

Legislation on Right to Education in Pakistan

A Critical review



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Established in 2005, Pakistan Coalition for Education (PCE) is committed to the improvement of quality education in Pakistan. The Coalition works in 65 districts across Pakistan and has over 200 members from local Community-Based Organizations (CBOs), Non-Government Organizations (NGOs), parent-teacher associations, Civil Society Organizations (CSOs), education reporters associations (members of the media), and relevant government education departments.

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GLOSSARY AND ACRONYMS

Art. / Article	An Article of the Constitution or of an international instrument
Constitution	The Constitution of the Islamic Republic of Pakistan, 1973, as amended from time to time
Constitutional jurisdiction	The special jurisdiction of the superior courts created under the Constitution for enforcement of fundamental rights and judicial review of public actions under Articles 199 (for the High Courts of the provinces) and 184(3) (for the Supreme Court of Pakistan)
Fundamental right	A right listed under Chapter 1 of Part II of the Constitution (Articles 8 to 28). All legislation and public (state) actions must comply with fundamental rights and are subject to judicial review by the superior courts
Judicial Review	The determination by superior courts of the legality of legislation and public (state) actions in accordance with the law and Constitution
Jurisprudence	The law as determined and interpreted by the superior courts through their judgments and precedent rulings
PCE	Pakistan Coalition for Education
PPP	Public-private partnership
Primary legislation	Laws that are passed by Parliament as Acts or issued by the President as Ordinances

Principles of policy	Principles listed under Chapter 2 of Part II of the Constitution (Articles 29 to 40) that each organ and authority of State is required to act in accordance with but are not subject to judicial review
RTE	Right to Education
S. / Section	A Section of a primary legislation
Secondary legislation	Laws that are created by the executive (government), usually as Rules and Regulations, under authority granted by primary legislation
Superior Courts	The highest constitutional courts of Pakistan vested with the powers of judicial review, comprising of the five High Courts, the Federal Shariat Court and the Supreme Court of Pakistan
State	The word 'State' is used throughout with the meaning given to it by Article 7 of the Constitution and includes the federal and provincial governments, the federal Parliament and the Provincial Assemblies as well as local or other authorities
UNESCO	United Nations Educational Scientific and Cultural Organisation

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EXECUTIVE SUMMARY

This policy paper invites a wholistic appreciation of the concept of RTE in all its dimensions and facets. Legal structures employed around the world and systemic limitations inherent in the legal system are highlighted to illustrate the confluence between legal rights and their practical manifestation. Only after having set out the indispensable considerations for a wholistic approach to achieving a constitutional fundamental right to free universal education does this paper then go on to engage with the existing legislation. A comparison is drawn between the features and provisions of the various federal and provincial statutes that have been enacted to date. An analysis of the deficiencies and shortcomings of the existing legislation is offered in light of the overarching concept and requisites for RTE. This paper helps identify the areas of policy concentration that would address the deficiencies restricting the deliverance of universal RTE as a fundamental right by the state and demarcates the legislative review required to successfully overcome these challenges for the achievement of RTE in Pakistan.

COUNTRY EDUCATION STATUS

Pakistan has 52 million children between the ages of 5 and 16 who are guaranteed free education by the Constitution. The number of out of school children in the same age group is 25 million, making Pakistan the country with the second highest population of out of school children. The latest Annual Status of Education Report (ASER) tells us that almost half of the 10 year old students have only achieved the linguistic competence of a 6 year old in either their mother tongue or in Urdu, the National Language. The competency levels for English are abysmal. Only half of 10 year olds could be tested to be competent in arithmetic expected of a seven year old. The other half, not even that.

51% of government primary schools don't have electricity. 36% don't have access to clean drinking water. 42% do not have functioning toilets.

The latest UNESCO report on the state of global primary education puts Pakistan amongst 21 countries in the world facing an extensive learning crisis. It also states that students in private schools outperform those in state schools. Yet, even there, only 36% of class 5 students can read a sentence in English, a class 2 skill. It also exposed the rift between quality of education across the different provinces. In Balochistan, only 45% of class 5 students could solve a two-digit subtraction, compared with 73% in the Punjab. The education limitation also takes on a gender feature as only 25% of girls in Balochistan achieve basic numeracy skills through their education, while boys from rich Punjabi families performed best.

Pakistan has the third-worst literacy levels in the world. Half the adult population and two-thirds of all women cannot read or write, while the country has one of the lowest expenditures on education in the world: a mere 2.3% of the country's GDP.

However, while there was a real decrease of 11% in the federal government's budget for the fiscal year 2014-2015 for education over the past year, the provinces improved their budgetary allocations over the same fiscal year. Khyber Pukhtunkhwa allocated 27.4% of its budget, Punjab allocated 26.1% of its budget

Mosharraf Zaidi, 'How Pakistan Fails Its Children', New York Times 14 October 2014

Ibid

Ibid

Ibid.

Saim Saeed, '5.5 million children out of school in Pakistan: UNESCO report', Express Tribune 1 February 2014

Ibid

Foreign & Commonwealth Office, 'UK/Pakistan: education April 2014'

Ikram Junaidi, 'Education budget decreased despite promises', DAWN 5 June 2014

Ibid

and Sindh earmarked 22% of its budget for education. However what is still required is enhancement of the provinces capacity to efficiently spend their budgets for delivering universal quality education.

International obligations

While Pakistan has unfortunately left behind the last opportunity to meet its obligations towards education under the Millennium Development Goals (MDGs) due for 2015 and is nowhere close to its target of 80% school enrolment, there are still a multitude of international obligations that we are not only required to fulfil but which also serve as guidelines for what needs to be achieved. These include Article 26 of the Universal Declaration of Human Rights; Article 13 of the International Covenant on Economic Social and Cultural Rights; Articles 28 and 29 of the Convention on the Rights of the Child, the UNESCO Convention Against Discrimination in Education; and the six goals of the Dakar Framework for Education. These international obligations necessitate that our attempts to deliver RTE in Pakistan are not only grounded in our domestic realities but also in tandem with the global conception of human rights and the expectations of international organisations and treaties towards the treatment of our citizens in light of international best practices.

Chapter 1

LEGAL RIGHT TO EDUCATION





Chapter 1

Legal Right to Education

The concept of a right to education (RTE) entails the inalienable right of all individuals to be provided quality education as not just a possibility but a delivered actuality. It aims to make education accessible in all circumstances by not leaving its attainment dependent upon privileged background or circumstances. Speaking of education as a human right makes it a part and parcel of not only being a citizen but also essential to the attainment of dignity as a human being. Over the past decade, the debate in Pakistan over improving the quality of and access to education has also centred on dealing with the issue through the paradigm of RTE and the resultant responsibility of the state to deliver this right. After having afforded constitutional recognition to RTE as a fundamental right, it is more important than ever before to appreciate how this right must be universally achieved in Pakistan.

Constitutionality of RTE in Pakistan

Since its adoption, the Constitution of the Islamic Republic of Pakistan, 1973 (the 'Constitution') has always provided for 'the responsibility of each organ and authority of the State', and of each state functionary to act towards 'removing illiteracy and providing free and compulsory education to the citizens of Pakistan'. Unfortunately, since this prescription was found under 'Principles of Policy', Articles 29 and 38(b of the Constitution), which are only guiding principles for the state to follow as they see fit in their own determination. Accordingly, this right had remained non-justiciable by the courts of law in accordance with Article 30 which does not empower the courts to act under the powers of judicial review of public actions as they may with regard to fundamental rights under Articles 199 and 184(3) of the Constitution. This meant that governments and other state institutions could not be held accountable for their violations of the Principles of Policy or their omission to deliver the right. Resultantly, the right to free and compulsory education was undelivered

RTE lays an equal and complementary responsibility and duty on the state to deliver access to education to all its citizens by overcoming all existing and possible hurdles and limitations that prevent a citizen from being provided such access to quality education.

by the state for decades. However, sustained lobbying by the civil society and the nation at large which had been suffering as a result of this failure, led to the inclusion of the right to education as a 'Fundamental Right' under Article 25A, as part of the sweeping changes brought about by the democratic restoration of the Constitution, under Section 9 of the 'Constitution (Eighteenth Amendment) Act, 2010'. This has made the right not only justiciable before the superior courts in their constitutional jurisdictions but also makes all legislation and executive acts subject to compliance with this right in accordance with Article 8 of the Constitution.

RTE as a fundamental right, as with any fundamental right, RTE lays an equal and complementary responsibility and duty on the state to deliver access to education to all its citizens by overcoming all existing and possible hurdles and limitations that prevent a citizen from being provided such access to quality education. The scope of the duty to act consistently with fundamental rights is very widely defined under Article 7 of the Constitution which defines the State as being inclusive of the federal and provincial governments, the federal Parliament and the Provincial Assemblies as well as local or other authorities. As a state responsibility, therefore, it is not a right that is capable of being fulfilled solely by its declaration as a recognised right or by passage of instruments of legislation to make education free. While such actions would further the attainment of universal RTE, its deliverance requires that all organs and institutions of state work under the overarching responsibility to remove all barriers to education in practical terms and ensure that there is no omission or failure to deliver on the part of the state limiting the access to education for any segment of the population. Legally, therefore, RTE cannot be viewed as the subject matter of a singular piece of legislation falling under the purview of a single government department but must be recognised as a responsibility of all state institutions to enable universal access to education by removing all actual and perceived restrictions on it while acting within the respective purview of their authority. Furthermore, this means that any public action of a state functionary is liable to be challenged before the superior courts and questioned on the basis of its failure to act in accordance with RTE under Article 25A.

Another important aspect of the changes brought about by the eighteenth amendment to the Constitution was the abolition of the concurrent legislative list in the Constitution which provided for shared legislative competence between the federal and provincial legislatures. Following this development, education is now a subject of legislative competence solely for provincial assemblies. However, following the discussion above, this cannot be taken to mean that the federal government and federal state institutions have now been absolved of all responsibility. Such a view would be legally incorrect. While provinces may pass laws and establish departments to regulate and manage the provision of education, the

federal government and parliament is still under an equal responsibility to pass all legislation under its competence and act for the furtherance of the right to education in contemplation of Article 25A, just as it must legislate in contemplation of every other fundamental right enumerated in the Constitution. Any legislation restricting this right, whether provincial or federal, is liable to be set aside by the courts under their constitutional jurisdiction. In view of the pervasive nature of the actions required to be taken for universal access to education, the State must act in tandem to address a diverse array of subjects that either restrict or could potentially further the right to education in Pakistan. Otherwise, there would be a risk of creating classes of citizens according to varying conceptions of education across the federation of Pakistan.

Furthermore, a fundamental right such as RTE is not limited to regulating the relationship between state and citizen but extends to the sphere of life of all citizens inter se. This view is especially fortified in view of the jurisprudence of the Supreme Court of Pakistan that sees all fundamental rights as specifically enforceable by the superior judiciary, even between private individuals. While it remains to be seen how the jurisprudence of the courts develops in this regard, it is possible for the enforcement of RTE to extend to all private persons limiting the rights of others to free education. The superior courts of Pakistan have in fact also recognised the right to a quality education as a part of the right to life under Article 9 of the Constitution.

A broader perspective of RTE

In order to appreciate the scope of the RTE that the state must deliver in view of the fundamental right to education, it is important to understand the various, but certainly not exhaustive, factors that must be taken into account to ensure that education is truly delivered as a universal right by addressing all inhibiting factors that limit accessibility for a citizen. From a constitutional standpoint and for purposes of judicial review by the courts of the state's responsibility to deliver the right to education, it would never suffice for the state to take a stance that it has passed legislation to make provisions for RTE. The actual question concerned would always be the actual enjoyment of the right by a citizen concerned and measures taken by the state to remove the actual impediments that hinder the enjoyment of this right. In the absence of this, any citizen of Pakistan is empowered by the Constitution to approach the constitutional courts for the deliverance of his right by the state. In fact, there have been multiple constitutional petitions filed before the High Courts in the public interest by various interest groups and lobbyists since the introduction of RTE as Article 25A of the Constitution, prompting the much delayed passage of primary legislation providing for free education in some provinces. Nevertheless, it is hoped that the democratic legislatures of the federation and the

provinces of Pakistan would take charge of this indispensable right for the future of Pakistan and deliver the required legal coverage without

Chapter 2

SCOPE AND AMBIT OF UNIVERSAL EDUCATION





Chapter 2

SCOPE AND AMBIT OF UNIVERSAL EDUCATION

It might come across as an unnecessary question with an obvious answer at first, but determining what is considered necessary to a complete education in terms of the minimal level of skills and abilities that are imparted through the educative process is central to determining the scope of the RTE that is to be achieved. This also raises issues of recognising the various systems of education that may be concurrently operating in both the public and private sector to meet the basic threshold while diverging in their approaches to education. It is important to deal with this question in terms of standardisation of quality of education with reference to curriculum, standardised testing, parental options to home school and subsequently test back into the school systems, alternate religious education, recognising the need to focus on different vocational and life skills in different educational systems while ensuring that the need for diversely tailored education is sufficiently addressed through state institutions as well.

In the context of Pakistan, there are at least five different institutionalised forms of education that exist in the mainstream education sector in addition to other less prevalent forms. Firstly, there is a dichotomy between publicly-funded state schools and privately-owned schools for fee paying students, both of which follow the curriculum and examinations prescribed by the relevant provincial boards for textbooks and examinations. Second, the majority of state schools use Urdu as the medium of instruction until the introduction of English as a second language in middle school, in sharp contrast to private schools that primarily offer instruction in English. Third, there are options for students to undertake vocational training in skills that may lead to employment while giving very limited attention to academic skills. Fourth, a very large number of students in the age bracket relevant under Article 25A are educated through religious seminaries, colloquially known as madrassas which are governed by various bodies pertaining to madrassas belonging

As a constitutional right, it must be ensured that no citizen is at a disadvantage with regards to the quality of education provided due to discrepancies between the modes of education in the private and state spheres.

to different sectarians affiliations prevalent in Pakistan. Fifth, while still a minority, but catering to the elite of the country, most upscale schools in the large cities of Pakistan now follow a British curriculum with examinations through external bodies.

Since Article 25A of the Constitution requires education to be compulsory, it is inevitable that primary legislation under it must prescribe what format such compulsion can possibly acquire. While government policy should be dictated by international best practices across these education systems, the law must also recognise these alternate systems as equally conducive to achieving the right to education and accordingly provide access to different modes of education where preference for one over another should be within the discretion of students and their parents.

As a constitutional right, it must be ensured that no citizen is at a disadvantage with regards to the quality of education provided due to discrepancies between the modes of education in the private and state spheres. This is often reflected in the linguistic preferences of education systems with the inevitable outcome of putting state-educated students at a disadvantage when sitting in university admissions, civil service or public sector competitive examinations later on in their academic careers. This social stratification cannot be allowed to continue if Article 25A is to be implemented in its letter and spirit. Otherwise, the education provided by the state would continue to disadvantage those who are most dependent on it. The law must therefore provide for the standardisation of the linguistic competencies of students across the country by creating nationwide standards of imparting local, regional languages as well as the national and official languages that place them on an equal playing field at all levels of education.

The problem of lagging standards of education is not limited to linguistic competence. There is great disparity between the standards of education being imparted in different parts of the country with varying focus on competencies and abilities that disadvantages entire regions of the country due to lagging standards and outdated curricula. This requires the law to provide for continued curriculum review that allows for the participation of not just educationists but also industry and public sector representatives to tailor and upgrade the skills imparted through the education system in line with the needs of the country and its economy. A cursory look at the Annual Status of Education Report (ASER) would suffice at reflecting upon the depressing condition of not only the skills being imparted but also the condition of education provided by the state in all parts of Pakistan.

In terms of establishing curriculum guidelines, the National Education Policy, 2009 was a positive development. While far from perfect, its real

deficiency still lies in the ever increasing lag between the policy on paper and its implementation in practice. The potency of any piece of legislation will continually be undermined if its implementation is not followed up by the standing committees of the legislatures themselves.

Similarly, attempts by the government to regulate madrassas by creating registration requirements and the introduction of state-run madrassas have met limited success till date. Recognising the importance of alternate systems of education that supplement the state's responsibility for delivering this right, madrassas must also be provided with curriculum assistance, financial support and a sustained effort to synchronise the quality of performance of institutions recognised across the country. RTE requires that a citizen is not disadvantaged because of his choice of medium of education or limited access to a certain form of educational institution in accordance with the provision of Article 25 (equality of all citizens).

Legislation must also cover the question of offering home-schooling to children where such students may then be allowed to sit examinations by educational boards. This may even prove to be of great assistance in achieving RTE on a community level where children in remote parts of the country may be educated communally while the government establishes proper facilities and infrastructure.

Ofcourse, the question of the role of private fee-charging schools is also central to the provision of RTE. However, existing legislation has not addressed the issue of affording equal recognition to different systems of education. Instead of recognising the role played by for-profit schools in delivering education, some of the provincial legislation (discussed below) has placed a greater burden on private schools to take on the state's responsibility of providing free education without creating any incentives for them to do so, nor including them in the consultative process.

Affordability

For most low-income families, the inability to afford sending children to school is the greatest restriction on access to education. This restriction does not only pertain to school fees, which is what this issue is often limited to when commonly addressed in policy making circles. The issue extends to a variety of factors at interplay in different scenarios including costs of daily transportation; ability to afford uniform for a number of growing children in the family; the cost of feeding them outside the home, at school; being unable to afford textbooks; inability to offer guidance or external assistance at home to compliment the education at school; or merely not being able to sustain the loss of income being otherwise bought in by a child by not attending school. Having said that, the

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Education Task Force's research on this subject in Pakistan suggests that households spend a significantly large portion of their budgets on their

In Colombia, an early childhood development (ECD) payroll tax has been in existence for over thirty-five years to raise funds for vulnerable children and families. While this subject-matter is apparently beyond the scope of RTE under Article 25A, similar specialised taxes can be created for earmarked contributions to education budgets that would find public support as well.

As the questions of funding and affordability are closely linked, there are also methods of targeted subsidisation for low-income families that have been very successful, the world over. For example, food coupons are used all over the world to be issued to families who cannot afford paid-for lunch in schools. Legislation that provides for reservation of publicly funded places on schools through quotas should be accompanied by incentives to private institutions through assistance and through a process of consultation and dialogue that also takes the educational expertise of the private sector on board for delivering RTE and maximising the resources available to the state. The expertise of private institutions may be sought as part of their social responsibility obligations to train public-school teachers and managers on best-practices through the creation of a national training academy for academic staff at federal and provincial levels.

The Sindh government has introduced an adopt-a-school programme which sets a good precedent for bringing in not only investment but also democratic oversight and greater transparency over how schools are run.

Accessibility

For RTE to be actualised universally, it must be made truly accessible. Accessibility is not an absolute concept consisting of a number of components that ensure the opportunity to access education. Creating accessibility requires that solutions are problem-oriented and look at specific instances and cases of the causes that limit access to education in the given scenarios for individuals or marginalised groups. In many instances, responding to community concerns and assessment of ground realities may well require that resources may be diverted from the provision of text-book tools for promoting education to responding to specific concerns of stakeholders such as parents, teachers and students themselves. This is only possible through taking a multi-tiered approach to implementing policy, legislation and creating public debate at all tiers of the State. We have already in the past experienced the positive impact of educational committees established in Pakistan in the 1960s at the district and sub-divisional levels with cross-sectional representation that not only created dialogue between stakeholders but were two way vehicles of communication between parents, students and schools on one hand and district and provincial government representatives on the other. It is

Creating accessibility requires that solutions are problem-oriented and look at specific instances and cases of the causes that limit access to education in the given scenarios for individuals or marginalised groups.

necessary that implementation of education policy and legislation be incorporated into the local government structure in Pakistan without

regard. In the UK, such legislation includes the 'School Standards and Framework Act 1998', the 'Advice on Standards of School Premises (May 2013)' and similar legislation passed by the regional assemblies of Scotland and Wales since education became a devolved matter.

As a result of public interest litigation in the US state of New Jersey, the Supreme Court ordered in the case of Abbott v Burke in 1998 that every school building in the poorest urban districts be made safe, healthy and educationally adequate. As a result, the 'Educational Facilities Construction and Financing Act' was passed in 2000 establishing the School Development Authority which has opened over 100 schools in the past decade in the state. Similar authorities tasked with enforcement of legislated standards of school facilities are indispensable for achieving the Right to Education in Pakistan by ensuring that the gap between legislation and implementation is also closed.

RTE has been a constitutional right in India since 2002 with primary legislation formed to deliver the right through the 'Right of Children to Free and Compulsory Education (RTE) Act, 2009' accompanied by dozens of rules, regulations, guidelines and notifications to deliver different aspects of RTE including free education, access, standard infrastructure and facilities etc. Consequently, after the attainment of goals and targets set by the legislation and the passage of a compliance deadline, thousands of private schools were shut down by the state that failed to comply with the standards set by the legislation with their students moved to free government schools with higher quality of services.

Pakistan must also adopt a phased strategy to adopting RTE legislation that first creates standards of education and secondly implements them in letter and spirit throughout the country before moving towards penalisation. Unfortunately, as discussed further below, the strategy employed thus far has been in reverse with greater attention on penalisation than on the universal provision of right to education under strictly defined legal standards of service that is to be delivered.

Disability

There is a dearth of legislation in Pakistan providing cover against discrimination as well as provision of specialised facilities for students with disabilities. While the traditional approach in Pakistan has to focus on segregated 'special education' for students with learning disabilities, there is no coverage for incorporating facilities for physically disabled students challenged by mobility etc. which does not pertain to their ability to learn. Any legislation covering infrastructure needs must make special provision for such students.

It is a popularised misconception that parents do not wish to educate girls in many parts of Pakistan. While there may certainly be some who are opposed to girls' education, all statistical data and research on attitudes towards education in Pakistan suggests this to be a rarity.

Detterence to violence

Chapter 3

EXISTING FRAMEWORK OF RTE LEGISLATION





Chapter 3

EXISTING FRAMEWORK OF RTE LEGISLATION

After the incorporation of the right to education as a fundamental right under Article 25A of the Constitution, there was a period of inactivity during which no primary legislation was introduced to deliver the newly created fundamental right. However, after a series of constitutional petitions of judicial review made in the public interest before the High Courts of the country, most governments introduced legislation through Ordinances, and later through Acts. At the time of writing, the Islamabad Capital Territory and the provinces of Balochistan, Punjab and Sindh had legislation providing for the right to education, whereas the Khyber Pakhtunkhwa government has publicly committed to introducing a right to education bill in the Provincial Assembly very soon. While fundamental rights are not justiciable by the Pakistani constitutional courts in the context of FATA, and the citizens of Gilgit-Baltistan have recourse to their own courts, and laws passed by the National and Provincial Assemblies do not automatically apply to these areas, the same rights of education should, nevertheless, also be extended to these areas in recognition of their status as citizens of Pakistan in accordance with the Supreme Court's judgment in the Al-Jehad Trust case. Azad Jammu and Kashmir is not discussed here as it does not constitute a part of Pakistan constitutionally and its citizens are not citizens of Pakistan under the law.

The following table highlights the salient features of the various legislations currently enacted:

Provision	Islamabad Capital Territory	Balochistan	Punjab	Sindh
Title	<i>Right to Free and Compulsory Education Act, 2012</i>	<i>The Balochistan Compulsory Education Act, 2014</i>	<i>The Punjab Free and Compulsory Education Act, 2014</i>	<i>The Sindh Right of Children to Free and Compulsory Education Act, 2013</i>
Enactment	19 December 2012	04 February 2014	Passed by Provincial Assembly on 27 October 2014	06 March 2013
Scope of RTE	<p>S.3</p> <p>“(1) Every child, regardless of sex, nationality or race, shall have a fundamental right to free and compulsory education in a neighbourhood school.</p> <p>(2) No child shall be liable to pay any kind of fee, charges, expenses, etc., which may prevent him from pursuing and completing the education.”</p>	<p>S.3</p> <p>“The parent of a child shall except in the case of a reasonable excuse, cause a child to attend a school until the child has completed the highest level of education course, offered in the school;</p> <p>Provided that in the case of a mental or physical disability the parent shall cause the child to attend a special education school within the ‘area’ of his residence.”</p>	<p>S.3(1)</p> <p>“Every child shall have a right to free and compulsory education from class one to ten, non-formal education, vocational education or a combination of all or any of the two as notified by the Government considering the needs, capability and age of the child so as to ensure completion of education or specified education in a school in the neighborhood or the school allocated for the child.”</p>	<p>S.3</p> <p>“(1) Every child of the age of five to sixteen years regardless to sex and race shall have a fundamental right to free and compulsory education in a school.</p> <p>(2) No child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the school education.”</p>
Power to make rules	<p>Yes. Government generally empowered to make rules under S.29 including for:</p> <ul style="list-style-type: none"> (a) the area or limits for establishment of a neighbourhood school; (b) the manner of maintenance of records of children; (c) determining the age of child; (d) the extended period for admission and the manner of completing study if admitted after the extended period; (e) the manner of giving special training and the time-limit thereof; 	<p>Yes. Government generally empowered under S.11</p>	<p>Yes. Government generally empowered to make rules under S.24 including for:</p> <ul style="list-style-type: none"> (a) manner of maintenance of records of children; (b) manner of giving special training and the duration of such trainings; (c) the area or limits for establishment of a neighbourhood school; (d) extended period for admission of a child and the manner of completing study by the child if admitted after the extended period; (e) academic calendar; 	<p>Yes. Government empowered under S.30 for the following areas:</p> <ul style="list-style-type: none"> (a) the area or limits for establishment of a school; (b) the manner of maintenance of records of children; (c) determining the age of child; (d) the extended period for admission and the manner of completing study if admitted after the extended period; (e) the manner of giving special teacher or management, training

Provision	Islamabad Capital Territory	Balochistan	Punjab	Sindh
	<p>(f) the authority, the form and manner of making application for Certificate of Registration;</p> <p>(g) the form, the period, the manner and the conditions for issuing Certificate of Registration;</p> <p>(h) the manner of giving opportunity of hearing under this Act;</p> <p>(i) the functions of School Management Committees;</p> <p>(j) school annual development plan;</p> <p>(k) the salary and allowances payable to, and the terms and conditions of service of teachers;</p> <p>(l) the duties to be performed by the teachers;</p> <p>(m) the manner of redressing grievances of teachers, students or any other person;</p> <p>(n) the form and manner of awarding certificate for completion of the education; and</p> <p>(o) the allowances and other terms and conditions of appointment of members of the relevant Education Advisory Council."</p>		<p>(f) duties to be performed by the teachers;</p> <p>(g) the manner of redressing grievances of teachers, students or any other person;</p> <p>(h) the manner of giving opportunity of hearing under this Act;</p> <p>(i) receipt of contribution, utilization and withdrawal of money from the Taleem Fund; and</p> <p>(j) maintenance and audit of accounts.</p>	<p>and the time-limit thereof;</p> <p>(f) the authority, the form and manner of making application for certificate of registration;</p> <p>(g) the form, the period, the manner and the conditions for issuing certificate of registration;</p> <p>(h) the manner of giving opportunity of hearing under this Act;</p> <p>(i) the functions of School Management Committees;</p> <p>(j) the preparing School Annual Development and Academic Plan;</p> <p>(k) the salary and allowances payable to, and the terms and conditions of service of teachers;</p> <p>(l) the duties to be performed by the teachers;</p> <p>(m) the manner of redressing grievances of teachers, students or any other person;</p> <p>(n) the form and manner of awarding certificate for completion of the education; and</p> <p>(o) the allowances and other terms and conditions of appointment of members of the relevant Education Advisory Council.</p>
Rules framed	None	None	None	None
Regulations	None	None	None	None

Provision	Islamabad Capital Territory	Balochistan	Punjab	Sindh
framed				
Definition of education	S.2(e) defines it as “the prescribed education for a child by the academic authority, notified by the Government” Scope has not been notified.	S.2(d) defines it as “The education pertaining to all or any of the class I to X in a school, of a minimum quality as per prescribed standards” Prescribed Standards have not been issued.	S.2(d) defines it as “teaching and training of mind and character by attendance in regular school education, madrassa education, vocational training and special education in the class room and school setting, or non-formal education or the education prescribed for a child or category of children by the Government;”	S.2(d) defines it as “prescribed education for child by the academic authority, notified by the Government.” Scope has not been notified.
Equality provision	s.3 “regardless of sex, nationality or race,”	S.2(c) “of either sex”	None	s.3(1) “regardless to [sic] sex and race”
Free education includes	S.2(g) “education free of any education related costs including expenditure on stationery, school bags, and transport.”	S.2(f) “Free Education means that the state shall charge no fee for tuition either directly or through any other head that imposes a financial burden on the parent/guardian of the child and the state shall provide the child with free textbooks, stationery, one meal in school and transport facilities;”	S.2(e) “free education implies that the Government or a local authority shall not charge any fee or expense for providing education and shall endeavour to remove financial barriers that may prevent a child from completing ten years’ education”	S.2(f) education free of any education related costs including expenditure on text books, stationary, schoolbags, and uniform; S.3 (2) “No child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the school education.”
Definition of schools	S.2(k) “any registered school imparting prescribed education and includes a,— (i) A school established, owned or controlled by the appropriate Government; (ii) A school receiving aid or grants from the appropriate Government to meet the whole or part of its expenses; and (iii) A school not receiving any kind of aid or grants from	S.2(l) “means a school established and maintained by the provincial Government and includes school/ section of a school/ Madrassa registered by the Government in which education is imparted;”	S.2(k) “means an educational institution imparting primary, elementary or secondary education to the children and includes: (i) a school owned or controlled by the Government or a local authority; (ii) a school receiving aid or grant to meet whole or part of its expenses from the Government, Federal	S.2(m) “any recognized school imparting primary, elementary and secondary education and includes - (i) a school established by or controlled by the Government or a local authority; (ii) a school receiving aid or grants, whole or part of its expenses from Government or the local authority;

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	the appropriate Government to meet its expenses.”		Government or a local authority; (iii) a school not receiving any kind of aid or grant from the Government, Federal Government or a local authority; and (iv) a Deeni Madrassa or any school providing religious education recognized by the Government”	(iii) a school belonging to specified category; and (iv) a school not receiving any kind of aid or grants for expenses from the Government or the local authority;”
Provision for vocational education	None	None	Yes. Under S.3.	None
Duty of Government	<p>Appropriate Government refers to the federal and local government for schools owned or controlled by each under S.2(a)</p> <p>S.3(3) states, “It is the obligation of the appropriate Government to,—</p> <ul style="list-style-type: none"> (a) provide free education to every child; (b) ensure admission of children of migrant families; (c) ensure compulsory admission, attendance and completion of education; (d) ensure safety of travel of the child and the teacher to and from school; (e) ensure availability of a neighbourhood school; (f) ensure that the disadvantaged child is not discriminated against and prevented from, on any grounds whatsoever, pursuing and completing education; (g) provide infrastructure 	<p>None. Parents are held responsible under S.3</p> <p>Responsibilities of Parent Management Committee under S.4 include:</p> <ul style="list-style-type: none"> “(a) to motivate parents and children to take admission in the school for spread of education in its area; (b) to recommend any changes which may seem, to the Management Committee, to be necessary in the hours of work, holidays and occasions in the schools in its area; (c) to plan and implement such schemes which may facilitate the children in the school including mid-day meal scheme etc; (d) to recommend to the authority exemptions from compulsory attendance at school under this Act; (e) to maintain and update the list of children liable to attend the school in its area 	<p>S.4 divides the duty between the provincial and local governments:</p> <p>“(1) The Government shall:</p> <ul style="list-style-type: none"> (a) provide free and compulsory education to every child in the neighborhood school or the school allocated for the child; (b) ensure good quality education conforming to the standards and norms of quality education; and (c) prepare an annual statement of the children admitted and retained in the educational institutions. <p>(2) A local government shall:</p> <ul style="list-style-type: none"> (a) maintain, in the prescribed manner, a record of children up to the age of sixteen years residing within its jurisdiction; and (b) ensure and monitor admission, attendance 	<p>S.7(4) states, “It is obligation of the Government to -</p> <ul style="list-style-type: none"> (a) provide free education to every child; (b) ensure compulsory admission and attendance to complete school education; (c) ensure that the disadvantaged child is not discriminated against and prevented from, on any grounds whatsoever for pursuing and completing education; (d) provide infrastructure including standard school building, playgrounds, laboratories, teaching learning material and teaching staff; (e) monitor functioning of schools within its jurisdiction; (f) decide the academic calendar;

Provision	Islamabad Capital Territory	Balochistan	Punjab	Sindh
	<p>including school building, playgrounds, laboratories, teaching learning material and reaching staff;</p> <p>(h) monitor functioning of schools within its jurisdiction;</p> <p>(i) decide the academic calendar;</p> <p>(j) provide all training facilities for teachers and students;</p> <p>(k) ensure good quality education conforming to the prescribed standards and norms;</p> <p>(l) ensure timely prescribing of curriculum and courses of study for education; and</p> <p>(m) provide proper training facility for teachers.”</p>	<p>and to obtain and keep record of such other information as may be necessary for the purpose of enforcing the attendance of the children at school and of preventing interference with such attendance;</p> <p>(f) to report the cases of the absence or late attendance of school teachers and non-teaching staff posted in schools, in its area;</p> <p>(g) to render all necessary help to Government officials engaged in the work of compulsory Education in its area;</p> <p>(h) to facilitate the school and local area education management in looking after the day to day matters relating to developmental, academic and co-curricular activities;</p> <p>(i) to ensure maintenance of healthy educational environment which encourages the parent and child to attend the school and stay till completion of the specific level;</p> <p>(j) to take care of discipline and physical structures, other assets of the school and to carry out minor/petty repairs etc;</p> <p>(k) to sanction one day casual leave in favor of teacher of the school and make alternate arrangements in case the teacher is on leave; and</p> <p>(l) to open and operate a joint bank account for utilization of funds made</p>	<p>and completion of education by every child residing within its jurisdiction.”</p>	<p>(g) provide all training facilities for teachers and students;</p> <p>(h) ensure good quality education confirming to the prescribed standard and norms;</p> <p>(i) ensure timely prescribing of curriculum and courses of studies for education; and</p> <p>(j) ensure enabling learning environment for better teaching</p> <p>[sic] learning in schools.”</p>

Provision	Islamabad Capital Territory	Balochistan	Punjab	Sindh
		available by the Government or from any other source for school's developmental activities."		
Duty of Parents	S.8(1) "The parent of a child shall, except in the case of a reasonable excuse, cause a child to attend a school in the neighbourhood until the said child has completed the prescribed education."	S.3 "The parent of a child shall except in the case of a reasonable excuse, cause a child to attend a school until the child has completed the highest level of education course, offered in the school; Provided that in the case of a mental or physical disability the parent shall cause the child to attend a special education school within the 'area' of his residence.	S.9 "(1) A parent shall admit or cause to be admitted the child for education in a school or, as the case may be, in the school allocated for the child. (2) The parent shall, except in the case of a reasonable excuse, cause the child to attend a school in the neighborhood or the allocated school until the said child has completed the education provided and contemplated for him. (3) If a parent fails to admit and keep the child in a school, he may not be entitled to any subsidy or poverty targeted support of the Government and the Government may recommend such a measure to the Federal Government or any other body providing such subsidy or support."	S.8(1) "The parent or guardian of the child shall, except in the case of a reasonable excuse, cause a child to attend a school until the said child has completed the prescribed education."
Definition of neighbourhood	None	S.2(b) defines 'Area' as "a geographical area of up to a 2 kilometers radius from a child's place of residence;"	None. However, not having a school within 2 kilometres from the residence is a reasonable excuse for a child to not attend school under S.9(3)(c)	None However, not having a school within reasonable distance is a reasonable excuse for a child to not attend school under S.8(2)(b)
Oversight body	School Management Committee under S.16 to be constituted by the school with reserved representation of parents and women.	Parent School Management Committee under S.4 to be elected through democratic process.	School Management Body under S.11 to be established by the Government.	School Management Committee under S.16 to be constituted by the school.

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	Private schools not in receipt of government funds are not covered by this.			
Parental involvement	Yes. Under S.16. Two-thirds of the Committee is to comprise of parents of students.	Yes. Under S.4	None	Yes. Under S.16
Norms prescribed for schools	Yes. Under S.15 Not notified as yet	Yes. Standards defined under S.2(m) as "any standards on educational inputs, processes and outputs developed and notified by the Prescribed Authority," Not notified as yet.	None	Yes. Under S.15(1) Not notified as yet.
Provision for school infrastructure	Included in Duty of Government. No subordinate legislation framed.	None	None	Included in Duty of Government. No subordinate legislation framed.
Provision for healthcare	Yes. Every school is required to provide for medical and dental inspection of students under S.21	None	None	None
Provision for meals	None	Included in definition of free education	None	None
Provision for transport	Included in definition of free education	Included in definition of free education	None	None
Provision for uniform	No express mention but implicit in definition of free education	None	None	Included in definition of free education
Provision for textbooks and stationery	Included in definition of free education	Included in definition of free education	None	Included in definition of free education
Timeline for schools to conform to norms	Two years under Section 15(3)	None	None	Two years under Section 15(3)
Corporal punishment	Prohibited under S.13(3)	Not mentioned	S.16 "(4) The incharge of a school shall ensure that a	Prohibited under S.13(3)

Provision	Islamabad Capital Territory	Balochistan	Punjab	Sindh
			<p>child studying in the school is not subjected to corporal punishment or harassment.</p> <p>(5) A person who contravenes any provision of this section shall be guilty of gross misconduct and shall be liable to disciplinary action under the law or contract of service of such person."</p>	
Provision for disadvantaged children	<p>S.2(d) states, "disadvantaged child" means a child who belongs to a socially and economically disadvantaged class, or group or belongs to such parent whose annual income is lower than the minimum limit specified by the appropriate Government, by the notification in the Official gazette"</p>	None	<p>S.2(c) states, "disadvantaged child" means a child who belongs to a socially and economically disadvantaged class, or to any other group having disadvantage owing to social, cultural, gender or such other reasons or who belongs to such a parent whose annual income is less than the limit which the Government may, by notification, specify."</p>	<p>S.2(c) states, "disadvantaged child" means a child who belongs to a socially and economically disadvantaged class, or group or belongs to such parent whose annual income is lower than the minimum limit and whose parents have become victim of terrorism as notified by Government;</p>
Provision for handicapped children	<p>S.2(c) defines a child as "including a child with special education needs, male or female"</p>	None	<p>S.3(4) states, "The Government shall, in the prescribed manner, provide or cause to be provided suitable education to a child suffering from disability or a special child."</p>	None
Establishment of new schools	Federal or local government to establish within two years under S.6(1)	S.10 states the Govt shall make educational facilities available. There is no timeline.	S.8(1) provides for a local authority to establish the requisite number of schools. There is no timeline.	Government and local authority to establish within two years under S.6(1)
Provision for child labour	Yes. An employer employing a child required to attend school after receiving a warning from the School Management Committee, commits an offence under S.16(6)	<p>Yes. Case may be registered against employer keeping child from school under S.7</p> <p>An employer or parent</p>	None	None

Provision	Islamabad Capital Territory	Balochistan	Punjab	Sindh
		employing a child required to attend school after receiving a warning from the School Attendance, Authority commits an offence under S.8(2)		
Provision for early childhood education	Yes. Discretion of federal and local government to provide free pre-school education and early childhood care for children above three until joining school under S.9	None	Yes. Discretion of government or local authority to establish a kindergarten or childcare centre for children above three until joining school under S.10	Yes. Both pre-school education and early childhood care for children above three until joining school under S.9
Provision for education after sixteen	None	None	None	Yes. Under S.4 Entitlement to free education extended till completion of secondary education.
Establishment of body for curriculum	Prescribing curriculum is listed as a duty of the appropriate government under S.3(l) An Academic Authority to be notified by the federal government for curriculum, evaluation, textbooks under S.7(3) Not notified as yet	None	None	Curriculum and evaluation procedure to be laid down by academic authority to be specified under S.20(1). No procedure laid down as yet.
Establishment of body for teacher training	The academic authority under S.7(3) to also be responsible “to develop and enforce standards for training of teachers, and to provide technical support and resources for planning and capacity building of teachers and education managers.”	None	None	None
Establishment of body for implementation and monitoring	No. Responsibility of appropriate governments under S.20 Power to inspect schools under S.25	School Attendance Authority(ies) under S.7 to ensure attendance or register case against parent or employer	No. Responsibility of provincial government under S.18	No. Responsibility of provincial government under S.21 Power to inspect schools under S.25
Establishment	Education Advisory Council	None	None	Education Advisory Council

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of body for public and expert consultation	under S.22			under S.22
Directions to schools	Govt. may issue directions under S.25(2)	None	Govt. may issue directions under S.19(2)	Govt. may issue directions under S.25(2)
Responsibility for private schools	<p>Schools owned or controlled by the government or private schools receiving government funds are to provide free education to a percentage of children equivalent to the funds received as a percentage of annual expenses under S.10(a)</p> <p>Ten percent of class 1 and then every subsequent class of disadvantaged children to be educated for free by private schools not receiving government funds under S.10(b)</p>	None	<p>Private schools receiving government funds are to provide free education to a percentage of children equivalent to the funds received as a percentage of annual expenses under S.13(a)</p> <p>Ten percent of class 1 and then every subsequent class of disadvantaged children to be educated for free by private schools not receiving government funds and deeni madrassas under S.13(b)</p> <p>All private sector schools are prohibited to “require a parent to purchase textbooks, uniform or other material from a particular vendor or provider and shall not charge any amount other than tuition fee, admission fee or prescribed security in the name and style of building fund or under any other name or style” under S.13(d)</p>	<p>Private schools to provide free education to ten per cent of their students under S.3(3)</p> <p>Ten percent of class 1 and then every subsequent class of disadvantaged children under S.10(b)</p>
Incentives for private schools and investors	S.6(2) “Government shall encourage enterprises, institutions and other segments of society, by offering incentives, to establish schools to facilitate free and compulsory education.”	None	S.8(3) “The Government and a local authority may encourage enterprises, institutions and other segments of civil society, by granting exemption or rebate in taxes and offering incentives for those who establish,	S.16(2) “Government shall encourage enterprises, institutions and other segment of society, by offering incentive, to establish schools to facilitate free and compulsory

Provision	Islamabad Capital Territory	Balochistan	Punjab	Sindh
	<p>S.6(3) "Government shall establish a system of grants-in-aid to support the school attendance of poor students."</p> <p>No incentives have been introduced as yet.</p>		<p>maintain or run schools for provision of free and compulsory education to children."</p>	<p>education."</p> <p>S.16(3) "Government shall establish a system of grants-in-aid to support the school attendance of poor students."</p> <p>No incentives have been introduced as yet.</p>
Criminal Offences	<p>Parent failing to comply with requirement of medical or dental inspection of student under S.21(2)</p> <p>Promoting educational institution without registration under S.24</p>	<p>Parent or employer failing to follow direction to cause a child to attend school under S.8(1)</p> <p>Parent or employer continuing to employ a child after warning under SS.7 and 8(2)</p>	<p>Any person receiving a capitation fee, or in case of state schools subjecting a child or its parent to screening under s.14</p>	<p>Promoting educational institution without registration under S.24</p>
Maximum penalty	<p>Maximum fine of Rs.5000/- under S.21(2)</p> <p>Rs.100,000/- or one year imprisonment or both under S.24</p>	<p>Minimum fine of Rs.200/- and minimum daily fine of Rs.50/- or one week imprisonment, or both</p>	<p>Maximum of twenty times capitation fee collected and Rs.50,000/- for subsequent contravention under S.14(2)(a)</p> <p>Maximum fine of Rs.50,000/- and 100,000/- for subsequent contravention for screening under S.14(2)(b)</p>	<p>Rs.100,000/- or one year imprisonment or both under S.24</p>
Teachers' duties	<p>S.18(1) "A teacher shall perform the following duties, namely:</p> <ul style="list-style-type: none"> (a) maintain regularity and punctuality in attending the school; (b) complete the curriculum and syllabi within the specified time; (c) assess the learning 	None	<p>S.17(2) "A teacher including the incharge shall:</p> <ul style="list-style-type: none"> (a) maintain regularity and punctuality in attending the school, classes, curricular and co-curricular activities; (b) complete the curriculum within the specified time; 	<p>S.18(1)</p> <ul style="list-style-type: none"> "(a) maintain regularity and punctuality in attending the school; (b) complete the curriculum within the specified time; (c) assess the learning abilities of every child and supplement additional instructions, if

Provision	Islamabad Capital Territory	Balochistan	Punjab	Sindh
	<p>abilities of every child and supplement additional instructions, if any, as required;</p> <p>(d) all round development of the child;</p> <p>(e) building up child's knowledge, potentiality and talent;</p> <p>(f) adopt learning through activities, discovery and exploration in a child friendly and childcentered manner;</p> <p>(g) make the child free of fear, trauma and anxiety and help the child to express views freely;</p> <p>(h) hold regular meetings with parents and share with them the relevant information about the child; and</p> <p>(i) perform such other duties as may be prescribed."</p>		<p>(c) assess the learning abilities of every child and impart additional instructions, if required;</p> <p>(d) try for all round development of the child;</p> <p>(e) build up child's knowledge, potentiality and talent;</p> <p>(f) adopt learning through activities, discovery and exploration in a child-friendly and child-centered manner;</p> <p>(g) keep the child free of fear, trauma and anxiety and help the child to express his views freely;</p> <p>(h) hold regular meetings with parents and share with them the relevant information about the child; and</p> <p>(i) perform such other duties as may be prescribed"</p>	<p>any, as required;</p> <p>(d) take care of all round development of the child;</p> <p>(e) build-up child's knowledge, potential and talent;</p> <p>(f) adopt learning through activities, discovery and exploration in a child friendly and child-centered manner;</p> <p>(g) make the child free of fear, trauma and anxiety and help the child to express views freely;</p> <p>(h) hold regular meetings with parents and share with them the relevant information about the child; and</p> <p>(i) perform such other duties as may be prescribed."</p>
Terms of teachers' service	<p>S.17 states, "(1) No person shall be appointed as a teacher unless he possesses the prescribed qualifications.</p> <p>(2) Where the persons having the prescribed qualifications are not available, the appropriate Government may, by notification, relax the prescribed qualifications, for a period not exceeding two years:</p> <p>Provided that a teacher, who at the commencement of this Act does not possess the prescribed qualifications, shall</p>	None	None	<p>S.17(1) states, "(1) No person shall be appointed as a teacher unless he possesses the prescribed qualifications.</p> <p>(2) Where the persons having the prescribed qualifications are not available, the Government may, by notification, relax the prescribed qualifications, for a period not exceeding two years:</p> <p>Provided that a teacher, who at the commencement</p>

Provision	Islamabad Capital Territory	Balochistan	Punjab	Sindh
	acquire such qualifications within a period of two years.”			of this Act, does not possess the prescribed qualifications, shall acquire such qualifications within a period of two years.”
Student-teacher ratio	To be prescribed and maintained within one year under S.19(1) Neither has happened.	None	None	To be prescribed and maintained within one year under S.19(1) Neither has happened.
Teacher absenteeism addressed	Regularity made part of teachers' duties and liable to disciplinary action under S.17(2) for default in performance of duties.	None	Regularity made part of teachers' duties and liable to disciplinary action under S.17(2) for default in performance of duties.	Regularity made part of teachers' duties and liable to disciplinary action under S.17(2) for default in performance of duties.
Use of teaching staff for non - educational activities	S.19(3) restricts deployment of teachers in non-educational activities to Population Census, disaster relief duties or duties relating to election.	None	S.17(2)(i) requires teachers to “perform such other duties as may be prescribed.”	S.19(3) restricts deployment of teachers in non-educational activities to Population Census, disaster relief duties or duties relating to election.
Recognition for educators	Awards under S.23	None	None	Awards under S.23
Registration of schools	Yes. Under S.14	None	None	Yes. Under S. 14
Provision for budgeting for education	Under S.7(1) federal and local governments have concurrent responsibility for finances (2) Federal govt may provide grants-in-aid to the local government	None	Under S.7(1) federal and local governments have concurrent responsibility for finances (2) The Provincial govt may approach the federal govt for grants-in-aid	Under S.7 (1) Provincial government and local authority responsible for providing funds and (2) Govt responsible for preparing capital and recurring expenses estimates.
Provision for greater resource allocation	None	None	None	S.7(3) permits Education Department to request Chief Minister to make a reference to Finance Department for need of additional resources.

Chapter 4

ANALYSIS AND RECOMMENDATIONS





Chapter 4

ANALYSIS AND RECOMMENDATIONS

While the introduction of primary legislation to deliver the fundamental right to education is certainly a step in the right direction, there are still a great number of deficiencies in the existing legal framework for achieving universal RTE in Pakistan.

Secondary Legislation

There are a great many features of RTE discussed above that have been successfully incorporated in the legislation. However, most of these are dependent on the formulation of secondary legislation including Rules, Regulations, prescriptions and notifications, without which these provisions are not executable or do not amount to a meaningful development. Only after detailed subordinate legislation is passed can the success of the governments and executive authorities be judged and held accountable before the courts and the electorate. To date, none of the provinces have formulated any subordinate legislation for RTE. Such voids have been identified in the table above where Rules are required for the true delivery of RTE, e.g. in order to provide for the many features of free education, or guidelines for infrastructure of schools to be established etc. Most of the issues pertinent to RTE legislation that require coverage have been discussed in detail above.

Age restrictions

As the right to education under Article 25A of the Constitution is qualified by age, the primary legislation has also followed the prescription of age between five and sixteen years when defining a child. However, this does not follow the division of schooling years in the education system of Pakistan which classifies students aged 4 to 5 in pre-primary school; aged 6 to 10 in primary school; aged 11 to 13 in middle school; 14 to 15 in high school and aged those aged 16 to 17 in higher secondary school.

Therefore, following the gap created by Article 25A, the legislation also excludes the first and last year of a child's schooling in many circumstances. Accordingly, there will be many students who do not fall within scope of benefit of the right to education legislation in either their first or last year of school.

Having said that, It is heartening to see that most of the legislation covers or provides discretionary authority for establishment of pre-schools and early childhood development programmes as well, even though this is technically beyond the scope of Article 25A. This positive development should be continued and made an integral part of RTE in Pakistan.

Secondly, apart from Sindh, none of the other legislation provide for discontinued or interrupted education to be continued after a child reaches the age of sixteen. Therefore, such allowance should be made to ensure that children who lag behind are allowed access to free and compulsory education until completion of their school, even beyond their sixteenth birthdays.

Compulsory Education

As discussed above, the distinctions between various systems of education prevalent in Pakistan are not reflected in the scope of compulsory education under the enacted legislation. Balochistan and Punjab are the only provinces to include madrassas in the definition of schools while the Punjab Act is the only one to make reference to vocational and informal education as well as recognizing alternate methods of education outside conventional institutions. It is necessary that the legislation responds to the state of our society and take along its sharp contrasts and distinguishing features in the education sector.

Private sector

Unfortunately, none of the governments have introduced any incentives for private sector investment and involvement, even where the legal capacity has been created in most of the legislation. The responsibility put on private schools to take up fixed percentage of students for free education is very restrictive. A large number of schools have already challenged these provisions in the High Courts and litigation is pending adjudication. Many private institutes claim that they have not been offered any relief from taxation; cost of utilities; rent etc. and their costs have been added to without consultation as to what method may be effectively adopted.

Alternate models of private engagement should also be considered through mutual dialogue with private investors, including school adoption

programmes, assistance with teacher training, financial contributions, setting up model schools as niche projects etc.

While the fate of provisions requiring privately owned schools to reserve ten percent of their strength for disadvantaged students remains to be determined by the Courts, there is bound to be considerable backlash from both school owners and civil society as an attempt to restrain economic rights. It is also most likely to be overturned by the superior courts for being an unconstitutional restraint to trade and business.

However, from a policy perspective, while this comes across as a quick solution to instate a fixed percentage of students into an existing network of privately owned schools, it is likely to drive many small-scale private schools for low income students, out of business. The decreased profit effect would not only have a bearing on increased fees on the remaining student body but also likely to result in further restrictions on already limited teachers' salaries and remuneration etc.

Furthermore, placing disadvantaged children from low income households into elite privately owned schools may also prove to be disastrous for their own self-confidence and psychological well-being. Such placement would only fortify class divisions and isolate such students from their peers and most likely shatter their confidence. There is absolutely no example in modern education policy to present as a success story for such a forced delegation of a central state responsibility to the private sector without passing along the revenue that the state raises from its citizens for the same services.

Geographical ambit

Except for the Balochistan legislation, the geographic catchment area of a 'neighbourhood' has not been defined in legislation, although the Punjab legislation makes reference to distance as a reasonable exception to school attendance. The geographic determination of the neighbourhood is important with regard to school enrolment drives, subsequent rules to be made on transportation coverage, the area to be covered by Committees and Authorities formed under the laws and determining what school a child ought to be attending.

However, while this requires a demarcation, the relevant governments must not allow such limitation to be a cause of creating gaps in the coverage provided by schools and continually strive to expand the reach and accessibility for students. A possible solution is to create school districts following practical necessities, following the system of demarcation of electoral constituencies.

Equality

*All school children
should be given full,
free health coverage
for at least
emergency services.*

*In the long run, the
cost of regular
healthcare checks
borne by the state
are set off by huge
savings caused by a
healthy and
productive
workforce.*

Chapter 5

IMPLEMENTATION





Chapter 5

IMPLEMENTATION

While some of the legislation provides for establishment of schools after a notification period which has not been notified under any of the laws, there is a general deficiency of a clearly demarcated timeline for the formulation of necessary rules and regulation and their subsequent implementation and review.

Finance

While the enacted laws place the responsibility to finance with governments, innovative steps are required to be taken to attract private investment, raise greater funding through the various methods discussed in the first part of this paper, as well as making political commitments for greater resource allocation. It would be helpful for specific rules regarding public-private partnerships in education to be formulated under these laws for school projects.

Deficiencies

Most of the enacted laws failed to address the question of child labour and harnessing the process of universal school enrolment. They also do not deal with child exploitation and abuse that keeps them out of school. Furthermore, there are no provisions for education of juveniles and child inmates in state detention, many of who are either detained with their mothers or simply lost to their families while serving time for bailable offences.

While the legislation addresses corporal punishment, it needs greater attention on providing for teachers' training to deliver the goals set out under RTE.

Surprisingly, there are no provisions dealing with language of instruction.

Most of the enacted laws failed to address the question of child labour and harnessing the process of universal school enrolment. They also do not deal with child exploitation and abuse that keeps them out of school.

It is important that in improving these laws, creating new ones, framing secondary legislation and working towards implementation and monitoring that we proceed in a democratic fashion with focus on a process led by a national dialogue that is transparent, accountable to the public and truly responsive to the realities and needs of our society and children.

RTE implementation is a good chance to provide for an early platform of mother-tongue learning throughout Pakistan with a systematised introduction of languages at appropriate junctures of learning and development in furtherance of Article 28 of the Constitution.

Devolution and coordination

The comparative analysis of the various laws enacted above should suffice to reflect the disparate nature of the execution of right to education in Pakistan. As detailed above, the devolution of education as a legislative subject to the provinces should not be a restriction for coordinating and harmonising our efforts for the achievement of a constitutional fundamental right. As a right that attaches to citizenship of the Federation of Pakistan and not just a province, we must enable this right in a way that creates greater unity and harmony in society rather than exacerbates distinction, discord and further stratification of society. In lieu of this, national standards must be devised to synchronise the scope and ambit of RTE in Pakistan in an environment of positive competition between the governments to perform beyond the basic threshold of the constitutional right. The constitutional body in the form of the Council of Common Interests should be specifically activated for this purpose as well.

It is important that in improving these laws, creating new ones, framing secondary legislation and working towards implementation and monitoring that we proceed in a democratic fashion with focus on a process led by a national dialogue that is transparent, accountable to the public and truly responsive to the realities and needs of our society and children. We must not allow this to become a bureaucratic exercise responding to court orders to draft laws. Furthermore, in bringing universal RTE to Pakistan, we must act in accordance with not just the fundamental rights enshrined in the Constitution but also the principles of policy that must always be the guiding beacon for executive authorities. Specifically, there is great need to strengthen local government structures in accordance with Articles 140A and 32 of the Constitution to allow the people to determine the solutions to their problems and become the vessels of the state to deliver their rights rather than remain inaccessible on the fringe of the state apparatus.

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