



INDIAN CONSTITUTION AND RIGHT TO EDUCATION

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ABSTRACT

“The theory of education is summed up in its being able to instill in a person “knowledge, skill, equipoise, understanding and gentleness, as these values are connected with the faculties of *man and his soul*”. (Dr. V.K.Gokak)

Education is thus viewed as an integral part of national development indicating ‘economic growth’ as well as ‘comprehended opportunities to all people for better life’ with ‘man as end of development and instrument’

Education enlightens people about themselves and the world, enriches their minds by broadening their experiences, and improves the choices they make as consumers, producers and citizens. Education strengthens their ability to meet their wants and those of their family by increasing their productivity and their potential to achieve a higher standard of living.

Education increases potential and confidence of people and their ability to create and innovate, i for personal and social achievement, as well as national development.

Future and hope of mankind lie in educational advancement and a Welfare State of India is committed to provide free and compulsory education to every child.

India being one of the oldest civilizations on the earth has a glorious history of education, and traditions of knowledge and wisdom have always been eternally cherished values for Indians. Contribution of Indians sages and scholars to various branches of knowledge, art and science including Mathematics, Astrology, Astronomy, Ayurveda, Yoga, Architecture, Sculpture, Music, dance and other performing arts etc. is well known to entire world and is appreciated.

However, traditional education system in India suffered from certain drawbacks, peculiar to caste based and class based society, where education was denied to Shudras and Women, who formed the bulk of the society. Various foreign invasions did not make any substantial change in this regard. The present educational system is also radically different from its classical past.

Historical Background

British Government who laid the foundation of current education in India, somewhere between 1813 and 1921. Their main contribution was to give all citizens equal and open access to educational institutions run by public funds. But the problem of educating the “untouchable” castes came up in 1856 when a boy from an untouchable caste was denied admission to the government school at Dharwar on the ground that it would result in the closure of the school itself. But this decision was disapproved by the Governor General of India at that time and it was decided that, no untouchable child should be refused admission to a government school even if it meant the closure of the school due to withdrawal of children from school by high castes.¹ However, the British refused to accept the principle of compulsory elementary education.

On the other hand, Indian nationalist thought was in favour of a certain minimum general education to be provided to all children on free and compulsory basis. Dadabhai Naoroji in 1881 requested the Indian Education Commission and Gopal Krishna Gokhale moved a similar resolution in the Central Legislative Assembly in 1910 and in 1912, but did

¹ Report of the Indian Education Commission, 1882

not succeed. Due to growing public demand between 1918 and 1931 compulsory education laws were passed by the newly elected State legislatures in which Indians were in majority. In 1937, Mahatma Gandhi put forward his scheme of Basic Education. As a result of all these efforts, the free and compulsory education to all children till they reached the age of 14 years was nationally accepted as Post-war Plan of educational development in India (1944) known popularly as the Sargent Plan.

B.G.Kher proposed that this goal could and should be achieved in a period of 16 years (1944-1960). It was this recommendation that was eventually incorporated in the Constitution as a Directive Principle of State Policy.²

Making of the Indian Constitution and the inclusion of Right to Education

The constitution of India was framed by the Constitution Assembly of India setup under Cabinet Mission Plan of May 16, 1946. The first meeting of the Constituent Assembly took place of Dec 9, 1946 with Dr. Sachidanand Sinha as its interim President. Dr. Rajendra Prasad was elected as its President on Dec 11, 1947.

Draft constitution was completed and accepted on Nov 26, 1949. The session of the Assembly was held on Jan 24, 1950, which unanimously elected Dr. Rajendra Prasad as the President of India. All 284 members of the Assembly signed the official copies of the Indian Constitution which came into effect on Jan 26, 1950.³

Equality of opportunity through education is outlined as part of our Constitutional guarantees. Literacy; its relationship with Education and Societal Development and its nexus to Human Rights and Human Development index in the democratic process are also discussed.⁴

International perspective

Article 26 of the Universal Declaration of Human Rights declares:

“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and Professional education shall be generally available and higher education shall be equally accessible to all on the basis of merit”.

UN Declaration of the Rights of the Child also seeks to ensure

“Right to free and compulsory education at least in the elementary stages and education to promote general culture, abilities, judgment and sense of responsibility to become a useful member of society and opportunity to recreation, and play to attain the same purpose as of education”.

Now most of the nations of the world including India have accepted their obligation to provide free elementary education to their citizens, as constitutional guarantees, within Human Rights framework.⁵

Post Independence Initiative-

“A review of the progress of basic education shows that goals and targets were fixed in the past on the basis of an inadequate understanding of the significance of education. These targets did not take into account the problem of availability of resources, and the conflicting claims of social and economic planning.⁶

The Kothari Commission (1964-66) recognized that, the causes of non fulfillment of the objectives included inadequate parental motivation, poverty, gender inequality,

² <http://lawmin.nic.in/ncrwc/finalreport/v2b1-5.htm>

³ <http://www.facts-about-india.com/constitution-of-India.php>

⁴ <http://lawmin.nic.in/ncrwc/finalreport/v2b1-5.htm>

⁵ <http://lawmin.nic.in/ncrwc/finalreport/v2b1-5.htm>

⁶ <http://lawmin.nic.in/ncrwc/finalreport/v2b1-5.htm>

indifference, caste based discrimination, social and economic backwardness, non accessibility and Low quality of schooling. The Commission emphasized the importance of spreading literacy as fast as possible. The National Policy on Education in 1968 accepted these recommendations of the Education Commission and reiterated the significance of universal literacy and developing adult and continuing education as matters of priority in India.

Following main problems and difficulties were identified as obstacles to the universalisation of primary education in most of the developing countries include lack of financial resources, high rate of population growth, poverty, ignorance, inadequate physical facilities for education and inadequate supply of trained teachers, bias against the education of girls and the physically and mentally handicapped due to socio-cultural attitudes, High drop-out rates due to child labour.⁷

The Indian Constitution has recognized the significance of education for social transformation. It is a document committed to social justice. The Preamble affirms a determination to secure liberty of thought, expression, belief, faith and worship and equality of status and opportunity and to promote amongst the people a feeling of fraternity, ensuring the dignity of the individual and the unity of the nation. Literacy forms the cornerstone for making the provision of equality of opportunity a reality.

Provisions of the Constitution of India on Right to Education

Fundamental Rights

Article 13 Laws inconsistent with or in derogation of the fundamental rights.

This article empowers the state to make any law including any Ordinance, order, bye-law, rule, regulation, notification only so far as they are consistent with the provisions of Fundamental Rights, failing which, the law shall, to the extent of such inconsistency, be void.

Article 14 Equality before law and equal protection of Law The principle of Equality before law was invoked to regulate rules of admission in the case of *G.Beena v. A.P.University of Health*⁸

Article 15 (1) and (2) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

As per this article, The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them But, the state can make special laws for women and children.

Article 15 (4) As per this article, State may make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 19: Protection of certain rights regarding freedom of speech, etc.

In the case of *L.K. Koolwal v. State of Rajasthan AIR 1988 Raj.2*,⁹ right to freedom of speech, was interpreted as a Right to Know.

Article 21 No person will be deprived of life and personal liberty without due procedure of law. This fundamental right to life has been held to include the right to education also in many Supreme Court decisions.

⁷ (Special issue of the International Yearbook of Education on “Primary Education on the threshold of the twenty-first century” International Bureau of Education, UNESCO, Geneva, 1986),

⁸ *G.Beena v. A.P.University of Health Sc. AIR 1990 AP 252*

⁹ *L.K. Koolwal v. State of Rajasthan AIR 1988 Raj.2*

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In the case of *Francis Coralie Mulin v. Administrator, Union Territory of Delhi (1981)*¹⁰, Justice Bhagwati opined:

“The fundamental right to life which is the most precious human right and which forms the arc of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. We think that the right to life includes right to live, with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about, mixing and co-mingling with fellow human beings.”

In *Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi JT 1991 (2) SC 296*,¹¹ right to education at the secondary stage was held to be a fundamental right.

In *J.P. Unnikrishnan V. State of Andhra Pradesh JT 1993 (1) SC 474*,¹² a constitution Bench had held,

Education up to the age of 14 years to be a fundamental right.... It would be therefore incumbent upon the State to provide facilities and opportunity as enjoined under Article 39 (e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary.”

Right to livelihood was held as an integral facet of the right to life in the case of *Narendra Kumar v. State of Haryana, JT(1994) 2 SC 94*.¹³

In the words of Prof. D.D. Basu, “Articles 19 and 21 are not water-tight compartments. ‘Personal liberty’ in Art. 21 is of the widest amplitude, covering a variety of rights of which some have been included in Art.19 and given additional protection.

Article 21A Right to Education

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. Article 21-A and the RTE Act came into effect on 1 April 2010.¹⁴

Article 28 Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

As per this article, no religious instruction shall be provided in any educational institution wholly maintained out of State funds. But this rule will not apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

¹⁰ Francis Coralie Mulin v. Administrator, Union Territory of Delhi (1981)

¹¹ Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi JT 1991 (2) SC 296

¹² J.P. Unnikrishnan V. State of Andhra Pradesh JT 1993 (1) SC 474

¹³ Narendra Kumar v. State of Haryana, JT(1994) 2 SC 94 See Also **Bandhua Mukti Morcha, etc. vs. Union of India (J.T. 1997 (5) SC 285)**, Nalla Thampi, 1985; Francis Coralie, 1981, Mehta 1987, Wadhwa, 1996, Unnikrishnan, 1993; Mahendra 1997, etc

¹⁴ <http://mhrd.gov.in/rte>

It is further provided that, No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Article 29: Protection of interests of minorities Cultural and Educational Rights.

Although commonly Art. 29(1) is assumed to relate to minorities, its scope is not necessarily so confined, as it is available to “any section of citizens resident in the territory of India”. This may well include the majority, as Ray, C.J. pointed out in *Ahmedabad St. Xavier College Society v. State of Gujarat*, AIR 1974 SC 1389.¹⁵

Article 30(1): Right of minorities to establish and administer educational institutions.

This article provides all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. It must be, however noted that, this Article does not come in the way of enactments for ensuring educational standards and maintaining excellence thereof.

It was held in the case of *Virendra Nath v. Delhi (1990) 2 SCC 307*¹⁶ that, the right under this article is subject to the regulatory power of the state.

Article 32 :- The right to move the Supreme Court in case of violation of the fundamental rights.¹⁷

Directive Principles of State Policy

Article 37 It is stated in Article 37 that, Directive Principles of State Policy are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Article 38 State to secure a social order for the promotion of welfare of the people.

1. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

2. The State shall, in particular, strive to minimise the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 39 Certain principles of policy to be followed by the State.

The State shall, in particular, direct its policy towards securing.

a. That the citizens, men and women equally, have the right to an adequate means of livelihood;

b. That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

c. That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

d. That there is equal pay for equal work for both men and women;

e. That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

¹⁵ *Ahmedabad St. Xavier College Society v. State of Gujarat*, AIR 1974 SC 1389

¹⁶ *Virendra Nath v. Delhi (1990) 2 SCC 307* See also **Kerala Education Bill, In re. AIR 1958 SC 956**, **St. Stephen’s College v. University of Delhi**.

¹⁷ (Dr Babasaheb Ambedkar called this article which secured remedial justice through Writ Jurisdiction, as Soul and heart of the Indian Constitution)

f. That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. This Article has been used to secure objects of Welfare State by construing provisions of directive principles of state policies as Fundamental Rights.¹⁸

Article 41: Right to work, to education and to public assistance in certain cases The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

In the case of **Jacob v. Kerala Water Authority (1991) I SCC 28**,¹⁹ the court interpreted right to work, to education and to public assistance in certain cases so as to advance Art.41:

Article 45 Provision for free and compulsory education for children

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.

Provision for early childhood, care and education to children below the age of six years

The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. *

(* Amended Text as per the 86th Amendment of December, 2002, but yet to be brought into force-)

Article 46 Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 47 Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Article 51A Fundamental Duties.

It shall be the duty of every citizen of India

(k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.²⁰

(Panchayati Raj) & Urban (Municipal) Local Bodies

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats(Article 243B, Article 243G), Municipalities(Article 243Q, Article 243W), and authorities for administration of Scheduled Areas and tribal areas(Article 244) and give them th such powers and authority , for.

(a) The preparation of plans for economic development and social justice;

(b) The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

¹⁸ See **Keshavananda Bharati v. State of Kerala (1973) 4 SC 228**

¹⁹ **Jacob v. Kerala Water Authority (1991) I SCC 28**

²⁰ Added by 86th Amendment of December, 2002

Articles 246 and 254: provide rules about Subject-matter of laws made by Parliament and by the Legislatures of the States , in case of any inconsistency between them. As per Article 254, Parliament, at any time, may enact any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

Article 280: Finance Commission Finance Commission can suggest measures to augment The Consolidated Fund to supplement the resource of the Panchayat in the State as also of the Municipalities.

Article 337: Special provision with respect to educational grants for the benefit of Anglo-Indian community

Article 344 Provides for the constitution of the Commission and Committee of Parliament on official language.

Article 350A Facilities for instruction in mother-tongue at primary stage.

This article casts a duty on every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups.

Article 351 Directive for development of the Hindi language.

It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India.

Through 42nd, 73rd, 74th and 83rd Amendment Acts provisions are made to enable education being included in the Concurrent List, devolution of powers to local bodies and making elementary education a Fundamental Right formally .

Significance of Right to education in the era of Globalisation:

Education is the essence of Human Resource Development and plays a significant role in balancing the socio-economic fabric of the Country, to achieve a better quality of life and all-round development of our citizens.

In pursuance of this mission, the Ministry of Human Resource Development (MHRD) was created on September 26, 1985, through the 174th amendment to the Government of India (Allocation of Business) Rules, 1961. Currently, the MHRD works through two departments:

- 1) Department of School Education & Literacy- It is responsible for development of school education and literacy in the country through “universalisation of education”.
- 2) Department of Higher Education- It is engaged in bringing world class opportunities of higher education and research to the country so that Indian students are not finding lacking when facing an international platform. For this, the Government has launched joint ventures and signed MoUs to help the Indian student benefit from the world opinion.²¹

The Ministry of Human Resource Development has published information about various educational schemes. Information is given about the elementary, secondary, higher, vocational and teacher education etc. Details of universities, technical education, distance learning and language education are given. One can also find information pertaining to the scholarships and welfare programmes, School Health Programme and nutritional support, Research and cases studies are also available. Users can also find detailed information about the role of Universal Elementary Education (UEE), legal framework and programme interventions for compulsory and free education for children. Details of the Sarva Shiksha

²¹ <http://mhrd.gov.in/about-mhrd>



Abhiyan (SSA), The Mid Day Meal scheme, Mahila Samakhya programme, and various educational schemes are available

Sarva Shiksha Abhiyan aims to provide for a variety of interventions for universal access and retention, bridging of gender and social category gaps in elementary education and improving the quality of learning. The programme seeks to open new schools in those habitations which do not have schooling facilities and strengthen existing school infrastructure through provision of additional class rooms, toilets, drinking water, maintenance grant and school improvement grants.²²

REVIEW OF ACHIEVEMENTS

Article 21-A and the RTE Act came into effect on 1 April 2010. Under RTE Act, ‘**Free education**’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. ‘**Compulsory education**’ casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age groups.

With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.²³

It is envisioned that strengthening the two ends of the spectrum, namely, elementary education and higher/technical education would help in meeting the objectives of expansion, inclusion and excellence in education.

The Central Advisory Board of Education (CABE) is the highest advisory body to advise the Central and State Governments in the field of education. National Knowledge Commission (2006) Report on higher education supports a strong reform agenda through public investment. Recently, the report of the committee on renovation and rejuvenation of higher education (Yashpal Committee) has recommended protecting the intellectual autonomy of educational institutions and the creation of an all-encompassing National Commission for Higher Education and Research (NCHER) to replace or subsume the existing regulatory bodies. The report talks about the concept of a university as a place where research and teaching become two important pillars of the creation of knowledge and should go together.

International Observations about India

India’s Right to Education Act (2009) has helped push enrollments higher. Rural India saw improvement in nearly all aspects of school facilities and infrastructure between 2003 and 2010, including electrification and roads. Mid day meals and school feeding programs in rural India have strongly increased girls’ enrolment. India’s RtE act and SSA programme improved the inclusion of children with disabilities. India built more latrines in 2000s, which resulted in increased girls’ enrolment. YET: Since 2000, double the number of countries (142) is now monitoring learning outcomes in order to improve education quality. India has conducted both government school based assessments as well as citizen led household based assessments of learning Ensuring skill acquisition and improving diverse

²² <http://india.gov.in/my-government/constitution-india>

²³ <http://mhrd.gov.in/rte>



learning outcomes represent a major post-2015 challenge in much of the world, including India²⁴

Since its implementation started in 2010, the RTE Act has contributed to tremendous changes in elementary education. Now 98% of rural habitations have a school within a distance of one kilometre; about 1.5 crore more children are in school; and world's largest school feeding programme – the Mid-day Meal scheme provides meals to about 11 crore children.

But, we are still far away from full compliance of RTE Act. Only 8% schools comply with all RTE Act norms. If we all join hands, we can make Right to Education of every child a reality.²⁵

A coordinated effort by Oxfam India, the Right to Education Forums, its partners and School Management Committees (SMCs) help keep children in schools, improve enrollment and retention rates, and keep check on RTE Act compliance.

A staggering 92% of Government elementary schools in the country are yet to fully comply with the Right to Education Act. The result — half of the children in India drop-out before completing class 10 and 6 million children between 6 and 13 years are out of school.

One of the major reasons behind this huge gap is resource crunch mainly because of the poor financial allocations for education. In 1966, the Kothari Commission had recommended that the India's public spending on education should be raised to at least 6% of Gross Domestic Product (GDP) by 1986. But, even in the recent Budget 2015-16, the central government has reduced the allocation and the current public spending on education is less than 3.5% of the GDP.²⁶

Future of education

In a UNESCO publication, "*Education in Asia and the Pacific*", Raja Roy Singh has rightly written:

"The dynamics of education and its role in each society in development and transformation make it essential that education continuously renews itself in order to prepare for a future rather than for obsolescence. This renewal process derives from a variety of sources which include: the growth of human knowledge, which is the basic component of education."

Future of education is being shaped by the following issues:

Knowledge Growth. The speed with which the growth of knowledge is now taking place, its range and sweep, the expansion of knowledge in science and technology impacts on every aspect of modern life.

1. **Education and Communication.** The communication technologies have multiplied and became more and more powerful affecting every individual.
2. **Education and culture.** The other source of educational renewal is the cultural heritage reflected in the whole range of expressions, which give meaning and worth to the society's being. Education has a vital role in promoting the processes by which scientific and technological knowledge is assimilated in the fabric of national life without detriment to the people's values.
3. **Distance learning-** Learning at one's own pace and at his convenience will get stressed. Use of satellites is rapidly changing the concept of conventional education. Students need no longer be limited by lack of access, shortage of teachers or interference from work.

²⁴ www.efareport.unesco.org

²⁵ <https://www.oxfamindia.org/rteportfolio>

²⁶ <https://www.oxfamindia.org/rteportfolio>



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4. **Use Information technology and Computers-** Integration of Information and Communication Technologies (ICT) with school needs serious consideration. Teachers, educators, curriculum developers, evaluators and others will have to redefine their roles to tackle ICT as; media and social networking places are bringing about dramatic changes and are facilitating the communication of information between instructor and learner.

Operationalising Right To Education

According to World Bank's assessment for 192 countries, physical capital on average accounts only for 16% of total wealth. More important is natural wealth, which accounts for 20%. And more important still is human capital, which accounts for 64%. Literacy is now part of the Human Development Index. Government of India has also accepted this position, and has enacted a legislation making free and compulsory education a Right of every child in the age group 6-14 years which has come into force from 1st April, 2010

A right to childhood; a right to quality education; a right to all-weather classrooms; a right to text books; a right to playgrounds, a right to be taught by qualified and sufficient number of teachers; right to holistic development and a right to adequate government spending to make RTE a Right of every child!