MAPPING THE CONSTITUTIONAL AND STATUTORY LANDSCAPE OF EARLY CHILDHOOD EDUCATION IN INDIA

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ABSTRACT

Early Childhood Education (ECE) provides the foundation for a child's cognitive, social, emotional, and physical development, fostering lifelong learning and holistic growth. In India, early childhood encompasses the first six years of life, a critical period characterized by rapid brain development and the acquisition of foundational skills. The constitutional and educational policy framework governing ECE has evolved around the mandate of Article 45 of the Constitution, both before and after the 86th Constitutional Amendment, reflecting an increasing recognition of the significance of the early years in a child's development. However, the discretionary nature of Section 11 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) has created a significant gap between constitutional and policy aspirations and the enforceable statutory obligation to provide Early Childhood Care and Education (ECCE) for children aged three to six years. Against this backdrop, this paper critically examines the constitutional and statutory framework governing Early Childhood Education in India and evaluate its adequacy in ensuring equitable, inclusive, and universal access to quality early childhood education. This study will primarily employ a doctrinal and qualitative legal research methodology, supplemented by policy analysis.

Keywords: Early Childhood Education, Right to Education Act 2009, Article 45, policy.

Introduction

"Many things can wait. Children cannot. Today their bones are being formed, their blood is being made, their senses are being developed. To them we cannot say 'tomorrow.'"- Gabriela Mistral[1]

The early years of a child spanning from 0 to 8 years are considered as the crucial period of growth and development in a child's lifetime. Early experiences have profound impacts on their physical, cognitive, emotional and social development that extend into adulthood.[2] Every child must have the right to early childhood education as they are better prepared for primary school and can reach better education outcomes. Early Childhood Education (ECE) has gained global attention over the years as it is becoming a growing priority for equitable access to education at early age.

The United Nations Convention on the Rights of the Child (UNCRC), adopted in 1989 established the foundational global framework for Early Childhood Education (ECE). By recognizing young children as active rights-holders from birth rather than passive recipients, it reshaped the international approach to early learning. A Directive was further issued by the UN Committee on the Rights of the Child in 2005 (General Comment No. 7), explicitly for infants and young children which significantly influenced the design and implementation of modern ECE practices. A Global partnership Strategy for Early Childhood Care and Education (ECCE) was led by UNESCO based on the Sustainable Development Goals (SDG 4.2) mandate that by 2030, all girls and boys must have access to quality early childhood development, care, and pre-primary education.[3] To make this goal a reality, a transformative international political agreement was adopted on November 16, 2022 during the UNESCO World Conference on ECCE. The Tashkent Declaration and Commitments to Action for Transforming Early Childhood Care and Education (ECCE) that commits signatory nations to provide for at least one year free and compulsory quality pre-primary education for all children and upgrade the national legal system to ensure such rights.

Every country has its own pace for developing and improving its legal standards and India being a signatory to the above discussed agreement has been working towards prioritizing ECE over the years. The Constitution of India through the Directive Principles of State Policy empowers the state to enact provisions for the protection of children and provide opportunities for their holistic development. To explore the importance of ECE, this paper briefly examines

the Constitutional background, legislative enactments, schemes, national policies, programs governing children's rights. The paper analyses the possible impact of legal reforms aimed at improving and empowering the pre-school education system in India.

Research Methodology

This study adopts a doctrinal legal methodology to critically examine the statutory, regulatory, and policy frameworks governing early childhood care and education in India. The primary data shall include the legislations, policies, schemes and reports available on the government websites. Secondary resources will consist of books, scholarly articles, journals.

Indian legal regime on Early Childhood Education

a) Constitutional Background

Indian Constitution is the grundnorm for any legislative actions or policy initiatives by the government. The constitution makers have laid a foundation and given ample scope for introducing child policies for their overall development. Article 45 of the Constitution *"The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."*[4] was the bedrock on which the government developed policies for enhancement of education in the country. The recognition of Right to Education as a fundamental right under Article 21A in the 86th Constitutional Amendment Act, 2002 was a breakthrough in ensuring the free and compulsory education to all. The Parliamentary Standing Committee[5] while providing suggestions to the Constitution (Eighty-Third) Amendment Bill (1997) recognised the complexity of educating children between 0 to 6 years and the exclusive role mothers play in the overall development at that crucial stage. Therefore, it recommended recognising the right to education only for children aged 6 to 14 years and also retaining Article 45 to give special focus on children aged 0-6 years.

Consequently, Article 45 was amended by the 86th Constitutional Amendment, *"The State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years*".[6] By omitting the children of 0-6 years under Article 21A from the constitutional right to education has its own negatives as no policy initiatives or schemes can fill the gaps in ensuring comprehensive early childhood development. Article 39(f) which also

falls under the category of Directive Principles of State Policy entrusts the state with the duty to ensure that children are given adequate opportunities and facilities to develop in healthy manner which indirectly is to protect them from any form of exploitation and abandonment.

From the above discussed provisions, it is clear that the Constitution of India does not provide an exclusive constitutional mandate for ECE in its ambit rather lays down an outline for the government to formulate required schemes, policies, programs for the upliftment of this category of children.

b) The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act)

The Central legislation that was enacted to enforce the fundamental right guaranteed under Article 21A. This legislation is the foundation to provide universal access to elementary education for all children.[7] The Act ensures compulsory right to education for children aged between 6-14 years and exempts children below 6 years. The Act does mention under Section 11 about making necessary arrangements for providing free pre-school education for children aged between 3-6 years by the Appropriate Government.[8] On reading Section 11, it is quite clear that the responsibility is thrust upon the appropriate Government which is the State Government, for providing free pre-school education for children between the age group of 3 to 6 years to prepare them for elementary education and to provide early childhood care.[9] While this objective is commendable, it remains non-justiciable and contingent upon state-level policy decisions, leaving its realization largely dependent on political will.

As the duty of effective implementation of the provision lies on each state government the reality is very agonising. In most of the states there are no proper norms or policy initiatives taken by the government to improve the status of ECE. The Bombay High Court in its decision has held that pre-primary education is an essential right of a child and has also directed the state authorities to bring policy in accordance with Sec11 of the RTE Act.[10]

In furtherance of this objective of education for all, the Act has made the private unaided schools also responsible to provide free education under Section 12 of the RTE Act. As per the Section 12, the schools must provide reservation up to 25% of maximum capacity admissions to Class I for the weaker sections and disadvantaged groups and the state government is liable to provide reimbursement for the same. In various cases, the issue of reimbursement has been a major reason for the non-compliance of the liability by the private schools. The courts have

every now and then highlighted the importance of Section 12 and the positive effect it can have if implemented strictly. As part of the compliance to Section 11, wherein necessary arrangements for providing free pre-school education and early childhood care for all children until they complete the age of 6 years the state government is bound to reimburse these schools to the extent of amount which has been mentioned in Section 12(2) of the RTE Act.[11]

ECE has not been explicitly recognised as a mandatory provision rather the discretion is given to the Appropriate government for its implementation through policies and schemes. Sections 35 and 38 of the RTE Act provide for directions, guidelines, and rulemaking powers of the Union government as well as the appropriate Ministry for the implementation of the law. In practice, it is the Ministry of Women and Child Development (MWCD) that has been responsible for early childhood care and education.

c) National Policies and Schemes

As ECE has a mere constitutional recognition in the Directive Principles of State and Policy and lack of statutory backing the government has implemented various administrative policies and schemes for promoting and ensuring ECE for the children. The table below lists out the various initiatives by the Central Government on ECE.

TABLE I

National Policies and Schemes on Early Childhood Education in India

S.No	Title
1.	Aadharshila National Curriculum for ECCE, 2024
2.	Balvatika Program, 2020
3.	Integrated Child Development Scheme, 1975
4.	National Early Childhood Care and Education Policy, 2013
5.	National Education Policy, 2020
6.	Padhe Bharat Badhe Bharat, 2014
7.	Saksham Anganwadi & Poshan 2.0 (2021-22)
8.	Samagra Shiksha Abhiyan (SSA), 2018
9.	The National Policy on Education, 1986

The important policies and schemes that transformed ECE in India are discussed below:

i. Integrated Child Development Scheme (ICDS), 1975: A welfare scheme launched in 1975 on primary healthcare, early childhood education, nutrition to children aged between 0 to 6 years, with a focus on health of pregnant women and lactating mothers. This scheme is managed by the Ministry of Women and Child Development working with a decentralized and community-based system. Through a massive local network set-up known as Anganwadis Centres the benefits of the scheme are sourced to all. The Anganwadi Service Scheme provides a package of six services; Supplementary Nutrition, Pre-School Non-Formal Education, Nutrition & Health Education, Immunization, Health Check-Up and Referral Services.[11] Pre-School Education is one of the important components that aims to develop a positive attitude towards school education among children between the age of three to six. The purpose of Anganwadi Centres is to create a safe space for the children where they prioritize playful engagement through educational activities that helps in overall development of the child. However, since the Anganwadi workers are also equipped with different roles assigned under the scheme there is a very narrow focus given on ECE.

ii. The National Policy on Education, 1986: For the overall improvement of the educational system in the country the NPE, 1986 was introduced with various recommendations. The policy was the first of many which significantly emphasised on the importance of ECCE. It endorsed introduction of programs that helps in inclusive development of children. The policy also laid importance on the availability of ECCE throughout the nation especially the economically weaker sections. The objectives on ensuring ECCE were pursued to be attained through the establishment of Anganwadis, pre-primary schools and standalone pre-schools.

iii. National Early Childhood Care and Education Policy, 2013: A policy adopted by the Government of India in 2013 to reaffirm the governmental concern for the holistic and overall development of every child. This new National ECCE policy along with the related programmes and schemes on health, nutrition, education etc strives to fulfil every need of the children. The National Early Childhood Care and Education (ECCE) Curriculum Framework and the Quality Standards for ECCE form the integral parts of the Policy framework. The Policy's primary objectives include enhancing quality,

building capacity, arrangements for institutional implementation, conducting research and documentation, encouraging partnerships for implementation etc.[11] The role of families in nurturing the children at young age have also considered as an important aspect in the policy and focus shall be laid on enhancing family's capacity. The overall goal is to enhance the process of transitioning from home-based care and education to centre-based ECCE and then to school-age provision.[12]

iv. Samagra Shiksha Abhiyan (SSA), 2018: An initiative by the Central government to fund elementary, middle and high school education in India. It considers school education as a continuous process starting from pre-school to senior secondary levels. Therefore, it aims to support ECCE through funding infrastructure facilities, playing materials and also teacher capacity building for the benefit of young children.

v. Mission Saksham Anganwadi & Poshan 2.0: The ICDS scheme has now been subsumed under the "Mission Saksham Anganwadi & Poshan 2.0 (Mission Poshan 2.0)". Mission Poshan 2.0 is a flagship nutrition programme of the Government of India and is one of the world's largest programmes for Early Childhood Care and Development.[10] The Ministry of Women and Child Development recognising the pivotal role of ECCE has launched the "Poshan Bhi Padhai Bhi" initiative in 2023 under the Mission Poshan 2.0 scheme to enhance ECE for children between 0 to 6 years. The program aims to promote comprehensive and high-quality early stimulation and pre-primary education for children. It emphasizes the use of age-appropriate teaching methods and stresses the connections between early childhood education, health, and nutrition services, along with primary education.[10] To empower the Anganwadi workers in imparting quality ECE "Aadharshila- National Curriculum for Early Childhood Care and Education for Children from Three to Six Years 2024" was launched. It is a contextual curriculum that is a guide for the Anganwadi educators to improve the quality of ECE. The Anganwadi workers also go through training programmes on the curriculum, pedagogy, and assessment tools

vi. National Education Policy (NEP), 2020*:* NEP 2020 came as a beacon of hope for ECCE in India. It created a new pedagogic and circular structure which is inclusive of the earlier stages of a child's life marking a remarkable shift from the earlier academic structure.

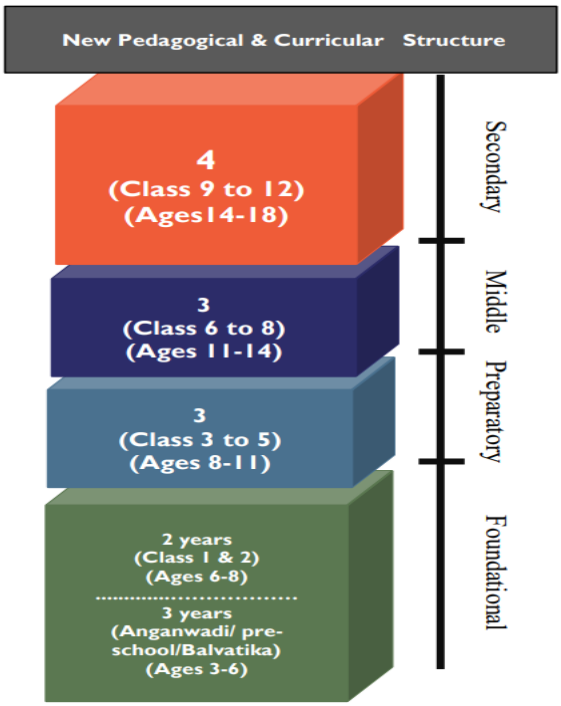

Fig. 1: The new academic structure retrieved from NEP 2020

The new structure gives a strong base for ECCE as overall development is aimed to start from the age of 3. Earlier, even though policy initiatives were taken by the government, quality ECE was not available to crores of children especially from socio-economically weaker sections. Therefore, through adequate funding the NEP 2020 aims to improve the quality and accessibility of ECE to all without any discriminations. Universal provisioning of quality early childhood development, care, and education must thus be achieved as soon as possible, and no later than 2030, to ensure that all students entering Grade 1 are school ready.[16] To achieve this mission the initiatives recommended were:

i. Aim of ECCE: To focus on overall development of children through physical and motor development, cognitive development, socio-emotional-ethical development, cultural/artistic development, and the development of communication and early language, literacy, and numeracy.[16]

ii. A National Curricular and Pedagogical Framework for Early Childhood Care and Education (NCPFECCE)- A new framework will be developed by the NCERT for children up to the age of 8 years which would have two sub-frameworks for the category of 0-3 years and 3-8 years. It would be a guide for the parents as well as the ECE institutions.

iii. System of early-childhood education institutions: To ensure universal access to high-quality ECCE across India, a strengthened and expanded system must be established. It shall consist of (a) standalone Anganwadis; (b) Anganwadis co-located with primary schools; (c) pre-primary schools/sections covering at least age 5 to 6 years co-located with existing primary schools; and (d) stand-alone pre-schools. All teachers recruited must be trained in the curriculum prepared for ECCE.

iv. Balvatika/ Preparatory Class: Before the age of 5, children must be moved to a preparatory class equipped with a qualified ECCE teacher to focus on play-based learning, cognitive, affective, psychomotor abilities, early literacy and numerals.

v. Training for Anganwadi Teachers: To prepare high-quality ECCE teachers the current Anganwadi teachers will be trained in accordance with the new curriculum. The training of such teachers will be mentored by Cluster Resource Centres of the School Education Department through continuous assessment.

vi. Ashramshalas: In tribal-dominated areas, ECCE will be introduced through Ashramshalas and in similar schooling models.

vii. Responsible Ministry: The responsibility for ECCE curriculum is vested with the Ministry of Human Resource Development (MHRD). The planning and implementation of ECCE lie jointly with Ministry of HRD, Women and Child Development (MWCD), Health and Family Welfare (HFW), and Tribal Affairs.

Results and Discussions

With the latest NEP 2020, various efforts are made in the government sector for providing access and strengthening ECE. The shift in the enrolment patterns of children of 3-5 years in different educational institutions indicates the positive results achieved over the years. The Annual Status of Education Report (ASER), 2024[17] discusses the progress made in the pre-school years with the implementation of NEP 2020.

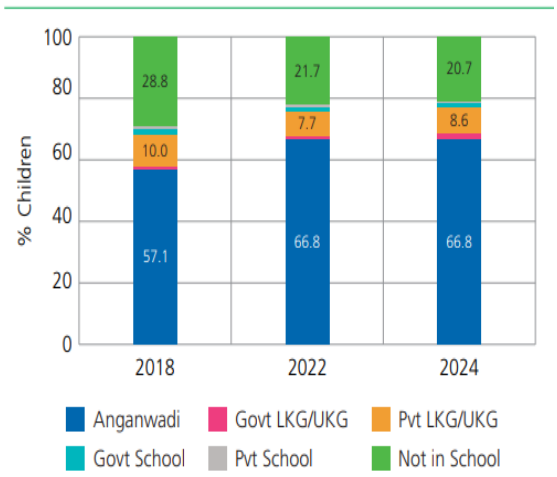

Fig. 2: Age 3: % Children enrolled in different type of institutions: All-India ASER 2018, 2022, 2024.[19]

In the figure 2, there is a clear dominance of Anganwadi centres where two-third (66.8%) of children are enrolled by 2024. The improvement of Anganwadi centres corresponds to the reduction in drop-out students to 20.7% in 2024 and slight decline in private pre-primary education.

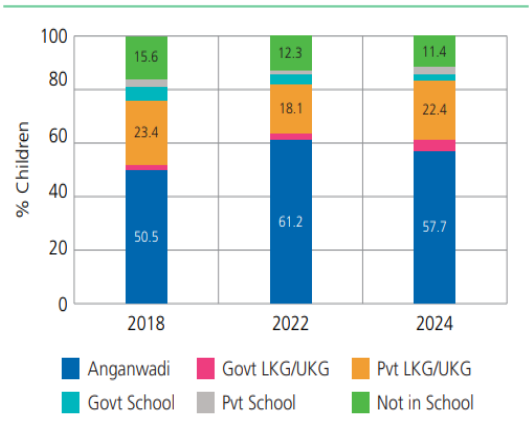

Fig. 3: Age 4: % Children enrolled in different type of institutions: All-India ASER 2018, 2022, 2024.[19]

In the figure 3, the Anganwadi centres are consistently accommodating majority of the children but the private pre-schools also have a major share in this age category. There is a good reduction in the percentage of children not enrolled in any schools. It indicates the reliance of parents in the private day cares, nursery that are functioning without major control by the government.

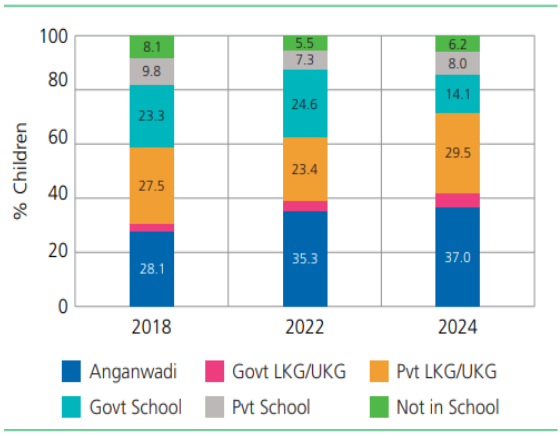

Fig. 4: Age 5: % Children enrolled in different type of institutions: All-India ASER 2018, 2022, 2024.[19]

In the figure 4, the enrolment patterns of age 5 children are diverse as seen. Even though Anganwadi centres have the majority percentage the private institutions also constitute a good percentage of enrolments. The percentage of children not enrolled has reduced to 6.2%.

The statistical results may create the impressions of a positive development in the improvement of ECE in India but there are still certain ground level issues pertaining to the same. Among the various services of ECCE (health, nutrition, education etc.), the component of education has often been given the lowest priority. Some of the issues related to ECE in India are:

a) Even though Anganwadi teachers are equipped with the current curriculum on ECCE, they are often burdened with various other duties such as keeping records of immunization of children, health check-ups of pregnant women, distribution of nutrition goods etc. Therefore, adequate attention cannot be laid on providing quality education to the children.

b) Anganwadis are the major institution for ECE in India but they face lack of infrastructure facilities throughout the country. Most the centres work through rented rooms or missing toilets, no proper drinking water and electricity. A proper infrastructure facility is the basic requirement for promoting ECE in the country.

c) The policy fosters the establishment of private pre-schools but with inadequate control over its functioning. Such private players have taken this is an opportunity for profit-

making in the absence of fee-regulations mechanisms without guaranteeing proper quality.

d) The most crucial problem regarding ECCE pertains to which ministry is responsible to make the rules in accordance with Section 11 of the RTE Act. The entire Act is administered by the MHRD but on analysing it is clear that in reality the situation is different. ECCE over the years has been dealt by the MWCD but with no clear allotment under the allocation of business under the government rules. Due to the issue, there is scarce of funding for ECCE, the public expenditure on early childhood care and education was a mere 0.1 percent of GDP.[18] With the NEP 2020 initiative there is some clarity on the allocation of duties to the different ministries. But that in itself is not sufficient; to bring clarity on the same a subsequent legislative amendment needs to be made to the business conduct rules.

e) ECCE has come a long way in terms of its recognition in the Constitution under Article 45 to finally being included under Section 11 of RTE Act. But its implementation is carried out through the various policy initiatives by the government, hence it merely remains as an aspirational policy and nor an enforceable constitutional right or a legal right.

Conclusion

Early Childhood Education has not been given the required importance in India in its legislative frameworks. The constitutional architects stopped short of granting it the status of a justiciable fundamental right, leaving it instead as an advisory obligation under the Directive Principles of State Policy. The NEP 2020 is a progressive development towards achieving universal access to ECE for all. This policy gave a structure for ECE with its various initiatives to achieve the desired results of holistic development of children at young age. As discussed, this being merely a policy initiative, it can never have the effectiveness of a legislation and thus, a statutory framework on ECCE is the need of the hour. The legislators must revisit and analyse the scope of Section 11 of the RTE Act in light of the possible developments.

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