

SUGGESTIONS ON THE KARNATAKA MATERNITY BENEFIT (AMENDMENT) RULES, 2018

We understand that the Department of Labor, Government of Karnataka (GoK), has prepared the Draft Karnataka Maternity Benefit (Amendment) Rules, 2018 (“**draft Rules**”) under Section 28 of the Maternity Benefit Act, 1961, (“**Act**”), by virtue of it being the “appropriate Government” empowered to make rules for *carrying out the purposes of the Act*.

The draft Rules have been framed to give effect to the purpose of the Act under Section 11A, which was inserted vide an amendment in 2017, to provide crèche facility in “*every establishment having fifty or more employees*”. Section 11A of the Act provides that an appropriate Government may prescribe the distance within which a crèche facility will be provided, and whether such facility will be separate or along with common facilities.

In providing our suggestions on the draft Rules, we have referred to the following law and policy materials which lay down guiding principles on early childhood care and education (“**ECCE**”) for children under six years of age:

- Article 45 of the Constitution of India which provides that every State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.
- The National ECCE Policy adopted in 2013,¹ which reaffirms Government of India’s (GoI) commitment to provide integrated services for holistic development of all children, from the prenatal period to six years of age.
- The National ECCE Curriculum Framework released by Ministry of Women and Child Development, GoI,² which enunciates the goals of early care and learning, and provides implementation framework for service providers, communities and state governments.

¹ <http://wcd.nic.in/sites/default/files/National%20Early%20Childhood%20Care%20and%20Education-Resolution.pdf>

² http://www.wcd.nic.in/sites/default/files/national_ecce_curr_framework_final_03022014%20%282%29.pdf

- Section 11 of the Right to Education Act, 2009, which states “with a view to prepare children above age of three years for elementary education and to provide ECCE for all children until the age of six years, the appropriate government may make necessary arrangements for providing free preschool education for such children.”
- UNICEF’s global report released in 2017 titled “Early moments matter for every child”³ which shows that the period from conception to the start of school opens critical and singular window of opportunity to shape the development of a child’s brain.

Broadly, the draft Rules set out details under the following aspects concerning a crèche facility:

1. Accessibility
2. Quality of physical infrastructure
3. Quality of care given to children

Our objections / suggestions are listed in a tabular format on each of the above aspects. We have also thereafter highlighted certain critical features of a crèche facility which the draft Rules fail to provide for.

	Present Rule	Objections	Suggestions
	ACCESSIBILITY		
1.	Rule 6A(1) “Location: There shall be one crèche for every thirty (30) children, located within the premises of the establishment or within five	This Rule may be struck down for being <i>ultra vires</i> S. 11A of the Act due to inconsistency and for exceeding	It is acknowledged that crèche facility is an economically intensive measure, which might make the prospect of hiring

³ https://www.unicef.org/media/files/UNICEF_Early_Moments_Matter_for_Every_Child_report.pdf

	<p>hundred (500) metres from the entrance gate of the establishment.</p>	<p>the limits of authority conferred by the enabling Act.⁴</p> <p>S. 11A clearly states that as long as an establishment has 50 or more employees, crèche facility should be provided. But Rule 6A(1) dilutes this requirement by providing for a crèche only when there are 30 or more children.</p> <p>This defeats the purpose of S. 11A, which is to ensure every working mother has access to crèche facility once she rejoins work after maternity leave</p>	<p>women unviable for small establishments.</p> <p>Therefore, to ensure financial feasibility while fulfilling the purpose of the Act, the Rule should allow multiple establishments to have a tie-up with a common crèche facility which is not more than a kilometer away from the establishment.</p> <p>However, if an establishment has 30 or more women employees opting for crèche facility, the same should be provided within the establishment.</p>
2.	<p>“Careful consideration shall be given by the employer while deciding on the location of the crèche. The expert advice from the State or National support agencies shall be availed as part of the decision making process by the employer.”</p>	<p>There is no clarity as to the identity of the support agencies which the employer <i>shall</i> consult.</p>	<p>The State Government should identify and appoint nodal Government agencies which will be in-charge of registering and regulating crèche facilities within specific wards. Urban Local Bodies should be entrusted with this by providing suitable guidelines.</p>

⁴ *Indian Express Newspapers v. Union of India* (1985) 1 SCC 641; *State of Tamilnadu v. P Krishnamurthy* (2006) 4 SCC 517.

			A long term solution is for the State Government to promulgate a comprehensive legislation regulating the entire gamut of institutions providing ECCE to children under six years, with a separate ECCE Council with established thereunder to <i>interalia</i> regulate crèche facilities.
Physical Infrastructure			
3.	Rule 6A(2) deals with 'Building and Facilities'	<p>Even though Rule 6A(2)(xiv) states that the standards and norms for crèche may be fixed by Central and State Governments, in their absence, the Rules fail to account and provide for children with disabilities and for children of different age groups that are likely to be part of a crèche facility.</p> <p>The distinction between building quality in urban and rural areas is discriminatory and arbitrary.</p>	<p>The National ECCE Curriculum Framework delves into the aspect of inclusion of children with special needs through infrastructure and personnel support.</p> <p>The different standards laid down for crèche in urban and rural areas should be removed.</p> <p>The Rules should mandate crèche facilities to adhere to the requirements laid down in the ECCE Curriculum.</p>
Quality of care			
4.	Rule 6A(3) deals with 'staff' which provides that a woman who has received	At present there is no recognized or Government approved ECCE course.	The current teachers cum caregivers in crèche and other ECCE facilities function in a legal

	<p>training in ECCE or TCH shall work as crèche in charge.</p>	<p>The Rules do not provide for background verification of staff by local police or for appointments of Government verified and registered personnel.</p>	<p>vacuum. This is extremely disconcerting given that these institutions are incharge of children at their most vulnerable age.</p> <p>With increasing percentage of children being enrolled in private ECCE facilities, it is about time that the Government stepped in to ensure adherence to minimum standards of care. The caregiver/ teacher should be trained to have the capacity and temperament to build a warm, caring relationship with young children.</p> <p>The Rules should mandate a recognized government approved ECCE training course for all teachers and mandatory background verification of every personnel employed in a crèche.</p>
<p>5.</p>	<p>Rule 6(D) provides for 'Outdoor Play Facilities' for children.</p>	<p>This is the only provision which looks at "education" aspect of children in a crèche facility.</p> <p>The National ECCE Policy and Curriculum stress on the importance</p>	<p>Rules should mandate crèche facilities to have suitable books and toys for two age groups: 0 -3 years and 3 – 6 years.</p>

		of providing a stimulating and nurturing environment for children during their most rapid growth phase.	It should be mandatory to adhere to the requirements detailed under the National ECCE Policy and Curriculum.
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Our suggestions to the draft Rules is summarized as follows:

1. Accessibility:

- a. Amend Rule 6A(1) to remove the requirement of 30 children. Instead, as required under the Act, establishments with 50 or more employees should ensure every single woman employee in need of crèche facility has access to it.
- b. Multiple establishments can have tie-ups with an accessible crèche facility. Where there are more than 30 children from the same establishment, provide a separate crèche facility within the premises of the establishment.

2. Infrastructure:

- a. Amend Rule 6A(2) to specifically provide for infrastructure facilities for children with special needs.
- b. The distinction between the quality of building in rural and urban areas should be deleted.
- c. Adhere to the recommendations of the National ECCE Policy and Curriculum.

3. Care and Education:

- a. Age appropriate books, toys etc. should be provided to cater to two separate age groups: 0 - 3 years and 3 - 6 years.
- b. Caretakers and teachers should undergo training in ECCE through a recognized institution.
- c. Background verification of caretakers and teachers should be mandatory.

The draft Rules are at present only a very tentative step at improving the status of ECCE in Karnataka. The amendments brought into the Maternity Benefits Act, 1961 provide for a great opportunity for the State to provide a holistic law to regulate private playschools, crèche and pre-schools. The draft Rules by and of itself has huge scope for improvement, as highlighted above. However, it is to be recognized that with the growing number of working women in private sectors, adequate care, nutrition and education of the children cannot be left at the mercy of private establishments whose primary motive is profit and not societal welfare. Therefore, we believe the need of the hour is to have an overarching ECCE legislation which puts in place a dedicated agency to register, regulate and inspect all ECCE related facilities, including crèche facilities.