child the best that it has to give" was unanimously by all 78 Member States of the United Nations General Assembly in 1959.¹¹ This Declaration expanded the five principles of the Geneva Declaration to ten – (i) non-discrimination; (ii) special protection, opportunities and facilities to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity; (iii) the right to a name and nationality; (iv) the right to social security, adequate nutrition, housing, recreation and medical services; (v) the differently-abled child to be given special treatment, education and care; (vi) the need for love and understanding so that the child grows in the care and responsibility of his/her parents, and in an atmosphere of affection and moral and material security; (vii) entitlement to education, which should be free and compulsory, at least in the elementary stages; (viii) the child should be among the first to receive protection and relief in all circumstances; (ix) protection against all forms of neglect, cruelty and exploitation, including that associated with employment; and (x) protection from practices that may foster racial, religious and other forms of discrimination. Although the Declaration reflected the best intentions, it did not have any binding force on the Member States, who were not very effective in putting principles into practice. Further, the biggest drawback of both the Geneva Declaration (1924) and the Declaration of the Rights of the Child (1959) was that they failed to define 'child', which left uncertainty as to when childhood began and ended. Recognizing the significance of child welfare and development, the year

¹¹ *Ibid*

1979 was designated as the International Year of the Child (IYC).

A. International Covenant on Civil and Political Rights, 1966.

2.4 One of the earliest instruments to have recognised the child's right to protection was the International Covenant on Civil and Political Rights (ICCPR) ¹², adopted by the United Nations General Assembly in 1966. The child's right to live peacefully and to be protected from violence, mistreatment, exploitation or neglect, is an indispensable part of ECD. Under the ICCPR, the responsibility of providing protection to the child has been assigned to the family, society and also the state. Article 24(1) of ICCPR reads that *'every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.'* India ratified the ICCPR in 1979.

B. Health for All Declaration, 1978.

2.5 World Health Organization's Health for All (HFA) Declaration, 1978 (or Alma Ata Declaration) expressed the need to address improvement in nutrition of both the mother and the child, to impart knowledge about nutrition, in particular, proper feeding of children and nutrition of mothers during pregnancy and lactation ¹³ and the need for urgent action by all

¹² ICCPR, 1966 available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (accessed 9 June 2015).

¹³ Primary Health Care, Report of the International Conference on Primary Health Care, Alma-Ata, USSR, 6-12 September 1978, available at;

governments, health workers and the world community to protect and promote health for all. It had several goals set out for its member countries, of which one was to provide plentiful supplies of clean water and help to decrease mortality and morbidity, in particular among infants and children.¹⁴ Even though many of its goals remain unachieved, this Declaration was an important move in the development of ECD and it beckoned towards a new route for global health.

C. Maternity Protection Convention, 2000.

2.6 The General Conference of the International Labour Organisation adopted the Maternity Protection Convention, 2000¹⁵ in order to promote equality of all women in the workforce and the health and safety of the mother and child. Taking into account the circumstances of women workers and the need to provide protection for pregnancy, it recognizes the shared responsibility of government and society. It direct States to adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which is prejudicial to the health of the mother or the child. Maternity leave is to include a period of six weeks' compulsory leave after childbirth having regard to the protection of the health of the mother and that of the child and a woman has to be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child. In case of dismissal of pregnant women, the burden of proof rests on the employer to prove that the reasons of

http://www.hauora.co.nz/assets/files/PHO%20Info/Alma_Ata_conference_1978_report%20and%20declaration.pdf (accessed 9 June 2015).

¹⁴Ibid.

¹⁵Available at

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C183

dismissal were unrelated to pregnancy or childbirth and its consequences or to nursing.

D. Education for All Declaration, 1990.

2.7.1 Along with healthy development, there emanates a need for learning, which is an essential stage of growth for a child to develop healthy cognitive skills. UNESCO's Education for All (EFA) Declaration, 1990 considered education as a tool for development. EFA Declaration, 1990 sponsored by the UNESCO, UNDP UNFPA, UNICEF, the World Bank and NGOs at the World Conference on Education in Jomtien, Thailand aimed for global commitment to provide quality basic education for all children, youth and adults and pledged to reduce illiteracy by the end of the decade. It was under Article V - Broadening the Means and Scope of Basic Education that the notion of '*learning begins at birth*' was acknowledged¹⁶, which shows a shift in the traditional approach to education wherein education was equated to formal training at school. Care and education during early childhood could be provided through family or community-based arrangements, or institutional programs, such as day care centres. The **Framework for Action to Meet Basic Learning Needs (1990)** offered guidelines to individual countries and groups of countries, as well as international, regional and national organizations in formulating their own specific plans of action and programmes for implementing the goals enumerated under EFA Declaration. It recognized the importance of identifying the traditional learning systems which exist in the society and identifying actual demand for basic education services. It clearly defined basic learning

¹⁶World Declaration on Education For All, World Education Forum available at <http://www.unesco.org/education/wef/en-conf/Jomtien%20Declaration%20eng.shtml> (accessed on July 15, 2015)

needs of all to include early childhood care and development opportunities; relevant, quality primary schooling or equivalent out-of-school education for children; and literacy, basic knowledge and life skills training for youth and adults together with capitalizing on the use of traditional and modern information media and technologies to educate the public on matters of social concern and to support basic education activities. The Jomtien Framework of Action called for an *'expansion of early childhood care and development activities, including family and community interventions, especially for poor, disadvantaged and disabled children'*¹⁷ which gave legitimacy to ECCE in a way that it had not enjoyed previously.

2.7.2 The Amman Affirmation (1996) reviewed the progress made toward the goals set in Jomtien and looked into ways to overcome persistent problems. It emphasized the need for re-examining the goals and adding new areas and means of action; responding to new challenges by promoting learning in all aspects of life through all the institutions of society; responding by including local content in basic education and acknowledging the essential role of the mother tongue for initial instruction.

E. Dakar Framework for Action – Education for All: Meeting Our Collective Commitments, 2000.

2.8 In 2000 a decade after the EFA Declaration 1990, the international community met again at the World Education Forum in Dakar, Senegal and agreed

¹⁷ Early Childhood Regional Capacity-Building Initiative, available at http://www.unesco.org/education/efa/know_sharing/flagship_initiatives/early_childhood.shtml (accessed 9 June 2015).

on the **Dakar Framework for Action – Education for All: Meeting Our Collective Commitments (2000)**, which apart from reaffirming the commitment to achieve Education for All by the year 2015 identified six key measurable education goals to meet the learning needs of all children, youth and adults by 2015. Some of the goals affecting children are – expanding and improving comprehensive early childhood care and education, providing access to complete, free and compulsory primary education for all, improving all aspects of the quality of education and eliminating gender disparities in primary and secondary education and achieving gender equality in education.

F. Moscow World Conference on Early Childhood Care and Education, 2010.

2.9 Moscow World Conference on Early Childhood Care and Education (2010) also reaffirmed the commitment to ECD. The Moscow Framework for Action called upon the governments to mobilize stronger commitment to ECD, which should also be expressed in legislation, policies and strategies.¹⁸ Specifically, the Framework recommended that States “*develop legal frameworks and enforcement mechanisms that are conducive to the implementation of the rights of children to ECCE from birth;*”¹⁹ and “*adopt and promote an approach to ECCE that is both holistic and multi-sectoral to ensure good birth outcomes (prenatal stage), neonatal health and nutritional well being, care and education...*”²⁰

¹⁸ Moscow Framework for Action and Cooperation, World Conference on Early Childhood Care and Education, Moscow, 2010.

<http://unesdoc.unesco.org/images/0018/001898/189882e.pdf>

¹⁹ *Ibid.*, Article 11(i)(a)

²⁰ *Ibid.*, Article 11(i)9b)

G. UN Millennium Declaration, 2000 and Millennium Development Goals, 2000.

2.10 UN Millennium Declaration (UN General Assembly, 2000) stresses the observance of international human rights law and international humanitarian law by urging observance of values of freedom, equality, solidarity, tolerance; development and poverty eradication; peace, security and disarmament; human rights, democracy and good governance etc. Following the adoption of UN Millennium Declaration, international development goals collectively termed as Millennium Development Goals (MDGs), 2000 which emphasized on investment in economic and social development were set with a target to be achieved by 2015. Some of the goals under MDGs affecting children are - to achieve universal primary education, to reduce child mortality, to improve maternal health, to eradicate extreme poverty and hunger.

H. Convention on the Rights of the Child (CRC), 1989.

2.11.1 The first legally binding international document concerning child rights was the Convention on the Rights of the Child (CRC), 1989. The CRC is the most widely ratified human rights treaty, and also ratified by India in 1992. It is one of the clearest and most comprehensive expressions of what the world community wants for its children.²¹It includes the 10 principles of the 1959 Declaration of the Rights of the Child, including non- discrimination and best interests

²¹Pia Rebello Britto, Nurper Ulkuer, William P. Hodges and Michael F. McCarthy , 'Global policy landscape and early childhood development' in Pia Rebello Britto, Patrice L. Engle and, Charles M. Super (eds), *Handbook of Early Childhood Development Research and Its Impact on Global Policy*, Oxford University Press, 2013.

of the child, and stretches to 54 articles covering almost every aspect of the child's life, thus creating interdependent rights for children. It covers four major categories of child rights: the right to life, the right to development, the right to protection and the right to participation. It recognizes the importance of family and casts responsibility on all duty bearers beginning with the family up to state to provide for the protection and harmonious development of child and to uphold standards for all children. Rights include protection from discrimination on grounds of gender, race or minority status as well as from sexual and other forms of exploitation. This Convention laid down a series of rights for children in a legally binding form and brought forward basic human rights for children worldwide.

2.11.2 Articles of CRC provides that the State is responsible to “...ensure to the maximum extent possible child survival and development” (Article 6), “...render appropriate assistance to parents and legal guardians in the performance of their child rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children (Article 18.2) and “...children of working parents have the right to benefit from child care services and facilities for which they are eligible” (Article 18.3).

2.11.3 CRC further advocates for providing for comprehensive programmes for ECD when it urges “in guaranteeing rights to the youngest children, States parties are urged to develop rights-based, multidimensional and multi-sectoral strategies that promote a systematic and integrated approach to law and policy development and provide comprehensive and continuous programmes in early childhood development, taking into consideration children's evolving capacity in light of article 5 of the Convention. In view of the crucial

importance of early childhood programmes for the sound development of children, the Committee calls on States parties to ensure that all children are guaranteed access to these programmes, especially the most vulnerable.”

The **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000** to the CRC, ratified by India in 2005, is intended to achieve certain purposes of the CRCs by requiring the States to take measures to guarantee the protection of the child from the sale of children, child prostitution and child pornography. It requires the ratifying States to take all possible measures to criminalize offences of child sale, prostitution and pornography and prosecute offenders domestically. The **Optional Protocol to the Convention on the Rights of the child on the Involvement of Children in Armed Conflict, 2000**, ratified by India in 2005, is a milestone in the campaign to end the recruitment and use of child soldiers, strengthen the legal protection of children and in helping to prevent their use in armed conflict. It requires ratifying States to ban compulsory recruitment below the age of 18 and to take all measures to ensure that members of their armed forces under the age of 18 are exempted from taking direct part in hostilities.

2.11.4 Although rights to health and nutrition, education and learning, care and protection, and play were included in the CRC, they were not incorporated adequately to endorse ECD. Due to ambiguity regarding the rights of young children and a narrow interpretation of ECD that restricted it to child survival, registration of birth and the right to name and nationality, **General Comment (GC7), 2005**²² was added to the CRC to deal

²²Convention on the Rights of Child, General Comment No. 7 (2005), Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006, available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf> (accessed 9 June 2015)

with implementation of all rights for ECD. The Comment strongly recommends that special plans of action be adopted for the identification of goals, the allocation of resources and the determination of time limits to achieve the goals under CRC.²³ The Comment underlines the truth that governments, public services and persons who live and work with children all share the duty to establish the proper conditions so that children can realize their potential. It clarifies that the young children are not only formally entitled to the rights that are vicariously claimed for them by parents or guardians, but should already begin to exercise those rights on their own in a practical sense through their actions and interactions, as well as through the concerns they express both for themselves and for others. Every attempt to find out the best interests of the child must be confirmed by paying attention to the child so as to capture the views and feelings the child expresses in verbal and non-verbal ways. Thoughtful, sensitive persons must listen to and seek to comprehend and respond to the demands and emotional states of the child because the survival, well-being and development of the child depend on the child's integration through interaction with others.

I. Zero Draft: Sustainable Development Goals.

2.12.1 The Co-Chairs of the Open Working Group on Sustainable Development Goals of UN Millennium Campaign have released their much anticipated Zero Draft, which contains a proposal for goals and targets to succeed²⁴ the Millennium Development Goals in 2015. Among other ambitious objectives it also aims to

²³Supra note 2.

²⁴Post 2015 Development Agenda – available at <https://www.worldwewant2015.org/node/442161>

end hunger, achieve food security and adequate nutrition for all, and promote sustainable agriculture, attain healthy life for all at all ages, provide equitable and inclusive quality education and life-long learning opportunities for all.²⁵

2.12.2 These global proclamations encourage States to form a comprehensive framework of policies and laws to ensure that rights of children are promoted and implemented. From the point of view of the right to ECD, these conventions and declarations do not adopt a specific definition of the word ‘child’ that would focus on very young children. However, their conceptualization and objectives set standards for our nation to achieve for a healthier overall development of our children. This must include a focus on early childhood development, which is particularly lacking in our legal system.

²⁵Targets under Zero Draft: Sustainable Development Goals -

Target 2.2 - End malnutrition in all its forms, including under nutrition, micronutrient deficiencies and obesity and overweight, with special attention to reducing stunting by 40% and wasting to less than 5% in children less than 5 years of age by 2025, and address the nutritional needs of pregnant and lactating women

Target 3.1- By 2030 reduce the maternal mortality ratio to less than 40 per 100,000 live births 3.2 by 2030 end preventable newborn, infant and under-five deaths

Target 4.1 - By 2030 ensure all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes

Target 4.2 - By 2030 ensure equal access for all to affordable quality tertiary education and life-long learning

Target 5.3 - Eliminate all harmful practices, including child, early and forced marriage and female genital mutilations

CHAPTER – III

CONSTITUTIONAL CONTEXT

3.1 Recognizing the significance of child-care and development in realizing the goal of national progress, the Founding Parents enacted several provisions concerning welfare and development of children, especially in Parts III and IV of the Constitution. The Fundamental Rights and Directive Principles of State Policy have provided an inspiration to all legislations concerning child welfare, education and development.

A. Fundamental Rights and Rights of Children under Six

3.2.1 Article 15(3) provides for affirmative action for women and children and is of great significance under which several beneficial laws and programmes have been passed. Jurisprudence developed around Article 21 of the Constitution by the Supreme Court of India underlies the primary importance of early childhood developments. As right to food, nutrition and health²⁶ have been judicially crafted as being part and parcel of the Right to Life to which every citizen, including a child is entitled to. It is taking this approach that right to free education up to the age of 14 years was read into Article 21 by the Supreme Court of India in *Unni Krishnan v. State of Andhra Pradesh* (1993 AIR 2178). The Court while creating such right made an important observation that Right to Life has to be read in light of Directive Principles of State Policies, viz. Articles 41, 45 and 46. Eventually, given the specificity of the needs of children under six, and the value of having

²⁶ People's Union for Civil Liberties v. Union of India & Others (Civil) no. 196/2001

a positive right ensuring to the child the right to full development, Art. 21-A was inserted through the 86th Amendment Act, 2002 within the Constitution, recognising the fundamentality of the right to education for children between the age group of six to fourteen. Although the 86th Amendment brought a Directive Principle of State Policy, ignored until now, within the folds of Part III of the Constitution, it excluded children below the age of six, thus denying them education for proper growth and development.

3.2.2 The Report of the National Commission to Review the Working of the Constitution (NCRWC) published in 2002²⁷ was of the view that the Right to Free and Compulsory Education should be extended to all children up to the age of 14 years, and not only from the age of 6 onwards. The NCRWC recommended the inclusion of the following provision in Part III of the Constitution: “30-C. *Every child shall have the right to free education until he completes the age of fourteen years; and in the case of girls and members of the Scheduled Castes and the Scheduled Tribes, until they complete the age of eighteen years.*” Recognizing that interests involved in early childhood development are complex and interwoven and cannot be taken care of by enacting Right to Education alone, the NCRWC went further and recommended insertion of Article 24-A in Part-III of the Constitution. The new provision of Article 24-A was to read as, “*Every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and*

²⁷ The National Commission to Review the Working of the Constitution, also known as the **Justice Venkatachaliah Commission**, was set up by a Government Resolution dated 22 February, 2000. The Commission was set up to examine as to how best the Constitution could respond to the changing needs of modern India within the framework of Parliamentary democracy, and to recommend changes to the Constitution without interfering with its basic structure or features. Available at <http://lawmin.nic.in/ncrwc/finalreport/volume1.htm>

exploitation” This insertion was based on translating Directions of Article 39(f) into an enforceable right. Expanding reach of Article 21-A to cover children under six and creating a new right as suggested by NCRWC were very positive steps towards creating a legal regime responsive to the needs of ECD.

3.2.3 However, these recommendations did not make their way into the Constitution, and as it stands today, issues relating to interests and welfare of young children remains locked in Part IV of the Constitution that incorporates Directive Principles of State Policy.

B. Directive Principles of State Policy

3.3.1 The Founding Parents were cognizant of the importance of development of young children as an essential feature for national development and their concerns were amply reflected in the enactment of **Articles 39 (e) and (f)** of the Constitution. These two provisions provide for health, care and protection of its citizens, including children. While Article 39(e) stipulates that the State shall direct its policy towards securing “that the health and strength of workers, men and women and the tender age of children are not abused” and “that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength”, Article 39 (f) requires the State to ensure that “the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment.”

3.3.2 Further, giving specific expression to their intention to promote the cause of early childhood development, the Founding Parents provided in **Article**

45 that “the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.” This provision makes the right to early childhood care and education an explicit Constitutional Objective. The Right of Children to Free and Compulsory Education Act (RTE), which came into effect from April 1, 2010 incorporated this Constitutional Objective through Section 11 of the Act which states, “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”.

3.3.3 **Article 42** - *“Provision for just and humane conditions of work and maternity relief - The State shall make provision for securing just and humane conditions of work and for maternity relief.”* The Constitution mandates the provision for maternity relief, which assumes importance from the perspective of the child as it contributes to a healthy birth and nurturing of the child. **Article 47** states that the State shall work towards raising the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. It is essential for the State to read Articles 42, 45 and 47 together whenever any policies relating to children are introduced.

3.3.4 Though the Directive Principles of State Policy are supplementary to Fundamental Rights, and provide direction to governance, they are however, non-justiciable in themselves and require legal sanction for realisation. This reduces any idea of ECD into a promise instead of creating a binding obligation on the

State. It is therefore suggested that as per the recommendation of the NCRWC, **Article 24-A**, reading “*Every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and exploitation*” should be inserted to Part III of the Constitution to ensure a child’s right to basic care and assistance becomes an enforceable right.

C. Perspectives from other jurisdictions

3.4.1 It is important to note that constitutions in many developing countries have specific provisions dealing exclusively with children and cast express obligations on the State to provide for care and development of its children including children under six years age.

3.4.2 Chapter two of the **Constitution of South Africa** that deals with a Bill of Rights for the people of South Africa considers ‘children’ as any child below the age of 18 years. Article 28 expressly provides for rights of children. Article 28 provides for the rights of the child to basic nutrition, health services, shelter and social services. By making right of the child to alternate care, basic nutrition, basic education, health services, shelter and social services constitutional rights, South Africa makes rights of children the primary responsibility of the State. These rights have also been made enforceable against the State. Article 28(1)(b) specifically upholds that every child has the right to family care or parental care or appropriate alternate care when the child is removed from the family environment. By this provision, the primary obligation of care is cast upon the family or parents and in situations where such parental care is

lacking, the Constitution casts an express obligation on the State.²⁸

3.4.3 In somewhat similar approach, Article 6 of its **Constitution of Brazil** determines, *inter alia*, that education, health and food are *social rights*; and that it is the duty of the family, the society and the State to ensure to children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.²⁹ In addition, article 229 of the Constitution dictates that it is the duty of the parents to assist, raise, and educate their underage children. Paragraph 1 of article 227 of the Constitution further establishes that the State must promote full health assistance programs for children and adolescents and allows the participation of non-governmental entities, and determines that the State must allocate a percentage of public health care funds to mother and child assistance. This provision also ensures special care for children who suffer from physical, sensorial or mental handicap. Health in Brazil is considered to be a right of all and duty of the State.³⁰ Article 198 of the Constitution determines that health actions and public services are to be integrated in a regionalized and hierarchical network and constitute a single system (*Sistema Único de Saúde*) organized according to the directives established in the Constitution to ensure better health care for all citizens inclusive of children.

²⁸ Government of the RSA v Grootboom, 2001 1 SA 46 (CC) par 77.

²⁹ Article 227, Constitution of the Federal Republic of Brazil.

³⁰ Article 196, Constitution of the Federal Republic of Brazil.

3.4.4 Cuba is another interesting model, whereby Article 9(b) of the Constitution of the Republic of Cuba creates a wide obligation on the State. It provides that the state will make provisions to ensure that no child lacks schooling, food and clothing. Article 44 makes it a state responsibility to provide day-care services to the children and Article 51 requires the state to provide free education to all, children or adults.

3.4.5 In nutshell what emerges from foregoing is that there exists a culture that creates constitutionally created obligation in states and parents for protecting and fostering ECD.

3.4.6 No doubt that the Constitution of India in its entirety espouses a welfare approach towards children wherein the child under six is provided a safe and healthy environment for full growth and development to its human potential. However, most of this, especially in relation to young children, remains only a promise. The Directive Principles of State Policy give insights into the intent of the constitution framers—that there must be a progressive realisation of the right in favour of children under six. But after sixty-five years of the Constitution's working, the time has come to translate some of these principles into justiciable rights. In this regard, it is suggested and as would be discussed in later chapters of this work that towards creating such justiciable rights in favour of under-sixes, lights could be drawn from South African, Brazilian and Cuban Constitutional law and constitutional practices. Also, taking cue from these jurisdictions the need may be considered for introducing a provision in Fundamental Duties in Article 51A of the Constitution reading as, “to foster a spirit of family values and responsible parenthood in the matter of education, physical and

moral wellbeing of children”. A similar suggestion was made by the NCRWC as well.

CHAPTER – IV

NATIONAL POLICIES AND SCHEMES

4.1. The Indian State has been aware of the pressing need for action to improve the situation of young children in India by providing them better access to health, nutrition and education and by creating an environment more conducive to their proper development. However, no direct legislative initiatives have taken shape in this regard. Successive governments have relied instead on a range of executive policies and schemes, the most important of which are discussed in this Chapter.

4.2 **The National Policy for Children 1974** - later reaffirmed by the **National Charter for Children, 2003**, and the **National Policy for Children, 2013** - recognised that programmes for children should find prominent place in national plans for the development of human resources. It laid down that the State shall provide adequate services towards children, both before and after birth and during the growing stages for their full physical, mental and social development. The measures suggested include a comprehensive health programme and supplementary nutrition for mothers and children, free and compulsory education for all children up to the age of 14 years, promotion of physical education and recreational activities protection of children from neglect, cruelty and exploitation, etc. The Policy was an extremely important step forward in the protection of children's interests, leading for example to the creation of the Integrated Child Development Services scheme (see below).

4.3 However, as the Policy document did not have binding legal status, it was not always effectively

implemented. For example, although the Policy provided for formulation of programmes for crèches and other facilities for the care of children of working or ailing mothers, the Government did not attempt to formulate any such programmes to operationalize crèches for over a decade after the adoption of the Policy. The **National Policy for Education, 1986**, specially emphasized investment for the holistic development of young children and gave priority to Early Childhood Care and Development amongst Child Development Services. The Policy also stressed the importance of establishing Day-Care centres for pre-school education to enable young girls engaged in taking care of siblings to attend school and women from poor families to earn additional income. This Policy also provided for child-oriented play that fosters individuality, and discouraged any formal method of learning around the '3Rs' (Reading, wRiting and aRithmetic). It thus tried to break the patriarchal notion of keeping the girl child at home as care giver of siblings and considered crèches as an alternative to enable the girl child to attend school. Here again, the fact that these provisions did not have legislative authority resulted in long delays in implementation. It was only after the adoption of the **National Plan of Action for Children, 2005**, which reiterated the 1986 Policy in relation to crèches, that the Rajiv Gandhi National Crèche Scheme for Children of Working Mothers (RGNC) was formulated in 2006. Thus, it took more than 30 years to formulate a programme on crèches after the National Policy for Children was laid down in 1974.

4.4 The **Integrated Child Development Services (ICDS)** scheme, launched in 1975 pursuance of the National Policy for Children, 1974, is the chief public policy programme aimed at young children. The basic premise of ICDS, which is a centrally sponsored

and state administered nationwide scheme, is the assertion that early childhood education and care are inseparable issues and must be considered as one. It thus adopts the holistic philosophy towards early childhood development that has been recognised both nationally and internationally. The scheme was established with the following objectives: (1) to improve the nutritional and health status of children in the age group of 0-6 years; (2) to lay the foundation for proper psychological, physical and social development of the child; (3) to reduce the incidence of mortality, morbidity, malnutrition and school dropout; (4) to achieve effective co-ordination of policy and implementation amongst the various departments to promote child development; and (5) to enhance the capability of the mother to look after the normal health and nutritional needs of the child through proper nutrition and health education. The ICDS provides an integrated approach for converging several aspects of early childhood development by including supplementary nutrition, immunization, health check-ups, pre-school education, health and nutrition education for women, referred services to children below six years of age as well as expecting and nursing mothers. The execution of the programme includes delivery of integrated package of minimum basic services - health care, nutritional nourishment and early childhood educational nurturance to children so as to reach a multitude of objectives including development of school readiness competencies and various others psycho social domains. All services under ICDS converge at the *Anganwadi*, which is the main platform for delivering these services.

4.5 The ICDS has suffered from problems of implementation, organisation and funding. A 2005 study found that the ICDS programme was not particularly effective in reducing malnutrition, largely

because of implementation problems and because the poorest states had received the least coverage and funding.³¹

4.6 The **National Early Childhood Care and Education (ECCE) Policy, 2013** envisions a holistic and integrated development of the child with focus on care and early learning at each sub-stage of the development continuum, in order to promote all-round development. The Policy acknowledges multiple models of ECCE service delivery and is applicable to all ECCE programmes like crèches, play schools, pre-schools etc. The Policy envisages an effective institutional mechanism and structure for enabling the disbursement of ECCE. However, as is the case with the other national policies, the ECCE policy is an executive policy that requires legislative sanction to ensure its continued implementation. Furthermore, it envisions several care-providers including the public, private and civil society sectors, which serves to significantly dilute the responsibility on the state, who should emerge as the primary duty-bearer. The responsibility of providing ECCE services lies with the State and it should be the primary provider of these services. Responsive care, safety and protection, early stimulation, and play-based early education under a trained care-giver in a safe environment should be made legal entitlements for the child.

4.7 The **Rajiv Gandhi National Crèche (RGNC) for Working Mothers Scheme, 2013** provides assistance to NGOs for running crèches for babies (0-6 years) and provides for sleeping facilities and pre-school

³¹Michael Lokshin, Monica Das Gupta, Michele Gragnolati and Oleksiy Ivaschenko (2005). "Improving Child Nutrition? The Integrated Child Development Services in India" (PDF). *Development and Change* 36 (4): 613–640.

education for children.³² Government assistance in this programme is limited and it envisages participation of voluntary institutions. However, a study on RGNC reports that the infrastructural facilities, cooking facilities and sleeping facilities have been poor, and that the lack of proper flow of funds from government to implementing agencies has contributed to its low popularity.³³

4.8 The experience of most of these policies and schemes has shown that the problems arise at two levels. At the first level problems arise due to lack of harmonising service standards and of delivery norms across different sectors and activities. The needs of children are multi-sectoral and indivisible in nature and most of these policies and schemes are fragmented. It has proved very difficult to ensure needed coordination between various ministries involved such as the Ministry for Women and Child Development, Ministry of Human Resource Development, Finance Ministry, Health Ministry. It has also been difficult to achieve convergence between regulatory, financial and operational wings of the Government to ensure the effective implementation of various schemes and programmes. Implementation of the Government's policies can be achieved if the legal framework lays down provisions for institutional mechanisms to ensure governance and convergence. The most direct method to achieve this would be to consolidate the different areas of early childhood development into a single institutional framework with a legislative foundation. At the second level one problem which is formidable is that these being policies and programmes constitute

³²Rajiv Gandhi National Crèche Scheme for Children of Working Mothers, Government of India, available at <http://wcd.nic.in/rajivgandhicrechescheme.pdf>, 27th July, 2015.

³³ Performance of Rajiv Gandhi National Crèche Scheme for Children of Working Mothers, Planning Commission, Government of India, 2013.

only promises or actions which may be pursued by the administration and thus lack legal enforceability. In this context, it is important to note that a law is different from a government programme or scheme. It is entirely within the legitimate powers of any democratically elected government to make, amend or withdraw any scheme. But once it becomes a law, this executive freedom is curtailed. It can, however, choose to make more provisions than the law prescribes, but no less. This indeed is the rationale for creating a legal framework of enforceable social and economic rights. Just as constitution binds all governments, regardless of their ideologies and predilections to respect all political freedoms, socio-economic rights legislations and binding.

CHAPTER - V

HEALTH AND NUTRITION

5.1 Health and nutrition is the primary area of concern for the young child. For there to be any possibility of growth and of any kind of learning or psychosocial development, the basic requirement of access to healthcare and adequate nutrition needs to be fulfilled. The right to nutrition and healthcare in fact constitutes the most basic and foundational right of children. Millions of children die every year from preventable diseases and infections and lots are at risk of becoming malnourished.³⁴ Due to inadequate nutrition especially in the critical period of 0-6 years, discrimination in food based schemes and restricted access to health facilities, many children are unable to realise their development potential in terms of both physical and intellectual growth. While the significance of health and nutrition for children and the problems and challenges involved on this front have found mention in numerous studies as well as in several government schemes, there are not enough specific legal entitlements created in favour of young children. Absence of legally enforceable entitlements makes children especially under-sixes more vulnerable to neglect and discrimination. As discussed earlier the constitutional and international framework as well as the current global context make it essential for India to remove this weakness and vagueness by creating legally binding entitlements in favour of children especially those under-sixes.

³⁴<http://www.childlineindia.org.in/child-health-and-nutrition-india.htm>

A. Central Legislative Enactments

5.2.1 Despite the constitutional mandate and desire as expressed in Articles 15(3), 39(f), 45 and 47, and also in various legislations specifically dealing with children such as **the Prohibition of Child Marriages Act 2006**, the **Juvenile Justice (Care and Protection of Children) Act, 2000**, the **Commissions for Protection of Child Rights Act, 2005** and the **Children Act, 1960**, there is no fully entrenched legal right to 'healthcare' and 'adequate nutrition' for young children. Considerable progress has been made in several other fields, but much remains to be done in regard to health and nutrition so far as young children are concerned. In *Sheela Barse v. Union of India*³⁵ the Supreme Court held that "*The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our large purpose of reducing inequality and ensuring social justice.*" The Supreme Court further stated that "*A child is a national asset and, therefore, it is the **duty** of the State to look after the child with a view to ensuring full development of its Personality*". Despite this acknowledgement by the apex court, there is no Central statutory framework that expressly deals with child's right to health. No doubt there are some legislations have impact on health and nutrition status of young

³⁵Sheela Barse v. Union of India, 1986 SCALE (2)230

children. Following paragraphs are an attempt to look into and reflect upon some of these laws.

5.2.2 Health, especially the reproductive health of the mother and the health of the infant child are closely related. Recognizing this close relationship the Apex Court in a petition (popularly known as petition for right to food) filed by the PUCL held Central and State Government responsible for providing ICDS services including supplementary nutrition, nutrition and health, education, etc. not only to every child under the age of six but to pregnant women and lactating mothers as well – a clear endorsement of binding relation of mother and child’s health³⁶. Further recognizing the special needs of pregnant and lactating mother and its relation to child’s health that in Section 4 of the **National Food Security Act, 2013** has made provisions entitling such women to “meal, free of charge during pregnancy and six months after the child-birth, through local *Anganwadi*, so as to meet the nutritional standards specified in Schedule II of the Act.”

5.2.3 **The Maternity Benefit Act, 1961** is an important piece of legislation that relates to the issue at hand. We will deal with this Act here very briefly as its detailed discussion appears in later chapter of this study. One of the major objectives of this legislation is providing complete health care to the women and her child when she is not able to perform her duty due to her health condition. There is need for maternity benefits so that a woman is able to give quality time to her child without having to worry about whether she will lose her job and her source of income.

³⁶ *People’s Union for Central Liberties v. Union of India and Ors.*, Writ Petition No. 196 of 2001 order dated 13th December, 2006

5.2.4 Section 2 of the Act provides maternity benefits to women working in factories, mines, the circus industry, plantations and shops or establishments employing 10 or more persons except employees who are covered under the Employees' State Insurance (ESI). The Act provides for paid maternity benefits for a maximum of twelve weeks, i.e., of six weeks prepartum and six weeks postpartum.³⁷ The Maternity Benefit Act makes it the responsibility of employers to provide for maternity benefits to the women in their employment. Oftentimes, employers avoid employing women in factories and other spaces, owing to these additional responsibilities that accompany such employments. This law only provides benefits to women employees working in certain specified establishments and completely exclude women in the unorganized sector.

5.2.5 Consequent to the Sixth Central Pay Commission relating to Maternity Leave and Child Care Leave, the provisions of the Central Civil Services (Leave) Rules, 1972 (CCS Rules) was amended so as to provide for maternity leave for 180 days³⁸. The CSS Rules also provide for paternity leave for 15 days during the confinement of the employee's wife for childbirth.³⁹ This is a progressive step taken by the Indian Government, but the Rules cover a very small section of people, i.e. Government servants appointed to the civil services and posts in connection with the affairs of the Union.⁴⁰ There is need to consider that the Maternity Benefit Act is amended in accordance with the forward looking provisions in the Central Civil Services Rules, whereby maternity benefits should be increased from

³⁷ Section 5(3), Maternity Benefit Act, 1961

³⁸ Rule 43 CSS Rules

³⁹ Rule 43-A CSS Rules

⁴⁰ Rule 2, CSS Rules

twelve weeks to 180 days. Provision of maternity benefits should be made obligatory on the State and not left to the will of the employers and should cover all women, including women working in the unorganized sector.

5.2.6 The **Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992**, is an important enactment from the point of view of protection of infant health. As stated in its preamble, the Act was adopted to regulate the production, supply and distribution of infant milk substitutes, feeding bottles and infant foods. In the statement of objectives presented in Parliament during the discussion of this Act, it was pointed out: *“Inappropriate feeding practices lead to infant malnutrition, morbidity and mortality in our children. Promotion of infant milk substitutes and related products like feeding bottles and teats do constitute a health hazard...”*⁴¹ Acknowledging the importance of breastfeeding, the Act sought to prohibit any kind of promotion of infant milk substitutes, feeding bottles and infant foods to protect breastfeeding from commercial influences; educate pregnant women and lactating mothers about breastfeeding to create awareness about the benefits of breastfeeding.⁴² In order to ensure effective implementation of this Act, as amended in 2003, the National Steering Committee on

⁴¹ Protecting IMS Act: Balancing Trade Interest and Child Health, available at <http://indianpediatrics.net/mar2005/mar-211-213.htm>

⁴² Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992, Section 7- Educational and other materials relating to feeding of infants to contain certain particulars. (1) Every educational or other material, whether audio or visual, dealing with pre-natal or post-natal care or with the feeding of an infant and intended to reach pregnant women or mothers of infants shall include clear information relating to-- 5 (a) the benefits and superiority of breast-feeding; (b) the preparation for, and the continuance of, breastfeeding; (c) the harmful effects on breast-feeding due to the partial adoption of bottle feeding; (d) the difficulties in reverting to breast-feeding of infants after a period of feeding by infant milk substitute;...

Breastfeeding and Infant and Young Child Feeding was constituted in 2013 to review the progress on enforcement of the Act and suggest corrective measures for its effective implementation.⁴³ No doubt the Act constitutes a positive step in the direction of protection of health of children but the provisions are applicable to infant food for the 0-2 years age group only while in practice even children above 2 and below 6 are given all kinds of products and thus resulting vulnerability to their health.

5.2.7 In our context, the **National Food Security Act (NFSA), 2013** constitutes one of the most important step in the positive direction. This Act significantly recognizes the different needs at different stages of childhood and specifically uses the word “entitlements”. Under Section 5 of the Act, the entitlements for nutritional needs include the following: *“(a) in the case of children in the age group of six months to six years, age appropriate meal, free of charge, through the local Anganwadi so as to meet the nutritional standards specified in Schedule II: Provided that for children below the age of six months, exclusive breast feeding shall be promoted”*. Section 6 provides that *“The State Government shall, through the local Anganwadi, identify and provide meals, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified in Schedule II.”* The Act also recognizes the special needs of pregnant and lactating women. Section 4 provides that these women shall be entitled to *“a) meal, free of charge, during pregnancy and six months after the child birth, through the local Anganwadi, so as to meet the nutritional standards specified in Schedule II”*. The Supplementary Nutrition Rules, 2015, have

⁴³ Press Information Bureau, Government of India, Ministry of Consumer Affairs, Food & Public Distribution <http://pib.nic.in/newsite/PrintRelease.aspx?relid=103199>

made provision for different categories of beneficiaries under the ICDS, including children in the age group of six months to six years. The Rules are primarily designed to bridge the gap between the recommended dietary allowance and the average daily intake, and also lay down rules for monitoring and enforcing quality standards for meals.

5.2.8 No doubt above is a positive development in regard to health of young children but those involved in field feel that there is need for clear and greater details of how the provisions are to be implemented. It is pointed that for instance, under Section 6 that provides that the State Government shall, through local *Anganwadi*, identify and provide free of charge to children who suffer from malnutrition so as to meet the nutritional standards specified in Schedule-II. There is need to make adequate provisions or guidelines for identification of children suffering from malnutrition and proper mechanisms for referring children suffering from acute malnourishment to appropriate healthcare providers. Similarly, Section 4(b) that provides “that subject to such schemes as may be framed by the Central Government, every pregnant woman and lactating mother shall be entitled to maternity benefit of not less than rupees six thousand, in such instalment as may be prescribed by the Central Government, however, those in regular employment of the Central Government or State Government or Public Sector Undertakings shall not be entitled to such benefits. No doubt it is good intend law, but the modalities for putting this into practice have not been spelt out and thus it is needed to provide these modalities. Finally, it is recommended that there be a provision so that the nutrition recommendations in Schedule II could be regularly revised in keeping with the latest scientific

studies based on calorific value, age, sex and food items (grains, milk, fruit, vegetables).

5.2.9 Further, as the above provisions of the NFSA are required to be implemented by the Centre and the States working together, and the political consensus to cooperate on this issue has not been fully manifest, neither level has taken sufficient responsibility for implementation, which has thus been inadequate. Another relevant aspect from the point of view of the right to ECD is that the provisions for the entitlements of young children figure in the same legislation as the entitlements for adults. Keeping in mind that children up to the age of six form a distinct category in themselves, creating a separate regime of justiciable rights for them would not only bring more focused and effective implementation but would also ensure proper allocation of resources. Half-hearted approach becomes more evident when one notes that only 11 States and Union Territories have implemented the NFS, 2013 and thus the beneficiaries and in our case young children have remained out of reach of whatever positive is created through this legislation.

5.2.10 Just as is the case with food security laws, other existing laws that are applicable to young children approach them as a subset of another target group or as part of the general population. For instance, the **Persons with Disabilities Act (PDA), 1995**, urges governments and local authorities to “*take measures for pre-natal, parental and post-natal care of mother and child*”.⁴⁴ This is important because the right to ECD ought to be a universal right accorded to all children, and children with disabilities require a special focus in order to make rights accessible to them. Here again, a

⁴⁴ Section 25(f), Persons with Disabilities Act, 1995.

legislative enactment focusing on young children as a group with special provisions for children with disabilities and undernourished children would help ensure better protection for them. Just as in the case of the NFSA, the PDA has faced problems in implementation which have reduced its effectiveness across all of its target population, and its usefulness as a legal mechanism furthering the rights of young children has suffered as a result. A legislative classification of young children under 6 years as a discrete group with specific entitlements deserves serious consideration.

B. State Legislation Enactments

5.3.1 Among other State laws, the **Assam Public Health Act, 2010**, specifically provides for a “right to health” (Section 5) -this is a general right that will also cover the rights of young children in the under-6 years age-group. An example of a State level child welfare statute is the **Goa Children's Act, 2003**, which calls for the State to ensure that children are protected against any form of abuse, exploitation and neglect and children receive special attention with regard to education.⁴⁵The Act defines “child” as someone under the age of 18 years. Section 3(4) states that *‘raising the level of nutrition and the standard of living as well as the improvement of public health as among States primary duties’* is a ‘right of a child’. Further, Section 5 of this Act specifically deals with Health & Nutrition and demands the state to universalize all vaccines and immunizations, to provide crèches and day care centres for infants and children of working mothers in all sectors of employment, to take preventive measures

⁴⁵The Goa Children's Act, 2003, available at; <http://childlineindia.org.in/CP-CRDownloads/Goa%20children%27s%20act%20and%20rules.pdf>

against the spread of diseases such as AIDS and terminal illness such as cancer, and to strive to reach higher standards for children by protecting them from malaria and from all avoidable illness and diseases.⁴⁶ It further instructs medical institutions, clinics, hospitals and nursing homes to not reject admission or treatment of a child or pregnant mother who has any illness or disease or ailment which has a social stigma attached with it, such as leprosy, AIDS, etc., and any contravention of this section is punishable with a fine which may extend to Rs. 50,000/-.⁴⁷

5.3.2 Even though Chapter VIII of the **Madras Public Health Act, 1939** (MPHA), provides for Maternity and Child Welfare under S. 82 stating that “*Every local authority shall be bound to carry out such measures pertaining to maternity and child welfare as may be prescribed*”⁴⁸, the State has not passed any rules to implement this Section. The only Rules the state enacted were the Rules for Vaccination in Rural Areas Under s. 81, 1964 (of MPHA), which defined "Child" as a boy or a girl who has not attained the age of 18 years and dealt specifically with vaccinations alone, sidelining the subject of nutrition. Various other such state rules as the Himachal Pradesh Vaccination Rules, 1973, Maharashtra Vaccination Rules, 1966 etc., do mention vaccination of children, which is one of the most successful health interventions and can bring about significant reductions in infectious diseases and adverse health consequences and improve quality of

⁴⁶<http://childlineindia.org.in/Goa-Children-Act.htm>

⁴⁷ Supra note 9.

⁴⁸ The Madras Public Health Act, 1939, available at http://www.sanchitha.ikm.in/sites/default/files/MadrasPublicHealth_%20Act1939..pdf

life⁴⁹; however, they do not deal with health and nutrition of young children as a legal right.

5.3.3 Thus, very few States have enacted legislative provisions with regard to health and nutrition for children, and even these have not focused on the specific rights of younger children. There are no provisions at all in the laws of most States. The nation clearly faces a statutory vacuum at both the State and the Central level.

C. National Schemes relating to Health and Nutrition

5.4.1 As has been discussed earlier in this work the importance of children's health and nutrition has indeed been recognised by the Central Government at the policy level. The **National Policy for Children, 1974** recognised that programmes for children should find prominent place in national plans for the development of human resources. It laid down that the State shall provide adequate services towards children, both before and after birth and during the growing stages for their full physical, mental and social development. The measures suggested include a comprehensive health programme and supplementary nutrition for mothers and children, free and compulsory education for all children up to the age of 14 years, promotion of physical education and recreational activities protection of children from neglect, cruelty and exploitation, etc. The **Integrated Child Development Services (ICDS)** scheme, launched under the 1974 Policy, is a comprehensive scheme

⁴⁹ National Vaccine Policy, Ministry of Health and Family Welfare, Government of India, April 2011 available at http://www.nhp.gov.in/sites/default/files/pdf/NATIONAL_VACCINE_POLICY.pdf

showing India's realisation of the importance of ECD. It adopted a holistic approach converging several aspects of early childhood development by including supplementary nutrition, immunization, health check-ups, pre-school education, health and nutrition education to women, referred services to children below six years of age as well as expecting and nursing mothers. The **National Policy for Children, 2013** was adopted to affirm the Government's commitment to the rights based approach in addressing the continuing and emerging challenges in the situation of children. The key priorities and undeniable rights of every child under the policy of 2013 are survival, health, nutrition, development, education, protection and participation.

5.4.2 The **Draft National Health Policy, 2015**⁵⁰ in Section 3.3.3, mentions among its objectives the provision of access to primary healthcare services as an "entitlement": "*Assure universal availability of free, comprehensive primary health care services, as an entitlement, for all aspects of reproductive, maternal, child and adolescent health...*" considering nutrition as one of the priorities the government has launched various initiatives relating to nutrition, such as the **Applied Nutrition Programme, 1963-64** that was initiated to arrange nutritious food for pre-school children, expectant and nursing mothers, and the **Special Nutrition Programme, 1970** which provided for a high protein and nutritious diet to children below six years and pregnant and nursing mothers.

5.4.3 The **National Nutrition Policy, 1993** advocated a multi-sectoral strategy for eradicating malnutrition and achieving optimum nutrition for all. It affirmed that "*nutrition affects development as much as*

⁵⁰ <http://www.mohfw.nic.in/showfile.php?lid=3014>

development affects nutrition". It recognized children below 6 years as nutritionally vulnerable and one of the "high risk" groups and accorded highest priority to them through policy articulations and programmatic interventions. The problem of malnutrition was envisaged to be tackled through direct nutrition intervention and also through conditions created for improved nutritional status ⁵¹ . The **Nutritional Programme of Nutritional Support to Primary Education, 1995** was initiated with the objective to promote universalization of primary education and also to improve the nutrition of children in primary classes where food grains (rice/wheat) at the rate of three kg per student per month was distributed subject to a minimum of 80 percent attendance in primary class. The **National Population Policy, 2000** acknowledged the health of children as a dynamic medium for population stabilization. Thereafter, the **National Health Policy, 2002** noted that: "*Another area of grave concern in the public health domain is the persistent incidence of macro and micro nutrient deficiencies, especially among women and children. In the vulnerable sub-category of women and the girl child, this has the multiplier effect through the birth of low birth weight babies and serious ramifications of the consequential mental and physical retarded growth.*"⁵² The **National Charter for Children, 2003**, adopted on 9th February 2004, was to reiterate the commitment to the cause of the children in order to see that no child remains hungry, illiterate or sick. It underlined the intent to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and

⁵¹http://portal.unesco.org/education/en/file_download.php/20bd37d284a34d514aef4611b6b88ad8India.pdf

⁵² Section 1.7, National Health Policy, 2002.

http://www.nhp.gov.in/sites/default/files/pdf/National_Health_Policy.pdf

development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the nation. The **Wheat Based Nutrition Programme**, tied to ICDS, provides food grains for preparation of supplementary nutrition to be distributed among the beneficiaries of the ICDS. The **National Food Security Mission has been launched in 2007** with the objectives of :1) to increase production of rice and pulses through area expansion and productivity enhancement in a sustainable manner; 2) to restore soil fertility and productivity at the individual farm level; 3) to create employment opportunities and; 4) to enhance farm level economy.

5.4.4 Several States have initiated their own schemes to deal with health and nutrition of young children. Maharashtra was the first state in the country to take a decision to tackle malnutrition in 'Mission – mode' under the Rajmata Jijau Mother-Child Health & Nutrition Mission in 2005, which aims at reduction of child malnutrition by focusing on the first 1000 days from conception, i.e. the period of -9 to 24 months.⁵³In 2012, the Government of Maharashtra commissioned the first-ever state-wide nutrition survey, Comprehensive Nutrition Survey, to assess progress of the mission.⁵⁴ Results indicated that there was a remarkable decrease in the percentage of stunting in children under the age of 2. Improvement was associated with changes in how children were taken care of and fed, the attention their mothers received and the surroundings in which they lived. However, the provisional results of the survey revealed that in spite of

⁵³<http://nutritionmissionmah.gov.in/Site/Home/Index.aspx>

⁵⁴ Improving Child Nutrition - The Achievable Imperative For Global Progress, United Nations Children's Fund (UNICEF) 2013, available at http://www.unicef.org/gambia/Improving_Child_Nutrition_-_the_achievable_imperative_for_global_progress.pdf

more frequent meals, very few received a minimal acceptable diet and few were fed an adequately diverse diet rich in essential nutrients to ensure their optimal physical growth and cognitive development.⁵⁵

5.4.5 It emerges from the above that the Central and State governments have been aware of the significance of health and nutrition for young children, but that this has only been recognised at the executive level through various schemes and in general policy objectives. Being so the approach towards ensuring needs relating to health and nutrition to young children as has been seen earlier in the Chapter dealing with National Policies and Schemes remain vague, weak and uncertain. However, both the constitutional mandate and the international legal framework require *legislative* action that will create proper entitlements for the 0-6 age group. It is unfortunate that no concrete legislative provisions have been enacted so far.

D. Perspectives from other jurisdictions

5.5.1 A rights-based approach has indeed been adopted by some other developing nations where - due to various social, cultural and economic reasons - the position of children in society and their access to basic amenities has been unsatisfactory. Article 227 of the Brazilian Constitution declares: *“It is the duty of the family, the society and the State to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.”* This emphatic constitutional

⁵⁵ Ibid.

imperative has been given detailed shape through legislation. The Child and Adolescent Statute, 1990 is a unique example of a legislative initiative that treats all children as one group and grants them rights by virtue of their belonging to that group without any separate criteria of classification. Health, nutrition, care and education are all considered essential for the child's well-being, and specific rights are provided for; special implementing policies and executive bodies to implement them have been created under the Statute. Further, later legislation reinforced several of the rights granted by the Statute and addressed issues that needed special attention. There was thus a concerted legislative and political effort to create a comprehensive system of children's rights under an umbrella legislation and backed by efficient implementation mechanisms.

5.5.2 The Philippines ECCD Act, 2009 ⁵⁶ (now replaced: see below) provided an example of an integrated ECD statute focusing on the 0-6 age-group. Section 3 of the Act listed its objectives, which are extremely comprehensive and cover all aspects that need to be covered in an ECD legislation: *“(a) To achieve improved infant and child survival rates by ensuring that adequate health and nutrition programs are accessible to young children and their mothers from the prenatal period throughout the early childhood years; (b) To enhance the physical, social, emotional, cognitive, psychological, spiritual and language development of young children; (c) To enhance the role of parents and other caregivers as the primary caregivers and educators of their children from birth onwards; (d) To facilitate a smooth transition from care and education provided at*

⁵⁶<http://www.eccdcouncil.gov.ph/cmsms/uploads/downloads/RA%208980%20ECCD%20Act.pdf>

home to community or school-based setting and to primary school; (e) To enhance the capabilities of service providers and their supervisors to comply with quality standards for various ECCD programs; (f) To enhance and sustain the efforts of communities to promote ECCD programs and ensure that special support is provided for poor and disadvantaged communities; (g) To ensure that young children are adequately prepared for the formal learning system and that both public and private schools are responsive to the developmental needs of these children; (h) To establish an efficient system for early identification, prevention, referral and intervention for developmental disorders and disabilities in early childhood; and (i) To improve the quality standards of public and private ECCD programs through, but not limited to, a registration and credential system for ECCD service providers.”

5.5.3 It is significant to note that the Early Childhood Care and Development (ECCD) System under the Philippines ECCD Act, 2009 referees to the full range of health, nutrition, early education and social services programs that provide for the basic holistic needs of young children from birth to age six, to promote their optimum growth and development. The Act declared the policy of the State to promote the rights of children to survival, development and special protection with full recognition of the nature of childhood and its special needs; and to support parents in their roles as primary caregivers and as their children's first teachers. It proposed to institutionalize a National System for Early Childhood Care and Development (ECCD) that was comprehensive, integrative and sustainable, and that involves multi-sectoral and inter-agency collaboration at the national and local levels among government; among service providers, families and communities; and among the public and private sectors,

non-government organizations, professional associations, and academic institutions. The strategies for ECCD include service delivery for children from conception to age six, educating parents and caregivers, encouraging the active involvement of parents and communities in ECCD programs, raising awareness about the importance of ECCD, and promoting community development efforts that improve the quality of life for young children and families.

5.5.4 The National System was coordinated under an ECCD Council created by ordinance pursuant to the Act's provisions. The Council was charged with implementing the Act, and was thus a centralised authority with a clear mandate, clear mechanisms for operation and funding, and a clear allocation of responsibilities in order to create accountability and transparency. The 2009 legislation was replaced by the Early Years Act, 2013⁵⁷, which expanded the overall focus to the 0-8 age group while giving the Council a special role in the development of the 0-4 group. Apart from this modification, the general goals and objectives under the two statutes are similar.

5.5.5 The Philippines thus has a comprehensive and detailed legislative framework for ECD. It is suggested that this could be an effective model from which to seek inspiration for an Indian legislation, while retaining the focus on the 0-6 age-group. As seen above, the Philippines framework sets out in great detail the various implementing mechanisms and their powers and modes of operation for realising its objectives, and has created a central Council for ECCD to oversee the functioning of these mechanisms and to ensure that the regulatory objectives are achieved. Thus, just like in the

⁵⁷<http://www.gov.ph/2013/03/26/republic-act-no-10410/>

case of Brazil, there is a comprehensive legislative framework creating entitlements for young children combined with detailed provisions for implementation. The Philippines' ECCD Council is a statutory authority that has both the power and the responsibility to ensure that the necessary steps are taken to promote the right to ECD. This is the ideal approach to take for entrenching the Right to ECD. Taking cue from experiences of Philippines and Brazilian systems and adopting them in Indian context the time is ripe for India, rather it is needed to create a full range of legal entitlements with regard to health, nutrition, care, early education and social services in favour of all children especially for children below six years.

5.5.6 Also looking to integrated nature and complexities involved in the idea of ECD and more so keeping in view that various schemes operating in India represent fragmented approach making coordination, monitoring and universality of quality and standards of services, a huge and formidable change that an institution or council like in Philippines could be constituted. The Council may have representatives from Ministry of Health, Ministry of Human Resources Development, Ministry of Women and Child Development, Ministry of Labour, Ministry of Industry apart from representatives of those working actively on the issues relating to child. Professions like law, medical and other be also brought on the proposed Council. One of the major task for such a Council could be to evolve Standards which could be universally applied, cutting across various schemes and programmes.

CHAPTER – VI

CARE AND EDUCATION

6.1 Early Childhood Care and Education (ECCE) refers to the simultaneous inputs of care and opportunities for psycho-social development and learning in an enabling environment for all children, from birth to six years of age. It is important to focus on law and policy for this group, considering mortality or malnutrition of children under six. The National Family Health Survey (2005-06) indicates that 48% of children under five are stunted and 43% are underweight for their age.⁵⁸ Before proceeding it is important to stress right at the beginning that any project, scheme or law aimed at ensuring ECCE it needs to be based on the principle of equity, access for all children to quality services and State responsibility.

6.2 The Supreme Court, in *Unni Krishnan v. State of Andhra Pradesh*⁵⁹, held that the right to basic education is implied within the fundamental right to life (Article 21), when read in conjunction with the directive principle on education (Article 41). The Court held that the parameters of the right must be understood in the context of the Directive Principles of State Policy, including Article 45, which provides that the state is to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for *all children* under the age of 14. The 165th Law Commission Report (1998) reaffirmed this principle, emphasizing the need for free and

⁵⁸ Children in India, 2012- A statistical Appraisal, Social Statistics Division, Central Statistics Office, Ministry of Statistics and Programme Implementation, Government of India, p. 10

⁵⁹ 1993 AIR 2178

compulsory education for all children up to the age of 14 years.

6.3 Even though the Law Commission and the Saikia Committee⁶⁰ recommended making education free and compulsory for all children *upto* the age of 14, the Secretary of Education, in its statement to the Parliamentary Standing Committee⁶¹ stated that the Department thought that the right to education, as a justiciable fundamental right, could only be enforceable in the age-group of after 6 years, when one enters the a formal system. Prior to that, even though education is very essential, it is entirely a different exercise and unenforceable as a fundamental right.

6.4 The Parliamentary Standing Committee stated that an infant's education in the age group 0-6 is an enormously complicated one. Much of the education imparted in this age group is non-formal through the mother and it is difficult to standardise it and therefore difficult to make a justiciable Fundamental Right. The Committee recommended that it would be feasible only to provide for free education to children of 6 to 14 years as a fundamental right. They added a further recommendation that Article 45 should be seen as complimenting Article 21A and Directive Principles should be followed wherever possible.⁶²

6.5 Consequently, the 86th Constitutional Amendment (2002) amended Article 45⁶³ thereby

⁶⁰ Report of the Committee of State Education Ministers constituted to examine implications of making the right to free and compulsory, elementary education a Fundamental Right dated 14th January, 1997.

⁶¹ Report of the Parliamentary Standing Committee on Human Resource Development Presented to both Houses of the Parliament on 24.11.97 at <http://www.educationforallindia.com/page144.html>

⁶² *Id*

⁶³The Constitution (Eighty-Sixth Amendment) Act, 2002: "Article 45. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

retaining right to early childhood care as a Directive Principle of State Policy. It created a further category of right to education for children between the ages of six to fourteen by introducing Article 21A, which provides that *“the state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as State may by law determine”*. This Amendment, however, has resulted in a failure to address the need for education of children under six by leaving them out of the education fold under Art. 21A. It is recommended that Article 21A be amended to read as, *“the state shall provide free and compulsory education to all children in such a manner as State may by law determine”*

6.6 The NCRWC had recommended inclusion of a new provision, which read as, *“to foster a spirit of family values and responsible parenthood in the matter of education, physical and moral well-being of children”* to Article 51A of the Constitution so as to make it the responsibility of the parents to discharge their fundamental duty to take care and provide for their children. Later, the same year, the 86th Amendment Act introduced Article 51 A (k) enjoining a parent or guardian to provide opportunities for education to a child or ward between ages of six – fourteen years. Even though the Constitution now considers it a citizen’s fundamental duty to provide educational opportunities for children under his/her care, this duty is limited to children between the ages of six to fourteen. It is recommended that this qualification for age may be removed and the Constitution be amended so Article 51 A(k) can read as, It shall be the duty of every citizen of India *“who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward under his care”*.

6.7 The only existing central legislation, which deals with early learning, is **The Right to Free and Compulsory Education Act, 2009**. Section 11 of the Act states, “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”. Although this is a laudable goal, the provision is not mandatory, and merely offers State Governments the option of providing education for children above the age of three years. Without a mandatory clause, there can be no accountability and clarity as to when and how the State Governments can be enjoined to make necessary arrangements and leaves education for children under six subject to the vagaries of political will. Provisions in section 11 should be made mandatory and should read as “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 *shall* make necessary arrangement for providing free pre-school education for such children”

6.8 Among the States, only Kerala explicitly provides for free and compulsory education for children under six years of age. Rule 6(11) of the **Right of Children to Free and Compulsory Education Rules, 2010. RTE Rules** provides “The state government and the local authority shall provide free and appropriate pre-school education based on a Pre-primary Education policy that shall be formulated by the state government, to all children above the age of three years till they complete six years so as to prepare them for elementary education. For this, Pre-school Centres shall be

established in all government and aided schools in a phased manner within three years from the date of notification of the Rules. A unified child-friendly curriculum shall be developed by the academic authority for these centres, which shall have linkages with the *Anganwadies* for providing ICDS services to all the children. The minimum academic and professional qualification of pre-primary teachers shall be as prescribed by the National Council for Teacher Education.” Rule 8(1)(e) requires the State Government to “ensure quality in pre-primary teacher and elementary teacher training courses by revising the pre-service pre-primary and elementary teacher training curriculum in consonance with the pre-primary and elementary school curriculum every five years.” Rule 8(3) further mandates, “The State Government shall in consultation with other academic authorities prepare Scheme(s) to provide pre-service and in-service training of teachers of pre-primary schools and functionaries of *Anganwadi* centres and of teachers in government, aided and unaided schools, including a monitoring mechanism designed in accordance with the standards of training.”

6.9 Although all other states have adopted RTE Rules in accordance with section 38 of the Right to Education Act, 2009, little thought has been given to children under six years of age. It is clear the section 11 of the RTE Act continues to be a mere provision on paper. States have not attempted to realize the aspiration of the provision. Rules established by all States define *Anganwadis* as “an *Anganwadi* Centre established under the Integrated Child Development Services Scheme of the Ministry of Women and Child Development of the Government of India”, but these Rules have not elaborated on the minimum requirements applicable. Further, The **Andhra Pradesh**

Right of Children to Free and Compulsory Education Rules 2010 define ECE, as “Early Childhood Care Centres established by Sarva Siksha Abiyan in the premises of primary schools or elsewhere to provide pre-school education to the children in the age group of 3-5 years” without elaborating on ECE services or providing for minimum requirements for ECE services. These Rules are silent on the quality of education and care to be provided by Pre-primary schools and *Anganwadis*. There should be a reference to quality of education in the Rules. Education for children under six must mean quality education and care to prepare them for elementary school and anything less than that should not be called education. Therefore, it is worth considering that whether the Rules established by all States should follow the Kerala model and prescribe for minimum standards applicable for Pre-primary education with an emphasis on the *Anganwadi* structure.

6.10 Institutional care for children under six has been provided through the provisions of crèche facilities and day care. Crèches are important means for ensuring care to children while parents are at work or are unable to care for them due to illness or otherwise. Crèches are meant to ensure protection of children under an able care-provider and provide adequate age-appropriate recreational facilities. In **Finland**, after the enactment of the *Act on Children’s Day Care of 1973*, the obligation to organise day care for children under school age rests with the local authorities. The local authorities may provide day care either in day care centres or in the form of family day care. Since 1990, parents have enjoyed an unconditional right to day care for children under three years of age either in municipal day care or by receiving child home care allowance in order to care for their children at home. Since August

1997, it has been possible for families to receive private child-care allowance for providing their children with private care.⁶⁴ The introduction of statutory right to childcare provides equal opportunity for all young children to be in an institutional system of care by the state.

6.11 Crèche facilities are, within the Indian context, provided through a range of legislations, which are sectoral, with little uniformity, and can only be availed by women employees working in the organized sector. These statutory provisions for crèche facilities under various legislations were added to reduce occupational segregation and encourage flexible working for women. But women workers in the unorganized sectors such as street vendors, rag pickers, head load workers, garment workers, agricultural labourers are not able to avail the statutory benefit of crèche facilities for their children.

6.12 For example, **The Factories Act, 1948** mandates any establishment with more than 30 women workers to establish crèche facilities for care of children and infants. The onus of providing crèche facilities is on owners of such establishments, who are required to provide adequate clean and sanitary accommodation under a trained caregiver.⁶⁵ The provisions relating to crèche are also given under Section 14 of the **Beedi and Cigar Workers Act, 1966**, Section 44 of the **Inter State Migrant Workmen (RECS) Act, 1979**, Rule 25 (vi) of the **Contract Labour (R&A) Central Rules, 1971**,⁶⁶ Section 35 of the **Building And Other**

⁶⁴ Early Childhood Education and Care Policy in Finland, Background Report prepared for the OECD Thematic Review of Early Childhood Education and Care Policy, May, 2000

⁶⁵ Sec. 48, The Factories Act, 1948

⁶⁶ The required number of women workers is 20 or more both under the Inter State Migrant Workmen (RECS) Act, 1979 and Contract Labour (R&A) Central Rules, 1971

Construction Workers(RECS) Act, 1996 (*the number of required women workers are fifty or more*), Section 8 of the **Plantation Labour Act, 1951**.⁶⁷ One of the detailed labour law regulations about crèche is the **Mines Crèche Rules, 1966**,⁶⁸ where rules elaborate on standards of crèche, including the structure of the room, ventilation, flooring, sanitation, latrines and bathrooms for children, provision of staff, medical arrangement, diet of children etc. The Rules also require the crèche to be open while the women are at work, irrespective of day or night, with adequate staff. The problem remains that these laws providing for crèche facilities are exclusive and limiting as they only provide facilities for children of women employees involved in certain specified establishments and the primary providers continue to be the owners of such establishments.

6.13 Since women in unorganized sector are ousted from the benefit of statutory crèche facilities, the Rajiv Gandhi National Crèche Scheme for the Children of Working Mothers becomes important to consider. Under the Scheme, the state provides assistance to NGOs for running crèches for infants. This scheme was brought forth with the objective that working mothers from poor families requires institutional support for young children and reach of child day care services for working women in the organized and unorganized sector should be addressed. This scheme specifically provides for participation of 50% of children from BPL families. However, the scheme specifies users fee @ Rs. 20/- per child per month to be collected from children from BPL families and Rs. 60/- per child per month

⁶⁷ The number of required women workers are fifty or more both under the the Building And Other Construction Workers (RECS) Act, 1996 and the Plantation Labour Act, 1951

⁶⁸ This was enacted by the Central Government as per power conferred under Section 58 (d) of **the Mines Act**.

from other families. This provision must be reconsidered by the State as providing for young children should be a state responsibility and the payment of this fee might be difficult for single mothers and widows of poor families, considering the abysmally low payment in unorganized sector and inflated cost of living, in the current scenario. A statutory framework similar to that in **Finland** is recommended, to ensure a statutory right to childcare by the state for all young children.

6.14 **Internationally**, Philippines has a good model for early child care and education. In addition to the Philippines ECCD Act, 2009, Philippines provides for its children through the **Early Years Act, 2013**. This law recognises 0-8 years of a child's life as the first crucial stage of educational development. It mandates that the age from 0-4 years shall be the responsibility of the ECCD Council and the responsibility to help develop children in the formative years between age 5 to 8 years shall be with the Department of Education.⁶⁹ The Act requires the State to institutionalize a National system for ECCD that is comprehensive, integrative and sustainable, involving multi-sectoral and inter-agency collaboration at national and local levels, family and communities, public and private sectors, NGOs, professional associations and academic institutions.⁷⁰ Inclusive models for early child development such as those found in Philippines should be encouraged in India to provide holistic care and education to children under six.

6.15 Another legislation that is relevant from the point of view of "Care of Child" is the **Maternity Benefit**

⁶⁹ Section 2, Declaration of Policy, Early Years Act, 2013.

⁷⁰ Id.

Act, 1961. The Act is crucial with regard to health of the mother as well as the child, but it is no less important when one talks about ensuring care of child. We are conscious that many aspects of the Act have already been discussed in Chapter V dealing with “Early Childhood Development : Health and Nutrition”, yet it may not be irrelevant to reiterate some of the points already made there. After birth of child during initial period when she is unable to perform her duty due to her health condition, the child’s care would become most vulnerable if appropriate maternity benefit is not extended to her. If the woman is not able to give quality time to her child because of fear of losing job or a wage-cut the real victim would be the child. Thus keeping in view the concerns about health and proper care of mother and child a provision was inserted in the **Maternity Benefit Act, 1961** that entitles Indian women employed in factory, mine or plantation including those belonging to Government or an establishment wherein 10 or more persons are employed on any day preceding 12 months to avail the benefit of 12 weeks maternity leave.

6.16 Taking a progressive step and acting on the recommendations of Sixth Pay Commission that the Central Government has recently authorized woman employee to avail maternity leave up to 180 days⁷¹. Significantly, the memorandum issued in this regard reads “recommendations of the Sixth Central Pay Commission relating to enhancement of the quantum of Maternity Leave and introduction of *Child Care Leave* in respect of Central Government employee”. The amended rules thus provided further that women employees having minor children may be granted *Child*

⁷¹ Government of India, Department of Personnel & Training’s O.M. No.13018/2/2008-Estt(L) dated 11th September, 2008

Care leave for a maximum period of two years. There is need for States also to follow the same practice. However, more important is to ensure that the Act is amended authorizing maternity leave up to 180 days. Correspondingly, the private sector too needs to adopt these progressive measure. Although the problem would continue to remain acute and persistent in case of those women who are engaged in unorganized sector.

6.17 While 180 days of maternity leave is authorised for Central government most of the private organisation provides 90 days of maternity leave to its women employees. Women in the private sector are often hard-pressed for leave beyond the maternity break, besides the regular quota of earned, casual and medical leave. Maternity benefits are, thus open to interpretation by individual companies. There are no uniform rules for female employees in private organizations and they are treated by varying standards when it comes to essential benefits like maternity and child care leave (CCL).

6.18 To an unstarred question as recent as August of 2015⁷² in Rajya Sabha by a Member of Parliament on the future plan of government to formulate any policy or guidelines laying down minimum specifications for the provisions of paid maternity leave to women employed by organizations and companies in the private sector, the Ministry of Labour and Employment answered the query by informing about the proposal which is under consideration to increase the existing maternity leave from twelve weeks to twenty four weeks under Maternity Benefit Act, 1961 but maintained silence on formulating

⁷² Unstarred question no.-2641 by Shri Avinash Pande answered by government of India, Ministry of Labour and Employment, Rajya Sabha on 12th August 2015 available on <http://164.100.47.5/EDAILYQUESTIONS/sessionno/236/12.08.2015UE.pdf>

governmental policy or guideline extending the benefits of Maternity Benefit Act to women employed in private sector. Above clearly demonstrates the need to bring changes in Maternity law and Rules to ensure that women in private sectors are entitled to benefits at par with their counterpart in government service and public undertakings.

6.19 To conclude discussion on ECCE it is suggested that the purpose of ensuring the right to ECCE as a universal justiciable right, it is imperative that special measures are incorporated within the framework to make ECCE available to all children and age groups. Proactive identification, outreach and special measures must be taken to provide for children with disabilities or illness, terminal or incurable disease; children with parents or guardians deemed unfit or unable to take care of the child; orphaned children; children belonging to marginalized families; children who have been victims of violence and/or trafficking etc. Further, every child under six should have an unconditional right to crèche and day care, which is provided, regulated and operated by the State as provided for in the Act on Children's Day Care of 1973, Finland; trained personnel for the purpose of ensuring care to children should be given parity with primary school teachers; States should lay down quality standards and norms for curriculum to be followed at pre-school and should conduct a periodic assessment of standards at crèches; users fee from single mothers, widows, tribal mothers of BPL families under the Rajiv Gandhi National Crèche for Working Mothers should be avoided so as to actually benefit mothers from unorganized sector; care for children under six at the hands of minors should be specifically prohibited and regulated.

6.20 With respect to education, in view of the Supreme Court judgment in *Unni Krishnan v. State of Andhra Pradesh* and the aspiration behind Article 45 of the Indian Constitution, section 11 of the Right to Education Act should be made mandatory and should read as “*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 shall make necessary arrangement for providing free pre-school education for such children*”; further, keeping the Kerala RTE Rules as a model, all states should provide for pre-primary education and the provision should read as follows: “*The state government and the local authority shall provide free and appropriate pre-school education based on a Pre-primary Education policy that shall be formulated by the state government, to all children above the age of three years till they complete six years so as to prepare them for elementary education. For this, Pre-school Centres shall be established in all government and aided schools in a phased manner within three years from the date of notification of the Rules. A unified child-friendly curriculum shall be developed by the academic authority for these centres, which shall have linkages with the Anganwadies for providing ICDS services to all the children. The minimum academic and professional qualification of pre-primary teachers shall be as prescribed by the National Council for Teacher Education.*”; all states must also ensure quality teaching at the pre-primary level by adopting Rule 8 of the Kerala RTE Rules.

CHAPTER - VII

CONCLUSIONS AND RECOMMENDATIONS

7.1 The current legal and constitutional rights framework in India does not place enough emphasis on the rights of young children. The protection of early childhood development in India thus depends on Policies and Schemes created and run by the Central and State Governments. The Commission is of the opinion that the constitutional framework of fundamental rights and directive principles should reflect the special status and needs of children in the under-6 age group. Further, the Commission believes that statutory backing should be given to the existing schemes and policies in order to create legal entitlements in favour of children. This should be coupled with an integrated and holistic approach to protecting the interests of the young child, keeping in mind the need for health, nutrition, care and education as the primary inputs for early childhood development. The following recommendations are intended to achieve these ends.

- i. It is suggested that, as per the recommendation of the NCRWC, a new Article 24A be inserted to Part III of the Constitution to ensure that the child's right to basic care and assistance becomes an enforceable right. The Article should read as follows: "24A. *Every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and exploitation*"

- ii. In order to extend the right to education to children in the under-6 age group as well, Article 21A of the Constitution should be amended to read as follows: *“The State shall provide free and compulsory education to all children in such a manner as the State may by law determine.”*
- iii. Similarly, it is recommended that the fundamental duty of the parent or guardian to provide education should not be applicable only to children between the ages of six and fourteen. Article 51 A(k) of the Constitution should be amended so that the duty is placed on every citizen *“who is a parent or guardian to provide opportunities for education to his/her child or, as the case may be, ward under his/her care.”*
- iv. Section 11 of the Right to Education Act should be made mandatory and should read as follows: *“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 shall make necessary arrangement for providing free pre-school education for such children.”*
- v. It is suggested that the Maternity Benefit Act be amended in accordance with the forward looking provisions in the CCS Rules, whereby maternity benefits should be increased from twelve weeks to 180 days. Provision of maternity benefits should be made obligatory on the State and not left to the will of the employers and should cover all women, including women working in the unorganized sector.

- vi. It is suggested that government formulates policy or guidelines laying down minimum specifications of paid maternity leave to women employed in private sector.

- vii. In order to ensure proper emphasis on the promotion of early childhood development, especially keeping in view that the current approach towards ECD which is fragmented into different schemes and raises issues of lack universality in standards, monitoring and coordination (as pointed out in Chapter IV), it is suggested that a statutory authority or Council for Early Childhood Development (“the Council”) be created. The Council may be composed of officials from the Ministry of Women & Child Development, Ministry of Human Resource Development, Ministry of Finance, Ministry of Labour and Ministry of Commerce & Industry and representatives from civil society active in the field of early childhood development, and other such members as may be specified. The powers and responsibilities of the Council should be specified by law. Similar Councils to be established at State Level as well. The Philippines’ ECCD (Early Childhood Care and Development) Council may be looked at as an example and adapted to the Indian context.

- viii. The Council must be made responsible for laying down minimum universal standards for quality of services, facilities and infrastructure to be put in place across all schemes and provisions relating to early childhood.

- ix. Clear provision should be made in the law creating the Council for the allocation of budgetary resources by the Central for the Central Council and by the State for State Council.

- x. With regard to Section 6 of NFSA, there is need for evolving guidelines or some methods for identification of children suffering from malnutrition and for referring such children to appropriate healthcare providers. It is suggested that some provision be brought so that the nutrition recommendations in Schedule II of the NFSA could be regularly revised in keeping with the latest scientific studies based on calorific value, age, sex and food items. The Council may be empowered to periodically commission such studies from the appropriate research institutes or organisations.

- xi. Provision should be made for the training of teachers to provide pre-school education, and there should be a budgetary allocation to fund training programs for the same to ensure quality standards and a proper implementation of the best methods of promoting play and learning. Teachers imparting pre-school instruction should be considered at par with primary school teachers, and this should reflect in the terms and conditions of their employment. This institutional aspect is essential for ensuring that pre-school education be given sufficient importance.

- xii. It is suggested that every child under six should have an unconditional right to crèche and day care provided, regulated and operated by the State, as found for example in the Act on Children's Day

Care of 1973, Finland. The provision of crèches should be made the responsibility of the State, not of the employer, especially in the unorganised sector.

[Justice A.P. Shah]
Chairman

[Justice S.N. Kapoor]
Member

[Prof. (Dr.) Mool Chand Sharma]
Member

[Justice Usha Mehra]
Member

[P.K. Malhotra]
Ex-officio Member

[Dr. Sanjay Singh]
Ex-officio Member

[Dr. G. Narayana Raju]
Member-Secretary