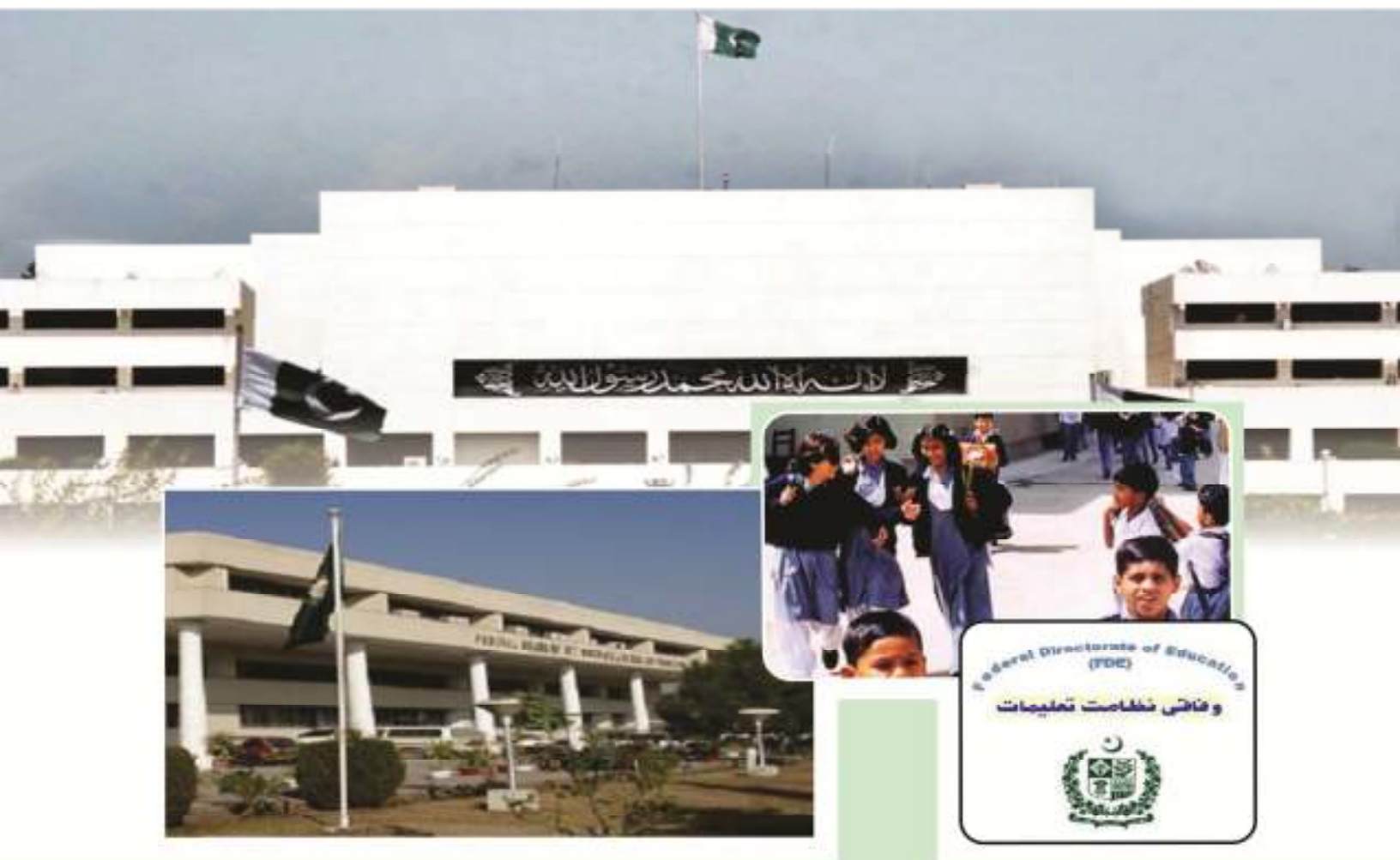


REVIEW OF
RIGHT
TO
FREE AND COMPULSORY EDUCATION ACT, 2012



**REVIEW OF FEDERAL RIGHT TO FREE AND COMPULSORY
EDUCATION ACT, 2012**

Review and Recommendations Presented to Federal Government

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Introduction

Education is an internationally recognized right which is considered cardinal for the exercise of all other human rights. The United Nations' Committee on Economic, Social and Cultural Rights (CESCR) befittingly stated that the right to education "epitomizes the indivisibility and interdependence of all human rights"¹. Post World War II, the right to education became an integral part of international human rights law. The right has been duly acknowledged in the international normative instruments, which provide international legal obligations for the provision of free and compulsory Education. From the first international normative instrument on the right to education, UNESCO's *Convention against Discrimination in Education* (CADE 1960) the right to free and compulsory education has been acknowledged in a number of international conventions, covenants and declarations². The incorporation of right to education in domestic laws can be traced back to 19th century when a number of European states laid down the provision of compulsory primary education in their respective laws³. Today more than 135 countries have enshrined this right in their constitutions.

The constitution of Islamic Republic of Pakistan 1973 acknowledged the right to education in chapter on "Fundamental Rights and Principles of Policy"⁴ but it remained non-justiciable ever since. In April 2010, Parliament passed 18th amendment to the constitution. The amendment besides abolishing the concurrent list introduced Article 25-A in the Constitution of Pakistan 1973.

"The State shall provide free and compulsory education to all children of the age of 5 to 16 years in such a manner as may be determined by law."
*Article 25-A, Constitution of Pakistan 1973*⁵

Introduction of Article 25-A signifies two major shifts; first provision of free and compulsory education is no longer merely a principle of policy but an obligatory commitment of the state⁶.

¹ Committee on Economic, Social and Cultural Rights, 1999. *General Comment 11, Plans of Action for Primary Education* (Twentieth session).

² Right to Education was included in the Universal Declaration of Human Rights, the First Optional Protocol to the European Convention on Human Rights and Fundamental Freedoms, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and in a number of other international instruments.

Article 26 (1) of Universal Declaration of Human Rights, 1948 states: *Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages*; Article 28 (1) (a) of Convention on Rights of Child 1989 states: *Make primary education compulsory and available free to all*; Article 7 (2) (c) of Worst Forms of Child Labor Convention, 1999 (No. 182) states *"Ensure access to free basic education..."*

³ Please see; K. Tomasevski. 2003. *Education Denied: Costs and Remedies*. New York: Zed books. pp. 44-48.

⁴ Article 37 (b) of Constitution of Islamic Republic of Pakistan 1973 states: "The State shall remove illiteracy and provide free and compulsory Secondary Education within minimum possible period"

⁵ Inserted vide, *Constitution (Eighteenth Amendment) Act 2010*, Act No X of 2010, P 267, 20th April 2010. The Gazette of Pakistan, Extr. Pt. I.

⁶ Article 37 (b): *"The State shall remove illiteracy and provide free and compulsory Secondary Education within minimum possible period"* (Article 37 (b), Part II, Chapter 2, Principles of Policy, Constitution of Islamic Republic of Pakistan 1973).

Secondly, it also obligates the federal and provincial governments to ensure the provision of free and compulsory education by legislating on the manner in which it will be extended, thus making it a justiciable right⁷.

Additionally, the abolition of concurrent list devolved education to the provinces for legislation and decisions regarding curriculum, syllabus, planning, policy, centers of excellence and standard of education⁸. It now rests with the Parliament and Provincial assemblies to legislate for the provision of Free Education in their respective jurisdictions. However it will be pertinent to mention here that even before the introduction of article 25-A, provinces have been legislating on the subject of provision of compulsory education, but this is the first time that they are constitutionally obligated to ensure the right to free and compulsory education⁹.

The Parliament enacted Right to Free and Compulsory Education Act in 2012¹⁰. The legislation extends to Islamabad Capital Territory (ICT) and areas as may be notified. While the Act¹¹ has been passed; legal experts, educationists and Civil Society Organizations (CSOs) have raised concerns pertaining to the restrictive scope of some of the definitions, omission of certain important clauses and the implementation procedure provided in the law. In this backdrop the present document attempts to present major areas of concern in the recently enacted RTE Act. The present review is divided into three distinct sections:

- A. Issues pertaining to the Definitions
- B. Procedural Issues
- C. Voids in Legislation

In the first section, we will focus on the definitions as given in the Act. We will reread these definitions in the light of on-going debate on free and compulsory education, and also try to highlight terms that need further elaboration. The second section discusses the procedural dimension of the Act i.e. nature of penalties - civil or criminal - under the Act in case of non-compliance, role and responsibilities of private schools, size and composition of School Management Committees etc. The third section outlines the areas on which the Act is largely silent. All of the three sections will draw from the experience and practice in various federations around the world.

⁷ Justiciability as used in this policy brief refers to ‘*the ability to claim a remedy before an independent and impartial body when a violation of a right has occurred or is likely to occur*’. ICJ. 2008. *Courts and the Legal Enforcement of Economic, Social and Cultural Rights – Comparative Experiences of Justiciability*. International Commission of Jurists. Geneva.

⁸ “18th Constitutional Amendment: Issues and Challenges in Curriculum and Standards” by Institute of Social and Policy Sciences.

⁹ For instance notable legal instruments introduced prior to 2010 include; *West Pakistan Primary Education Ordinance, 1962; Punjab Compulsory Primary Education Act, 1994; N.W.F.P Compulsory Primary Education Act 1996, Sindh Compulsory Primary Education Ordinance 2001 and ICT Compulsory Primary Education Ordinance 2002*.

¹⁰ “Right to Free and Compulsory Education Act, 2012” as passed by the National Assembly on November 13, 2012

¹¹ Throughout the paper, unless expressed otherwise, “Act” means Right to Free and Compulsory Education Act, 2012

Section II:

1. Issues Pertaining to the Definitions

1.1. Defining Free Education¹²:

In case of Islamabad Capital Territory, after the enactment of the Act, it is the responsibility of appropriate government to pay for the cost of education and provide stationery, schoolbags and transportation to children entitled to Free and Compulsory Education. Among the number of issues related to “Free Education” is that since free and Compulsory Education is the right of every child in the country, it should be reasonable to assume that children going to privately owned school should receive education “Free” to the extent of average per child cost incurred by government on a child in government owned school. Whether the children going to privately owned schools will be entitled to free stationery, schoolbags and transport? If so, what will be the costs and procedures associated with these? This question becomes more relevant when we consider a potential situation where only private schools are present in a neighborhood, and no government school. Will the children going to these private schools receive any reimbursement for their education from the appropriate government? All these are very significant and relevant questions, but the legislation unfortunately does not appear to address them.

If the Act¹³, however, intends to restrict these privileges only to the students of government owned schools, then it should have been clearly pronounced in the document. This is the case in Sri Lanka where Education Ordinance 1939 specifically ties the word “Free” with education in Government Schools.

1.2. Neighborhood:

Neighborhood denotes the immediate environment or surrounding. For the purpose of school education, it includes reasonable area within [or around] a locality that can be covered with relative ease by the children to reach the school for education. Definition of Neighborhood has direct bearing on the access to education in any locality. One view, however, is that although it should be defined in qualitative terms so as to clarify the meaning of the term, but the actual task of delimiting neighborhood shall remain subject to Rules of Business. In case of India¹⁴, neighborhood is treated in the Rules of Business. It stands at 1km in respect to children in classes 1 to 5, and 3 km in respect to children in

¹² Section 2(e) of the Act defines “Free education” as including any education related costs e.g. expenditure on stationery, schoolbags, and transport.

¹³ Throughout the paper, unless expressly mentioned, “Act” means Right to Free and Compulsory Education Act, 2012

¹⁴ Section 4 (1) of Draft Model Rules under the Right of Children to Free and Compulsory Education Act, 2009

classes 6 to 8. It should be kept in mind that the term “neighborhood” in case of India is explained in the Draft Rules of Business and not in the Act.

Another view is that the term “Neighborhood” should neither be delimited in the Act nor in the Rules. The proponents of this view believe that it should be left with appropriate governments to delimit neighborhood through respective notifications. There is some merit in this view as it may be plausible to delimit the neighborhood differently in view of the ground realities of different areas.

Moreover, neighborhood should be defined at two levels in Islamabad Capital territory considering the fact that the Act makes appropriate government responsible for providing the transport under Free Education. At the first level, neighborhood should include all the residents within the walking distance of the school. At the second level, it should include the residents to whom, due to the significant distance from school, transport facility could be extended.

1.3.Child¹⁵:

Child means the individual of an age-group who is to receive free and compulsory education. The delimitation of the age group has direct implications on the access of “Free Education”. The Act defines the age-limits of a child as from 5 to 16 years old. But there arises a question regarding the status of child after the age of 16. For instance, what would be the status of a child if he/she fails for one or more years and is unable to complete his/her education till s/he reaches the age of 16. Although section 13 (2)¹⁶ states that no child shall be expelled from school until the completion of prescribed education, but “expulsion” can be construed in a number of ways. For instance, it may imply the involuntary exclusion of a child from school education as a consequence of a disciplinary action. Therefore a single specific section should have stipulated that no child might abandon or be caused to abandon school until the completion of prescribed education, even beyond 16 years of age. We may look at the legislation on Free and Compulsory Education in case of India¹⁷ where the Act unequivocally states that regardless of age, a child once admitted shall leave the school after the completion of Elementary Education.

¹⁵ Section 2(k) of the Right to Free and Compulsory Education Act, 2012 defines “Child” including a child with special education needs, male or female, of the age of five to sixteen years of age.

¹⁶ It states that “No child admitted in a school shall be expelled from school till the completion of the prescribed education.”

¹⁷ Section 4 of Right to Free and Compulsory Education Act 2010

1.4. Appropriate Government¹⁸:

Appropriate government means a certain agency or a position, responsible for carrying out the provisions in legislation. There is a need to further elaborate the term “Appropriate Government” in the Right to Free and Compulsory Education Act, 2012. For instance, whether the roles and responsibilities under the appropriate government will be carried out by the Ministry of Federal Education and Professional Trainings or Federal Directorate of Education (FDE) working under the Capital Administration and Development Division on behalf of the Federal government? The legislations across the globe identify or create a certain department or a position for carrying out the provisions stipulated therein. We see that in case of legislation on Education in Canada¹⁹, where Minister of Education and Early Childhood development is responsible for the administration of the provision in the Act. It also appears in case of South Africa²⁰, where “Chief, Minister of Religion, or a headman or a councilor of a local authority” is referred to as “Competent Authority”. This clarity is absent in the Right to Free and Compulsory Education Act, 2012.

1.5. School²¹:

School is any premises that is used to impart education. In case of South Africa²², “School” is defined as “a public school or an independent school which enrolls learners in one or more grades between grade zero and grade twelve.” At present, there are many types of educational institutions operating in Pakistan. There are schools owned and controlled by government; schools fully or partially funded by the government; privately owned schools; and madrassahs. Even the privately owned schools can be subcategorized in term of their fee-structures. At the policy level, there is a need to acknowledge the fact that each category of schools cater to a specific class of the society. Legislation without appreciating this fact would result in confusion and inefficiency. In Section 2 (k), the Act defines “School” in terms of extent of funds and control by the Appropriate Government. Three categories come to fore as a result:

- (i) A school established, owned or controlled by the appropriate Government;

¹⁸ Section 2 (a) of the Bill defines “Appropriate Government” as

(i) in relation to a school established, owned or controlled by the Federal Government, the Federal Government; and

(ii) in relation to a school established, owned or controlled by the Local Government, the Local Government.

¹⁹ Section 2 (a) of Canadian School Act, 1996

²⁰ Section 1 of South African Schools Act, 1996

²¹ Section 2(k) defines School as any registered school imparting prescribed education and includes:—

(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 the appropriate Government to meet its expenses.;

²² Section 1 (xix) of South African School Act 1996

- (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 the appropriate Government to meet its expenses;

This puts a large number of educational institutions undifferentiated in the third category without actually defining the term “School.” Apart from overlooking distinct variations of private schools, this categorization does not quite acknowledge the roles and functions of institutions like madrassahs and tuition centers.

1.6.Non-Discrimination:

Although the Act does guarantee right to free and compulsory education indiscriminate of gender, but it makes no mention of non-discrimination with regard to religion²³. There is a concern among the civil society organizations, academicians and practitioners that necessary guarantees for religious minorities and girls should have been the part of any legislation on education.

1.7.Screening Procedure²⁴:

On the one hand, the Bill envisages that the schools which do not receive amount in aid and grants should cater for the disadvantaged group to the extent of 10% in every class. And on the other hand, the Act prohibits any method of screening in order to establish preference of one child over another. As there will be a limited number of seats in 10% quota in every class, how will the sought-after schools admit the most deserving students while working within the boundaries of the proposed Act? Although the Act says a method of random selection will be used for decision but it speaks nothing with regard to the transparency of this random selection. The Act - and now the rule of business - ought to have appointed a certain number of applicant-parents to attend the selection process of candidates through the random method so that concerns regarding transparency and merit do not start to surface.

1.8.Special Education²⁵:

Special education is the education for physically and mentally challenged children. The constitution, after 18th amendment, and the previous legislations²⁶ on education do extend

²³ Section 3 (1) of Right to Free and Compulsory Education Act 2012 states: Every child, regardless of sex, nationality or race, shall have a fundamental right to free and compulsory education in a neighborhood school.

²⁴ Section 2(l) “Screening procedure” means the method of selection for admission of a child, in preference over another, other than a random method;

²⁵ Section 2 (m)

the right to compulsory education to all the children within a specified age-limit but unfortunately, none of these legislations dealt comprehensively with the education of mentally handicapped, gifted or disabled children. Although the Act does acknowledge the right to Special Children to Free and Compulsory Education but there is practically no mention of the form, method and procedure to provide them with Free and Compulsory Education. The Bill needs to go in greater detail with regard to establishing institutions and procedures to bring the special children within the scope of beneficiaries of the proposed Act.

1.9.Migrant:

Section 3 (3) (b)²⁷ uses the word “Migrant Families”. It is unclear as to what is meant by the term in the Act. Does it mean the internally displaced people, or should it be construed in any other manner?

²⁶ Punjab Compulsory Education Act, 1994; Compulsory School Attendance Act; and Right to Free and Compulsory Education Act

²⁷ Section 3 (3) (b) states that it is the obligation of the appropriate Government to:—ensure admission of children of migrant families;

2. Some Key Procedural Issues

2.1. Disciplinary Action:

Section 13 (4)²⁸ states that in case of contravention of provisions of this section, disciplinary action will be taken against the teachers/officials in government owned schools under the “Service Rules”. But there is no point of reference for the disciplinary action if the same contravention comes from the teachers/officials in the privately own schools. One view is that since there is regulatory mechanism for privately owned schools, and teachers found in default of their duties shall be dealt through that forum. Even if this is the case, the Act should have hinted to it while addressing lapse in duty by the teachers in the government schools.

2.2. Duties of Teachers²⁹:

Section 18 outlines the duties of the teachers and provides for the disciplinary action against them if they are found in default of these duties. The question arises as to how will it be assessed that a certain teacher has committed default in his duties? Whether it will be determined by some standardized scientific tools or will it largely be the matter of individual judgment? If it is the latter, whose prerogative will it be to exercise this judgment? In case of India³⁰, which appears to be the inspiration behind these provisions in the Act, the disciplinary action is conditioned with the default in committing duties which

²⁸ Section 13 (4) states: Whoever contravenes the provisions of this section shall be liable to disciplinary action under the service rules.

²⁹ Following is the list of duties under Pakistan’s Right to Free and Compulsory Education Bill.

- (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 any, as required;
- (d) all round development of the child;
- (e) building up child’s knowledge, potentiality and talent;
- (f) adopt learning through activities, discovery and exploration in a child-friendly and child-centered manner;
- (g) make the child free of fear, trauma and anxiety and help the child to express views freely;
- (h) hold regular meetings with parents and share with them the relevant information about the child; and
- (i) perform such other duties as may be prescribed.

While the duties specified in India’s Right to Free and Compulsory Education are as follows:

- (a) Maintain regularity and punctuality in attending school;
- (b) Conduct and complete the curriculum within specified time;
- (c) Assess the learning ability of each child and accordingly supplement additional instructions, if any, as required;
- (d) Hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child.

³⁰ Section 24 (2) of Indian Right to Free and Compulsory Education Act, 2010

are easy to be judged in an objective manner³¹. Yet another, but the most important concern is that whether this legislation is the right forum to discuss and stipulate what teachers ought or ought not to do? Should these duties and responsibilities not remain the matter of rules of business or job description?

2.3. Medical and Dental Inspection of Children:

Section 21³² of the Act makes the schools responsible to provide medical and dental inspection to the children as far as practicable. Furthermore the Act is silent on who will pay for these medical inspections. Whether these will be included in the definition of “Free Education”, or the parents will foot the cost. The Act needs to further explain the financial aspect of this provision. In case of Canadian School Act, Section 117 of the legislation of education is quite unequivocal about this and states: “Where a student is injured or there is a medical emergency, teachers and school staff shall provide assistance to the student and obtain medical treatment where necessary.” It also states that all costs related to medical treatments, including ambulances, shall be borne by the student or the parent. But it should be kept in mind that the treatment provided for under the Act is preventive in nature i.e. checkups, vaccination etc and does not cater for a situation of medical emergency i.e. injury, accident etc.

2.4. Awards:

Section 23³³ states that teachers, educational administrators, educational researchers, individuals and organizations will be awarded if they meet the set criteria. There is no mention in the Bill as to who will notify this “Set Criteria” and what kind of organizations will qualify to contest for these awards.

2.5. Over-riding Clause:

The over-riding clause is a legal provision within a piece of legislation that silences the conflicting clauses in any other legislation to the extent of the collision. For instance, Private Education Institution Regulatory Authority (PEIRA) has the prerogative³⁴, among other things, to register, monitor and regulate the private schools. It is also responsible for

³¹ Section 98 of Canadian School Act, 1996 states the responsibilities of the teachers without any mention of the disciplinary action.

³² Section 21 of Right to Free and Compulsory Education Act (1) states: Every school shall, so far as it is reasonable and practicable so to do, provide for the medical and dental inspection, at appropriate intervals, of the students.

³³ Section 23 states: (1) Teachers, educational administrators, educational researchers, individuals and organizations who meet the set criteria may be awarded the prescribed awards.

(2) Students with excellent achievements in learning and training may be awarded the prescribed awards.

³⁴ Under Private Education Institution Regulatory Act

monitoring the curriculum of private education institutions. But according to Right to Free and Compulsory Education Act, the appropriate government, or any institution formed by the federal government will monitor the curriculum of all the education institutions in Islamabad Capital Territory. This becomes problematic when there is no clause in the Right to Free and Compulsory Education Act that over-rides the jurisdiction of PEIRA to the extent of the conflict between the respective legislations. Hence there is a good deal of likelihood of confusion as a result of collision between the provisions of Right to Free and Compulsory Education Act and an already existing legislation.

2.6. Standards and Norms:

The phrase “Standards and Norms” appear at multiple places in the Bill i.e. in Section 3 (3) (k), Section 14 (2), and Section (15) etc., but nowhere in the entire Act is there any explanation as to what these are and who will notify them. In the case of India, the Standards and Norms are clearly defined in the Act and include directions regarding the Number of Teachers, Building, Minimum number of working days/instructional hours in an academic year, Minimum number of Working hours for the teachers, Teaching Learning Equipment, Library, Play material, games and sports equipment. One view is that the discussion on Standards and Norms should be the matter of Rules of Business as the Rules are easy to modify than the Act. Yet another view is that only the general areas/themes for Standards and Norms may be prescribed in a schedule annexed to the Act, and the notifying authority for it may be outlined therein. This will allow us to gather healthy inputs from academicians, civil society organizations and practitioners, without risking rigid Standards and Norms in the Act.

2.7. Pre-School Education³⁵:

The Bill makes provision for Free Pre-school education from the age of over 3 years till the children join the school. Some of the critics question the very idea of sending children to school this early, while others are concerned majorly with the technical side of providing free pre-school education. The Bill, according to them, provides for the education of 5 to 16 years of children, but it sheds no light on the resources and institutional infrastructure set aside for the pre-school education.

³⁵ Section 9 of the Bill states that the appropriate Government may make necessary arrangements for providing free pre-school education and early childhood care for the children above the age of three years, until they join the school for education.

3. Gaps in Legislation

3.1.Implementing Authority:

Two bodies have been instituted by the legislation in order to oversee the implementation of various provisions in the Bill. Section 16 establishes the School Management Committee at the level of every government owned school while Section 22 establishes Education Advisory Council to take all the steps as may be proposed by the specified government. Moreover, Federal Government (Section 7(3)) has the prerogative to institute a new body regarding “Curriculum and Evaluation, Procedures, including approval of syllabi and textbooks for students, to develop standards for training of teachers and to provide technical support and resources for planning and capacity building of teachers and education managers.” Critics say that apart from these bodies, there should be another separate body whose sole objective should be to monitor the implementation of all the provisions of the Bill at all levels.

3.2.Grievance Redress Mechanism:

In the entire Bill, there is no institutional provision for redressing the grievances of the aggrieved individuals. For instance, if the Notification of “Disadvantaged Child” according to Section 2(d) does not include the name of perceived disadvantaged children, where would they go to lodge their complaint? Similarly, there are many provisions in the Bill that require an appellate forum where the potentially aggrieved would take their grievances. These include Section 2 (l): Screening procedure; Section 3 and 6: Obligations of Appropriate government; Section 5: Right of transfer to other schools; Section 9: Appropriate government to provide pre-school; Section 10: Responsibility of private school for free; Section 11: No capitation fee and screening procedures; Section 13: No denial of admission, and expulsion; Section 17: Terms and Conditions of Service of teachers; Section 18: Duties of teachers; Section 20: Monitoring of Child’s Right to Education; Section 23: Awards etc. In case of India³⁶, all the grievances are directed to the local authority which decides the matter within 3 months. The appeal against authority’s decision can be lodged with State Commission for Protection of Child Rights.

3.3.Religious Education for minorities:

The Act should also have provided for the religious education to the minorities as well. This might turn out to be the first step in recognizing minority rights in the current state of

³⁶ Section 32 of Indian Right to Free and compulsory Education Act, 2010

affairs in the country. Education Ordinance 1939³⁷ in Sri Lanka makes the school responsible to provide separate religious education to minorities if the number of parents belonging to a certain religion exceeds 15. Another opinion is that the subject “Ethics” should be introduced at all levels in schools instead of separate religious classes for every class in every school.

3.4.Madrassah(s)/Religious Seminaries:

Madrassahs are an important element in the overall education equation in Pakistan. Invariably all the Madrassahs are providing free religious education, books, food and sometimes even accommodation to their students. Instead of capitalizing on the opportunity to mainstream and formalize the role of Madrassahs, the proposed Act makes no mention of the institutions in the entire document. If Madrassahs are not recognized as a part of mainstream education system in the Act, the status of children studying at these institutions children falls in oblivion. Whether they will be deemed as receiving free and compulsory education or still be counted as out-of-school-children (OOSC)?

Moreover, there is a strong aspiration among the parents, both in urban and rural areas, to send their children to Madrassahs for *Hifz-e-Quran* [Learning Quran by Heart]. This not only encourages us to formalize the role of Madrassahs, but also calls for a debate over equivalence standards. Yet another view is that Hifz cannot be taken in equivalence to a number of school years³⁸. The proponents of this view state that if someone wants to pursue it, he/she should do it parallel to the regular schooling. But unfortunately non of these feed into the Act.

3.5.Assistance and Donations:

In the federations across the globe, where there is considerable fiscal autonomy extended to the federating units, these units are responsible for raising and providing funds for Free and Compulsory Education. They, in many cases, are also assisted by the central and local governments to a certain extent. Apart from these traditional methods, funds can be raised through other means as well. For instance in Canada³⁹, the School Councils also raise funds in form of donations from the residents of that area. There is no mention of such a mode of fund-raising in the Act. Now when it has been passed by the Parliament, at least the Rules of business under Free and Compulsory Education may consider utilizing potential available in form of donations from philanthropist individuals and organizations. In addition to that, appropriate governments may also campaign for donations to raise funds for free and compulsory education in their respective jurisdictions.

³⁷ Section 31 (1) of Sri Lankan Education Ordinance 1939

³⁸ “Reading of “Right to free and compulsory education Act 2011” Passed by Senate,” Idara-e-Taleem-o-Agahi

³⁹ Section 67 (5) of Canadian School Education Act states that the functions of School Council includes fund-raising among other things

3.6. Gestation Period/Implementation Period:

Gestation period refers to the time-frame stated in a piece of legislation wherein the appropriate government shall make necessary arrangements for the implementation of provisions stipulated in it. After the lapse of this period, any intended beneficiary can file litigation against the government for non-compliance with the provisions stipulated in the Act.

It is a matter of serious concern that although the Right to Free and Compulsory Education Act, 2012, has been passed by the Parliament, but it still awaits a notification from the Federal Government to come into force. The appropriate governments have been given a time-period of three years, by the act, in order to build infrastructure for imparting free and compulsory education. It must be borne in mind that this preparatory time-period of three years will start to lapse after the notification of Act coming into force by the Federal Government. The Act, even after being passed by the Parliament, has little legal or administrative significance at the moment it.

Furthermore, now when the right to free and compulsory education has been acknowledged in the Constitution of Pakistan as the fundamental right, why should a child living in neighborhood, without government school, wait for three years for a school building? Another point of concern is the case of a child who is 16 at the moment and perfectly qualifies for free and compulsory education, but not after the lapse of gestation period three years later⁴⁰. These are genuine challenges for the legislators, especially for the policy makers and require immediate attention.

3.7. Some more concerns:

- There is need of clarity in the Bill with regard to the procedure – civil or criminal⁴¹ - once penalty is awarded.
- Many of the areas in Pakistan are prone to disasters. The Bill does not provide for the continuation of Children's Education in the event of disaster i.e. earthquake, floods etc.

⁴⁰ Gestation period in case of Right to Free and Compulsory Education Act, 2012 is stipulated as three years. As no other legislation has been enacted by any other province, we take three years for gestation as base time-line for the sake of example here.

⁴¹ "Experts Seek revision in Right to Free and Compulsory Education Act, 2011," Daily, The News; September 24, 2012

Right to Free and Compulsory Education Act 2012

ACT NO. XXIV OF 2012 RIGHT TO FREE AND COMPULSORY EDUCATION ACT, 2012

An Act to provide for free and compulsory education to all children of the age of five to sixteen years

[Gazette of Pakistan, Extraordinary, Part-I, 24th December, 2012]

No. F. 23(43)/2012-Legis.—The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on the 19th December, 2012 and is hereby published for general information:-

WHEREAS it is expedient to provide free and compulsory education to all children of the age of five to sixteen years in schools established by the Federal Government and Local Government in Islamabad Capital Territory;

It is hereby enacted as follows:-

1. Short title, extent and commencement.—(1) This Act may be called the Right to Free and Compulsory Education Act, 2012.

(2) It shall extend to the Islamabad Capital Territory.

(3) It shall come into force on such date and in such areas, as the Federal Government may, by notification in the Official gazette, appoint.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) "Appropriate Government" means,—

(i) in relation to a school established, owned or controlled by the Federal Government, the Federal Government; and

(ii) in relation to a school established, owned or controlled by the Local Government, the Local Government;

(b) "capitation fee" means any donation, contribution or payment, by whatever name, other than the fee notified by the school or the appropriate Government;

(c) "child" means a child including a child with special education needs, male or female, of the age of five to sixteen years of age;

(d) "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;

(e) "education" means the prescribed education for a child by the academic authority, notified by the Government;

- (f) "Education Advisory Council" means the Education Advisory Council established under this Act;
- (g) "free education" means education free of any education related costs including expenditure on stationery, school bags, and transport.
- (h) "notification" means a notification published in the Official gazette;
- (i) "parent" includes a person having the care and custody of a child and includes a natural guardian or legal guardian so appointed or declared by a Court.
- (j) "prescribed" means prescribed by rules made under this Act;
- (k) "School" means 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 the appropriate Government to meet its expenses.;
- (l) "screening procedure" means the method of selection for admission of a child, in preference over another, other than a random method; and
- (m) "special education" means educational programmes and practices designed for students as handicapped or gifted students, whose mental ability, physical ability, emotional functioning, etc. require special teaching approaches, equipment, or care within or outside a regular classroom.

3. Right of child to free education.—(1) Every child, regardless of sex, nationality or race, shall have a fundamental right to free and compulsory education in a neighbourhood school.

(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.

(3) It is the obligation of the appropriate Government to,—

- (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 including school building, playgrounds, laboratories, teaching learning material and reaching staff;
- (h) monitor functioning of schools within its jurisdiction;
- (i) decide the academic calendar;
- (j) provide all training facilities for teachers and students;
- (k) ensure good quality education conforming to the prescribed standards and norms;
- (l) ensure timely prescribing of curriculum and courses of study for education; and
- (m) provide proper training facility for teachers.

4. Special provisions for education.—Where a child has not been admitted in any school or though admitted, could not complete his education, then he shall be admitted in an appropriate class in a formal or non-formal school:

Provided that he shall, in order to be at par with others, have a right to receive special training, in such a manner, and within one academic year.

5. Right of transfer to other school.—(1) Where in a school, there is no provision for completion of the prescribed education, a child shall have a right to seek transfer to any other school for completing his education.

(2) Where a child is required to move from one school to another, for any reason whatsoever, such child shall have a right to seek transfer to any other school for completing his education.

(3) for seeking admission in such other school, the in-charge of the school where such child was last admitted, shall immediately issue the transfer certificate:

Provided that delay in producing the transfer certificate shall not be a ground for either delaying or denying admission in such other school:

Provided further that the in-charge of the school delaying issuance of transfer certificate or delaying or denying admission shall be liable for disciplinary action under the service rules.

6. Duty of appropriate Government to establish school.—(1) The appropriate Government shall, for carrying out the provisions of this Act, establish, within such limits of neighbourhood as may be prescribed, a school, within a period of three years from the commencement of this Act.

(2) The appropriate Government shall encourage enterprises, institutions and other segments of society, by offering incentives, to establish schools to facilitate free and compulsory education.

(3) The appropriate Government shall establish a system of grants-in-aid to support the school attendance of poor students.

7. Sharing of financial and other responsibilities.—(1) The Federal Government and the Local Government, if any, shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Federal Government may provide to the Local Government as grants-in-aid such percentage of expenditure for education as it may determine, from time to time, in consultation with the Local Government.

(3) The Federal Government shall establish or specify, through notification, an academic authority to lay down the curriculum and evaluation procedures, including approval of syllabi and textbooks for students, 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.

8. Duty of parents.—(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.

(2) Reasonable excuse for the purpose of sub-section (1) shall include any of the following cases namely;—

(a) where the School management Committee is satisfied that the child is incapable of attending school by reason of any infirmity or mental incapacity or it is not desirable that the child should be compelled to carry on his study further; or

(b) where there is no School in the neighbourhood.

9. Appropriate Government to provide pre-school education.—The appropriate Government may make necessary arrangements for providing free pre-school education and early childhood care for the children above the age of three years until they join the school for education.

10. Responsibility of private school for free education.—For the purposes of this Act, a school,—

(a) specified in sub-clauses (i) and (ii) of clause (k) of Section 2, shall provide free education to such proportion of children admitted therein as its annual aid or grant so received bears to its annual recurring expenses; and

(b) specified in sub-clause (iii) of clause (k) of Section 2, shall admit in class I and then in every class, to the extent of at ten percent of the strength of that class, disadvantaged children in the neighbourhood and provide free education till the educational level of that school:

Provided that where a school specified in clause (b), imparts preschool education, the provisions of clauses (a) and (b) shall apply for admission to such pre-school education.

11. No capitation fee and screening procedure.—(1) No school or person shall, while admitting a child, collect any capitation fee and subject the child or his parents or parent to any screening procedure.

(2) Any school or person, if in contravention of the provisions of sub-section (1),—

(a) receives capitation fee, shall be punishable with fine which may extend to twenty times the capitation fee charged for the first contravention and fifty thousand rupees for each subsequent contravention; and

(b) subjects a child or parent to screening procedure, shall be punishable with fine which may extend to fifty thousand rupees for the first contravention and one hundred thousand rupees for each subsequent contravention.

12. Proof of age for admission.—For the purposes of admission to a school, the age of a child shall be determined on the basis of the Form-B of NADRA and birth certificate issued as prescribed:

Provided that no child shall be denied admission in a school for lack of proof of age.

13. No denial of admission and expulsion.—(1) A child shall be admitted in a school at the commencement of every academic year:

Provided that no child shall be denied admission if such admission is sought subsequent to termination of admission period of the academic year:

Provided that any child subsequently admitted shall complete his studies in such manner as may be prescribed.

(2) No child admitted in a school shall be expelled from school till the completion of the prescribed education.

(3) No child shall be subjected to corporal punishment or mental harassment.

(4) Whoever contravenes the provisions of this section, shall be liable to disciplinary action under the service rules.

14. Registration of Schools.—(1) No school, other than a school established, owned or controlled by the appropriate Government, after the commencement of this Act, be established or function, without obtaining a certificate of registration from the prescribed authority.

(2) The prescribed authority shall issue the certificate of registration in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:

Provided that no such registration shall be granted to a school unless it fulfils the prescribed norms and standards.

(3) The prescribed authority shall, on the contravention of the conditions of registration, by an order in writing, withdraw registration: Provided that registration shall not be so withdrawn without giving a reasonable opportunity of being heard to such school:

Provided further that such order shall contain a direction as to which of the neighbourhood school, the children studying in the so de-registered school, shall be shifted.

(4) The appropriate Government or an authorized officer may take such steps as it or he may deem necessary to close a unregistered or de-registered educational institution.

(5) Any person who establishes or runs a school without obtaining certificate of registration, or continues to run a school after withdrawal of registration, shall be liable to fine which may extend to two hundred thousand rupees and in case of continuing contraventions, to a fine of twenty five thousand rupees for each day during which such contravention continues.

15. Norms and standards of school.—(1) No school shall be established or registered or continue to Function, unless it fulfils the prescribed norms and standards.

(2) Where a school established before the commencement of this Act does not conform to the prescribed norms and standards, it shall take steps to conform to prescribed norms and standards at its own expense, within a period of two years.

(3) Where a school fails to conform to the prescribed norms and standards within two years, the prescribed authority shall withdraw registration granted to such school.

(4) Any person who continues to run a school after the registration is withdrawn, shall be liable to fine which may extend to two hundred thousand rupees and in case of continuing contraventions, to a fine of twenty five thousand rupees for each day during which such contravention continues.

16. School Management Committee.—(1) Every school, other than a school specified in sub-clause (iii) of clause (k) of Section 2, shall constitute a School Management Committee consisting of the representatives of the appropriate Government, teachers, parents of children admitted in such school:

Provided that at-least two-thirds of members of such Committee shall be parents:

Provided further that one-third of members of such Committee shall be women.

(2) The School Management Committee shall perform the following functions, namely:-

(a) monitor the general working of the school;

(b) ensure that the prescribed norms and standards are observed;

(c) ensure that the education policy of the appropriate Government is implemented;

(d) prepare and recommend the annual development plan;

(e) monitor the utilization of the aids and grants received from the appropriate Government or any other source; and

(f) perform such other functions as may be prescribed or entrusted to it by the appropriate Government.

(3) The School Management Committee shall also ensure that every child required to attend a school under this Act attends a school and for this purpose, it shall take all steps as maybe considered necessary or as may be prescribed by Government.

(4) Where a School Management Committee is satisfied that a parent who is required under this Act to cause a child to attend a school has failed to do so, the School Management Committee, after giving the parent an opportunity of being heard and after such enquiries as it considers necessary, may pass an order directing the parent to cause such child to attend a school on and from a date which shall be specified in the order.

(5) Any parent who fails to comply with an order issued under sub-section (4) of this section, shall on conviction be punishable with fine which may extend to five thousand rupees and with further fine which may extend to five hundred rupees for every day after the conviction for which the failure continues or with imprisonment which may extend to three month or with both.

(6) Any employer of a child, who is required under this Act to attend a School, after receiving due warning from the School Management Committee, continues to employ a child, whether on remuneration or otherwise, shall on conviction, be punishable with fine which may extend to fifty thousand rupees or with imprisonment which may extend to six month or with both and with a further fine which may extend to one thousand rupees for every day after the conviction for which the non-attendance at a school continues.

17. Terms and conditions of service of teachers.—(1) No person shall be appointed as a teacher unless he possesses the prescribed qualifications.

(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:

Provided that a teacher, who at the commencement of this Act does not possess the prescribed qualifications, shall acquire such qualifications within a period of two years.

18. Duties of teachers.—(1) A teacher shall perform the following duties, namely:—

- (a) maintain regularity and punctuality in attending the school;
- (b) complete the curriculum and syllabi within the specified time;
- (c) assess the learning abilities of every child and supplement additional instructions, if any, as required;
- (d) all round development of the child;
- (e) building up child's knowledge, potentiality and talent;
- (f) adopt learning through activities, discovery and exploration in a child friendly and child centered manner;
- (g) make the child free of fear, trauma and anxiety and help the child to express views freely;
- (h) hold regular meetings with parents and share with them the relevant information about the child; and
- (i) perform such other duties as may be prescribed.

(2) A teacher committing default in performance of duties specified in sub-section (1), shall be liable to disciplinary action under the applicable service laws.

19. Other teachers related matters.—(1) The appropriate Government shall ensure that the prescribed pupil-teacher ratio, is maintained in each school within one year from the date of commencement of this Act.

(2) The appointing Government shall ensure that vacancies of teachers in a school shall not exceed ten per cent of the total sanctioned strength and such vacancy shall be filled within four months.

(3) No teacher shall be deployed for any non-educational purposes other than the population census, disaster relief duties or duties relating to elections.

(4) Every child completing his education shall be awarded a proper certificate, in such form and in such manner, as may be prescribed.

(5) The grievances, if any, of a teacher shall immediately be redressed in such manner as may be prescribed.

20. Monitoring of child's right to education.—(1) The appropriate Government, shall, in addition to the functions assigned to them under this Act, also perform the following functions, namely:-

(a) take all necessary measures for the effective implementation of the child rights under this Act; and

(b) inquire into complaints relating to child's right and take appropriate action.

(2) Any person having any grievance relating to the rights of a child under this Act may make a written complaint to the appropriate Government.

(3) After receiving the complaint under sub-section (2), the appropriate Government shall decide the matter within the period of one month after affording a reasonable opportunity of being heard to the parties concerned.

21. Medical and dental inspection of children.—(1) Every school shall, so far as it is reasonable and practicable so to do, provide for the medical and dental inspection, at appropriate intervals, of the students.

(2) The school may require the parent of a student to cause the student to undergo medical or dental inspection in accordance with arrangements made by the school authorities, or by a registered medical or dental practitioner, and a person who fails without reasonable excuse to comply with the requirement shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand rupees.

22. Education Advisory Council.—(1) The appropriate Governments shall constitute an Education Advisory Council consisting of such number of members, not exceeding nine, to be appointed from amongst persons having knowledge and practical experience in the field of the education, child rights and child development to advise the appropriate Governments on implementation of the provisions of this Act in an effective manner.

(2) The Education Advisory Council shall also ensure that every child required to attend a school under this Act attends a school and for this purpose it shall take all steps as may be considered necessary or as may be specified by Government.

(3) The terms and conditions of the appointment of members of the Education Advisory Council shall be such as may be prescribed.

23. Awards.—(1) The teachers, educational administrators, educational researchers, individuals and organizations who meet the set criteria may be awarded the prescribed awards.

(2) The students with excellent achievements in learning and training may be awarded the prescribed awards.

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24. No Advertisement without Registration.—(1) No person shall promote an educational institution, whether by advertisement, prospectus, brochure or otherwise, unless the educational institution has been registered or a provisional certificate of registration has been issued.

(2) A person who contravenes sub-section (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding one year or to both.

25. Inspections and directions.—(1) The appropriate Government shall, from time to time, inspect or cause to be inspected a registered educational institution for the purpose of ascertaining that this Act and the rules made under this Act have been and are being complied with.

(2) The appropriate Government may issue such guidelines and give such directions as it deems fit for the proper implementation of the provisions of this Act.

(3) Every school shall provide such information as may be required by the appropriate Government.

26. Prosecution of the offences.—(1) No prosecution for offences punishable under this Act shall be instituted except upon a complaint with the previous sanction of the appropriate Government.

(2) All the offences under this Act are bailable and compoundable.

(3) The authorized officer in a case where he deems it fit and proper so to do, may compound any offence committed by a person which is punishable under this Act on payment, within such time as may be specified in the order, of such sum of money, as may be so specified, which shall not exceed fifty per centum of the amount of the maximum fine to which the person would have been liable if he had been convicted of the offence.

27. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the appropriate Government, the School Management Committee or any other person, in respect of anything which is in good faith done, in pursuance of this Act, or any rules or order made there under.

28. Repeal.—The Islamabad Capital Territory Compulsory Primary Education Ordinance, 2002 (XIV of 2002) shall stand repealed:

Provided that such repeal shall not affect the previous operations of the law under repeal or order passed or anything duly done or suffered there under.

29. Powers to make rules.—(1) The appropriate Government may, by notification, make rules, for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(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;
- (f) the authority, the form and manner of making application for Certificate of Registration;
- (g) the form, the period, the manner and the conditions for issuing Certificate of Registration;
- (h) the manner of giving opportunity of hearing under this Act;
- (i) the functions of School Management Committees;
- (j) school annual development plan;
- (k) the salary and allowances payable to, and the terms and conditions of service of teachers;
- (l) the duties to be performed by the teachers;
- (m) the manner of redressing grievances of teachers, students or any other person;
- (n) the form and manner of awarding certificate for completion of the education; and
- (o) the allowances and other terms and conditions of appointment of members of the relevant Education Advisory Council.



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