

**REVIEW OF PUNJAB FREE AND COMPULSORY  
EDUCATION ORDINANCE 2014 (NO V OF 2014)**

***COMMENTS AND RECOMMENDATIONS***

**PRESENTED TO THE  
HONOURABLE CHAIR AND MEMBERS OF THE STANDING COMMITTEE  
ON EDUCATION, PROVINCIAL ASSEMBLY PUNJAB**

**PRESENTED BY:**

**INSTITUTE OF SOCIAL AND POLICY SCIENCES (I-SAPS)**

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## TABLE OF CONTENTS

Introduction and background:.....	3
Section Wise Review-Comments and Recommendations .....	5
Chapter I: Preliminary.....	5
Chapter I: Definitions .....	7
Chapter II: Right to Free and Compulsory Education .....	11
Chapter III: Duties of Government, Local Authority and Parents .....	13
Chapter IV: Responsibilities of Schools and Teachers.....	17
Chapter V: Protection of Right of Children .....	20
Chapter VI: Miscellaneous.....	21

## **Punjab Free and Compulsory Education Ordinance 2014**

### **Introduction and Background**

The right to free and compulsory Education has been acknowledged in a number of international conventions, covenants and declarations<sup>1</sup>. The Constitution of Islamic Republic of Pakistan 1973 acknowledged the right to free and compulsory secondary education in Part-II, Chapter 2, on Principles of Policy<sup>2</sup>. The right however remained non-justiciable ever since. In April 2010, Parliament passed Constitution (Eighteenth Amendment) Act, 2010 (Act No X of 2010). The amendment made the Right to Education justiciable, by insertion of Article 25-A, which obligates the state to 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<sup>3</sup>. The 18<sup>th</sup> Amendment also abolished the Concurrent Legislative List, thus effectively placing education in the provincial mandate.

Education has been devolved to the provinces for legislation and decisions regarding curriculum, syllabus, planning, policy, centers of excellence and standard of education<sup>4</sup>. It now rests with the Parliament and Provincial Assemblies to legislate for the provision of Free Education in their respective jurisdictions.

Since the passage of the 18<sup>th</sup> Amendment Act 2010, progress has been made in all the provinces regarding framing of a law for provision of free and compulsory education. At the federal tier, Right to Free and Compulsory Education Act 2012 was enacted on December 24, 2012 for the Islamabad capital territory. Similarly Sindh Right of Children to free and Compulsory Education Act was enacted on February 13, 2013. The province of Balochistan closely followed by promulgating Balochistan Free and Compulsory Education Ordinance in March 2013. Punjab started working on the legislation in 2012 and the government established Punjab Education Commission chaired by Justice (r) Khalil ur Rehman Khan to develop a draft to meet the requirements of Article 25-A. The commission has done a

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<sup>1</sup> Article 26 (1) of Universal Declaration of Human Rights, 1948 says: 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 says: 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...”

<sup>2</sup>“The State shall remove illiteracy and provide free and compulsory Secondary Education within minimum possible period” Article 37 (b), Part II, Chapter 2, Constitution of Islamic Republic of Pakistan 1973

<sup>3</sup> The Article 25-A states; “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, Part-II, Chapter 1, Constitution of Islamic Republic of Pakistan 1973.

<sup>4</sup> Institute of Social and Policy Sciences (I-SAPS). 2011. *Eighteenth Constitutional Amendment: Issues and Challenges in Curriculum and Standards*” by Institute of Social and Policy Sciences. Islamabad.

*Comments and Recommendations on Punjab Free and Compulsory Education Ordinance 2014*

comprehensive work in close collaboration with Education department, non-governmental organizations working on education, and education expert, but unfortunately the draft bill could not be presented on the floor of the house.

The Punjab Free and Compulsory Education Ordinance 2014 was promulgated on May 13, 2014. The promulgating is an appreciable step by the Government of Punjab. The decision to place the bill before the standing committee on education prior to its enactment in order to address inadequacies/deficiencies in the ordinance is a welcome step. It is expected that the deliberations by the committee will result in tabling a bill which is comprehensive and responds to the challenge of education in Punjab.

The present document is developed in pursuance of the directions by Engr. Raja Qamar ul Islam, Honourable Chairman of the Standing Committee on Education in Punjab Assembly. The document provides a summary of the comments and recommendations shared in the standing committee. The document attempts to briefly review the recently promulgated Punjab Free and Compulsory Education Ordinance 2014 and propose section wise comments and recommendations with an objective to improve upon the existing provisions of the law. The review is based upon the examination of international education governance models including legal and institutional frameworks to gather evidence of best practices and attempts to contextualize them for supporting the work being undertaken by the honourable standing committee on education. I-SAPS earnestly hopes that these recommendations will be able to add value to the work being undertaken by the honourable standing committee.

## **Punjab Free and Compulsory Education Ordinance 2014: Section Wise Review-Comments and Recommendations**

### **Chapter I: Preliminary**

#### **1.1.Preamble:**

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

#### **Comments:**

- A preamble reflects the essence and spirit of the law, though it has not direct bearing on any provision of the law, however whenever there is a difficulty of controversy in interpretation of any section or provision of the ordinance, the preamble is used to judge the enforceable interpretation.
- In this particular case the preamble is not consistent with subsequent clauses of the ordinance. The preamble provides for provision of education to all the children of the age five to sixteen years, however two subsequent sections provided different standards:
  - **Sections 2(e)** while defining free education clearly mentions that government will endeavor to ensure provision of free education and to remove financial barriers for attaining 10 years of education. However if we look at the public education system in place, and also include Pre-School Education as provided for in **Section 10** of the ordinance, it comes to about 12 years of education.
  - The preamble and the subsequent clauses are also inconsistent to the extent of clarity upon what should be the standard of provision of free and compulsory education; either age should be the criterion or the level of education attainment. **Section 3(1)** refers to ensuring the right of free and compulsory education from class 1 to 10, which beside precluding pre-school education also results in questions pertaining to the age limit for attaining this level of education.

#### **Recommendation:**

- The subsequent sections, need to be brought in to conformity with the preamble and consistent with the substantive spirit of the law. Instead of restricting to ten years of education, the relevant provisions need to provide for secondary school education.

**1.2. Section 1 (3): Commencement of the Law:**

*“It shall come into force on such date as the Government may, by notification, determine and the Government may, in like manner, determine different dates on which the specified provisions of this Ordinance shall come into force”<sup>5</sup>*

**Comments:**

- The commencement clause is fraught with multiple issues; first the enforcement of the law has been made dependent on the will of the government. Considering the previous experiences, as in the case of Punjab Compulsory Primary Education Act 1994, which has not been enforced in last 20 years by the government.
- Secondly, **Section 1(3)** also empowers the government to selectively enforce the different provision of the ordinance. So instead of responding to the challenge of out of school children the ordinance authorizes the government to act when it feels the need. The whole provision is in direct conflict with the need and spirit of Article 25-A of the constitution as well as the proclaimed objective of this law.

**Recommendations:**

- Given the enormity of the challenge, financial constraints, and other related issues, it is comprehensible that the government is not able to address the challenge of providing free and compulsory education to all the children of 5-16 years of age.
- Therefore, instead of leaving the commencement of the whole law and its provisions on the discretion of the government, it is proposed that the law should provide an objective gestation time for coming in to force. The time may range from 2-3 years, during this time the government can prepare for its implementation.

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<sup>5</sup> Section 1 (3) Chapter 1, Punjab Free and Compulsory Education Ordinance 2014

## **Chapter I: Definitions**

### **2.1. Section 2 (c) Disadvantaged Children:**

*“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”*

#### **Comments:**

- The last clause of section 2(c) while defining disadvantaged children links it with a child’s parent’s annual income and also authorizes government for prescribing the limit. There is a likelihood that such financial limitations will tend to the restrict access to free and compulsory education. There has been no such limit prescribed so far, and authorizing the government to determine this limit will have its repercussions, which may exclude certain groups while including groups who may not be eligible in this category. Besides these, the whole idea of creating a limitation on the basis of annual income of a child’s parent is inconsistent with the intended purpose of the law.
- There has been an ongoing debate on the meaning of the disadvantaged, and most of the experts agree that the religious minorities need to be included in this definition.

#### **Recommendations:**

- The financial limitation clause needs to be removed, and the word “religious” need to be inserted along with social, cultural and gender in the provision to make the definition more comprehensive.
- **Children with Special Needs:** There seems to be less emphasis on the education of the physically and mentally challenged children in the ordinance as a whole. Special education has been referred to in the two different sections i.e. Section 2(2) and Section 3(2) however as separate category it has neither been defined nor attended to in any of the sections. It is therefore proposed that it should be included in the definitions and subsequent sections, proposing special measure to ensure access to free and compulsory education for the physically and mentally challenged children.

### **2.2. Section 2 (e) Free Education**

*“Free education implies that the Government or a local authority shall not charge any fee or expense for providing*

*education and shall endeavor to remove financial barriers that may prevent a child from completing ten years education*

**Comments:**

- The definition of free education as provided in Section 2(e) seems deficient on number of counts, namely, first; it only provides a fee waiver and fails to clearly outline other essential items including, books, school bag, stationery, uniform, transport etc.
- The RTE Acts passed in Sindh, Balochistan and ICT, besides fees, clearly stipulate provision of free text books, stationery, school bags and school uniforms<sup>6</sup>. The Balochistan Right to Compulsory Education Act 2014 and ICT Right to Free and Compulsory Education Act, 2012 also include the provision of transport in the definition of free education. Balochistan Right to Compulsory Education 2014 also provides for the provision of one meal in school in the definition of free education. The comparison clearly points out the limitations of the definition provided in the Punjab RTE ordinance.
- As discussed in the foregoing section, the definition of free education is also inconsistent with the preamble of the ordinance.
- The definition of free education by limiting it to ten years also excludes the pre-school education, as provided in **Section 10** of Punjab Free and Compulsory Education Ordinance 2014.

**Recommendations:**

- It seems pertinent that, instead of stopping at that the “*government or local authority will not charge any fee*” the definition of free education clearly delineates the key components of free education such as free text book, stationery, uniform, school bags and transport.
- Moreover, the pre-school education as stipulated in Section 10 of the ordinance needs to be made part of the definition of free education.

**2.3. Section 2(m): Vocational Education**

*“includes the training of skills to prepare trainees for jobs and careers at various levels from trade to a craft or a position in engineering, accounting, nursing, healing arts or architecture”*

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<sup>6</sup> Please see Section 2(f), Sindh Right of Children to Free and Compulsory Education Act, 2013; Section 2 (f) Balochistan Compulsory Education Act 2014; Section 2(g) Right to Free and Compulsory Education Act, 2012



**Comments:**

- The phrase in this particular definition when it refers to various levels of trades and crafts and then categorically identifies professional skills as engineering, accounting, nursing, healing arts or architecture limits the scope of the vocational education.
- It is important to note that the education in most of the professions listed in the definition starts after secondary school, be it nursing, engineering, accounting or architecture. However most of the vocational skills and crafts taught prior to secondary education has not been addressed specifically, leaving these to interpretation of the relevant sections.

**Recommendations:**

- It is proposed that, the phrase “*includes but not limited to*” be added to make this definition more exhaustive and relevant to the objectives of the law.

**2.4.Missing Definitions**

There are various terms, concepts, institutions, etc. have been extensively used in the Ordinance but not defined in the chapter on the definitions. The most important of these include the following:

- i. Special Education
  - ii. Neighborhood
  - iii. Pre- School Education
  - iv. Prescribed Authority
- The importance of inclusion of special education has been discussed in the previous section (please see Section 2.3 Children with Special Needs). Likewise, the definition of Neighborhood is of critical importance. In context of School Education, it refers to the area which can be covered with relative ease by the children to reach school for education. It is important not only in the context of establishing new schools but also in determining the role of community, non-formal education and role of private sector for provision of education where there are no public schools.
  - Pre-School Education: Section 10 of the act provides for provision of facilities for pre-school education by the local authorities. However by restricting education to 10 years or 5-16 years, it needs to be explained how it will become in the purview of free and compulsory education. This begs for inclusion of the definition of the same and making the other provisions consistent with it.
  - The definition of prescribed authority is missing though the term has been used seven times in the text of the ordinance and is assigned with important functions such as inspections, monitoring, trials, etc. Secondly, with the definition of local authority, the usage of the term prescribed authority tends to create ambiguity in terms of identifying the exact role and function of the prescribed authority as

desired by the law. Thus it is important to define the authority responsible for ensuring the fulfillment of the objectives of the law.

**Recommendation:**

- As all these are important terms having significant impact on the objectives of the law, it therefore seems necessary to include the definitions of these forthwith.

## Chapter II: Right to Free and Compulsory Education

### 3.1. Section 3 (3): Right to Free and Compulsory Education

*“... a child or parent shall not be liable to pay any kind of fee or charges or expenses for completing the education in a school mentioned in sub-clause (i) of clause (k) of section 2”*

#### Comments:

- The issues pertaining to what constitutes free education have been discussed in the previous section of this document (please see 2.4). However it would be important to reiterate the same here, that the definition of free education and what constitutes free needs to be clearly identified in the law so as to state clearly the inclusion of books, stationery, uniform, school bags, transport etc. As mere statement that the child or parent will not be liable to pay any kind of fee or charges or expenses for completing education falls short of providing a comprehensive cover.
- Furthermore it also needs to be deliberated upon that the children/parents pay in for appearing in the examination and out of pocket expenditure such as for participating in a study tour etc. This expenditure at times can be a serious hurdle for a child to complete his/her education, therefore these also need to be taken care for while revisiting the definition of free education and relevant clauses such as Section 3 (3).

#### Recommendation:

- The definition of free education needs to be made more comprehensive and the relevant clauses be amended accordingly.

### 3.2. Section 4: Duty of the Government to Provide Education

*The Government shall:*

*(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.*

*(2) A local government shall:*

*(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 and completion of education by every child residing within its jurisdiction.*

**Comments:**

- The section on the duty of the government to provide education focuses primarily on the functional aspect of the duty, such as enrollment, ensuring free education, maintaining standards, etc. We are well aware that education sector in Punjab has serious issues of access and missing facilities too, therefore it will be important to include access related duties of the government in this section.

**Recommendation:**

- It is proposed that this section should clearly stipulate the duties of the government to provide educational facilities to the children of five to sixteen years of age and state unequivocally the responsibility to maintaining, up keeping the existing infrastructure and clearing the backlog of missing facilities in the public schools.

**3.3.Section 4 (1)(a): Duty to Provide Education**

*“(1) The Government shall:*

*(a) provide free and compulsory education to every child in the neighborhood school ...”*

**Comments:**

- Section 4 (1) (a) provides for the duty of the government to provide free and compulsory education to every child in the neighborhood school. Though as the neighborhood is not defined in the act, there are no geographical parameters to determine to what extent this role is applicable and in case of nonperformance how the responsibility will be fixed.

**Recommendation:**

- As discussed earlier it would be important to determine the limits of neighborhood by clearly defining it.

## **Chapter III: Duties of Government, Local Authority and Parents**

### **4.1. Section 8 (1): Establishment of Schools**

*“For carrying out the purposes of this Ordinance, a local authority shall establish the requisite number of schools, within such area as may be prescribed.”*

#### **Comments:**

- The ordinance makes the establishment of schools by the local authority contingent upon the area which will be prescribed. This again substantiates the defining and determining of neighborhood and clearly highlights the inadequacy in this regard.

#### **Recommendation:**

- For the purpose of the right to free and compulsory education legislation, neighborhood needs to be defined and included in the section on definitions. In this particular section the provision of establishment of requisite number of schools should be linked with the parameters determined in the definition of neighborhood.

### **4.2. Section 8 (2): Usage of School buildings/Formal and Non Formal Education**

*“The Government shall devise a scheme for using the schools in the evening hours for providing education to the children and for making arrangements for providing non-formal education to the children in other educational institutions.”*

#### **Comments:**

- The section though provides a substantial mean to increase access but at the same time tends to confuse and mix the formal education means with non-formal.

#### **Recommendation:**

- Formal and Non Formal education are two distinct streams and have different requirements. It is important to note that both these need not be mixed; therefore it would be important to deal these in separate sections and with clear purposes.

### **4.3. Section 8 (3): Support to Private Entities to Establish Schools**

*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, maintain or run schools  
for provision of free and compulsory education to children*

**Comments:**

- This is an important provision as it deals with granting exemptions and rebates, to individuals and groups who establish and run schools for providing free and compulsory education.
- In this backdrop two important variables needs to be considered; first, what will be the conditions which can encourage private individuals and entities to establish such schools and the incentives so offered are not misused. Secondly, what will be the conditions when there is a public school in the same neighborhood, whether same exemptions will be applicable and on what conditions.

**Recommendations:**

- It is proposed that the provision needs to be amended to ensure that these benefits will only be applicable in the areas/neighborhoods where there are no public schools.
- It will also be important that the provision should also stipulate the provision for regular monitoring all the beneficiary entities. The details of the same can be prescribed in the rules.

**4.4. Section 9 (1): Duty of a Parent**

*“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.”*

**Reasonable Excuse: -as explained in the Ordinance**

*Reasonable excuse for purposes of this section shall include any of the following cases:*

- (a) where the school management body is satisfied that the child is incapable of attending school by reason of sickness or infirmity or that by reason of the child’s mental incapacity it is not desirable that the child should be compelled to attend a school or carry on his study further;*
- (b) where the child is receiving, otherwise than in a school, education or instructions which in the opinion of the school management body, is sufficient;*
- (c) where there is no school within a distance of two kilometers measured according to the nearest route from the residence of the child.*

**Comments:**

- Reviewing the explanation for reasonable excuse as provided in the law, highlight a number of inadequacies and limitations, which needs to be addressed. The first

case amounts to expulsion/removal/denial of the right to free and compulsory education. The child is deemed to be unfit for education on the basis of sickness, infirmity or mental incapacity. This if examined seems not to be a case of inability to attend school but of a child with special needs, and instead of addressing his/her special needs the law is proposing discontinuation.

- In the second case, it seems interesting if a child is exempted because he can afford education other than school. It would be thought provoking how a child who is willing to study, and even ready to pay for or spare time in the evening is not ready to enroll or continue education in a public school.
- The last provision again underscores the importance of defining the neighborhood. It while explaining reasonable excuse, proposes two kilometers as the optimum distance for the school, this can very well be included in the definition of neighborhood.

**Recommendations:**

- The reasons for exemption or excuse need to be revised.
- Separate provisions need to be inserted for the children with special needs, instead of denying them access to education.

**4.5. Section 9 (3): Duty of a Parent**

*“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.”*

**Comments:**

- The section provides punishment in terms of restricting the eligibility to receive any support or subsidy from the government. The provision, considering the socio-economic conditions of Pakistan seems too harsh. Ensuring that all the school going age children are in school requires more of creation of an enabling environment than proposing penalties for the parents.

**Recommendation:**

- As the substantive reason for the legislation is to bring the children in the school, the penal provisions are in contrast with it and need to be excluded. Instead it is proposed that the parents should be given some positive reinforcement to enroll their children in Schools. These incentives can be financial incentives or include provision of food items to the children as was done under the *Tawana Pakistan Project* by the Government of Pakistan.

#### **4.6. Section 10: Pre-School Education**

*“The Government or the local authority may establish a kindergarten school or childcare centre in a local area or consolidate or merge such schools or centres for providing free pre-school education and early childhood care for the children above the age of three years until they join a school for education.”*

##### **Comments:**

- The pre-school education is neither defined in the definition and the section 10 when read along with Section 2 (e) and Section 3(3) it highlights the inconsistency in the body of the law.

##### **Recommendation:**

- The Pre-School Education needs to be defined in the Chapter on the definitions, clearly setting out the parameters of this stream of education. Similarly the definition of free education needs to be amended in order to incorporate provision of pre-school education.

#### **4.7. Section 11. Management of Schools**

*“The Government or the local authority shall establish a school management body consisting of such persons and confer on it the prescribed Powers in relation to the school.”*

##### **Comments:**

- In Punjab at the moment there are already similar bodies known as School Councils, which are functional at school level. This provision tends to create a parallel body. If this aims to provide a legal cover to the existing school councils or to replace the same needs to be clearly stated.

##### **Recommendations:**

- School Councils in Punjab are performing important functions and most of the councils are performing a good job. It is proposed that the law should provide a legal cover to these bodies instead of creating new entities. In this regard it is proposed that it should be clearly stated in this provision that the school councils will perform this role.
- The School Management body also needs to be defined in the section on definitions for the sake of clarity.



## **Chapter IV: Responsibilities of Schools and Teachers**

### **5.1. Section 13(b). Responsibility of Private Schools for Free Education**

*“...a private sector School specified in sub-clauses (iii) and (iv) of clause (k) of section 2, shall admit in class one and then in every class, ten percent of the strength of that class, children, including disadvantaged children of the neighborhood or other children as may be determined by the Government, and shall provide free and compulsory education to such children.”*

#### **Comments:**

- In case of fixing a liability on private sector schools, the most important question pertains to the rationale for allocating 10 percent of seats in these schools. Is this responsibility a result of corporate social responsibility or the extraordinary circumstances have provided the rationale.
- In absence of strong monitoring mechanisms it will not be possible for the government to ensure the application of this provision.
- The last clause of section 13 (b) provides for the children to be admitted on the assigned seats by the government tends to provide an opening for the government sector for misuse of the provision.

### **5.2. Section 13(d). Parents vis-à-vis Private Schools**

*(Private Schools) “shall not 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.”*

#### **Comments:**

- The Section 13 (d) not only restricts the private schools to collude with specific vendors of stationery, uniform etc. it also provides guarantee that the fees cannot be denied to them. This section in its content and intent is in direct conflict with the subject matter of this law. It seems more relevant to private schools regulation instead of being part of legislation on Right to free and compulsory education.
- When considered in the context of the present law, if the provision is for the students who will be admitted on 10% seats in a private school, they are not supposed to pay the fees as they will be enrolled for provision of free and compulsory education. Therefore the provision defeats the very purpose of the law itself.

- Moreover, in context of provision of free and compulsory education, how the children who are unable to afford the private school fees how will they be able to purchase text books, uniform, and other expenditure? Why not the respective schools be made responsible for provision of books, stationery items, uniform, school bag, transport etc. The section seems inconsistent with the spirit of the Act.

**Recommendations:**

- It is proposed that the section on private schools needs to be revised to make it consistent with the intent of the legislation.
- It needs to clearly assign the duties and responsibilities pertaining to provision of free and compulsory education and establishment of transparent and effective mechanism for enrolling children on merit.

**5.3. Section 16(2) (b-d). Expulsion from School**

*“(b) the child has been assessed in two consecutive annual examinations as being below the educational standard of the school; (c) a reasoned judgment has been passed by the disciplinary committee of the school that further retention of the child in such school shall be detrimental to the discipline of the school; or (d) the child or parent fails to fulfill any prescribed condition including nonpayment.”*

**Comment**

- A major issue in Pakistan at the moment is retention of the enrolled children; the emphasis by the law on expulsion is beyond comprehension. If the reasons for expulsion provided in this section are examined, there are two major issues; First, a child failing to perform in two consecutive academic years is primarily a failure on part of the teacher and the study environment instead of the incompetence of the student.
- The second reason for expulsion is the failure of the parent to pay the school fee, this provision in itself defeats the purpose of the law meant for free and compulsory education.
- Moreover, as the right of the child to receive education has been denied, the law also fails to propose a remedy for the same.

**Recommendations:**

- The section on expulsion needs to be amended. The provision of expulsion from school needs to be excluded. The child in this particular case may be transferred to

other educational facility instead of being denied the right to free and compulsory education.

#### **5.4. Section 17(2) Duties of the Teacher**

*A teacher including the incharge shall:*

- (a) maintain regularity and punctuality in attending the school, classes, curricular and co-curricular activities;*
- (b) complete the curriculum within the specified time;*
- (c) assess the learning abilities of every child and impart additional instructions, if required;*
- (d) try for all round development of the child;*
- (e) build up child's knowledge, potentiality and talent;*
- (f) adopt learning through activities, discovery and exploration in a child friendly and child-centered manner;*
- (g) keep the child free of fear, trauma and anxiety and help the child to express his 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"*

#### **Comment:**

- The rules for monitoring the performance of teachers are already in place; this calls in to question the reason for inclusion of these provisions in this law. It would be pertinent to mention that the rationale of the law is provision of free and compulsory education instead of regulating the conduct of teachers. In this regard the example of recently passed Balochistan Compulsory Education Act 2014 can be cited, which does not refer to any such functions and duties of the teachers are supposed to perform.
- If it needs to be included the rules need to elaborate upon the standards and criterion of the same. It would also be important to see how the same measures can be applied in the case of private school teachers.
- Clause (i) of Section 17 (2) requires special mention and needs to be revisited, it provides, that teachers will "*perform such other duties as may be prescribed*". This leaves much room for the government to engage teachers in all sort of non-academic activities.

#### **Recommendations:**

- It is proposed that the regulation of teachers' duties does not fall in the ambit of present legislation and it needs to be reevaluated.
- Importantly in this section, and especially in clause (i) of Section 17 (2) the duties of the teachers need to be clearly linked with teaching and students learning objectives.

## **Chapter V: Protection of Right of Children**

### **6.1.Section 18(2) Grievance Redress Mechanism**

*“Any person having any grievance relating to the rights of a child to education may make a written complaint to the Government or to the prescribed authority.”*

#### **Comment**

- The mechanism and the concerned authority for approaching in case of violation of the child’s right to free and compulsory education has not been clearly identified.
- As discussed earlier the term “prescribed authority” has been used in this section for redress of a grievance but it is neither defined in the chapter/section on definitions nor is it elaborated upon in the present section.

#### **Recommendations:**

- The mechanism for grievance redress needs to be elaborated, and the concerned public functionaries clearly identified here in the law. The roles and process can be attended to in the rules of business.
- The “prescribed authority” needs to be defined in the section on definitions in order to avoid ambiguity.

## **Chapter VI: Miscellaneous**

### **6.2. Section 18(4) Right to Appeal**

*“Any order passed under this section shall be final and the administration of the school shall implement such order.”*

#### **Comment:**

- The section is in violation of basic canons of adjudication as well as the spirit of the constitution. It denies the right to appeal in case of order has been passed.

#### **Recommendations:**

- The right to appeal is a fundamental right and a basic canon of due process, the section needs to be revisited for the inclusion of right to appeal against the order passed by the relevant authority.

### **6.3. Section 22: Summary Trial**

*“Notwithstanding anything contained in the Code of Criminal Procedure 1898 (V of 1898) but subject to subsection (3), the Court shall summarily try an offence punishable under this Ordinance on the basis of a complaint submitted by the an authorized officer of the prescribed authority and impose punishment of imprisonment for a term not exceeding six months or fine not exceeding fifty thousand rupees.”*

#### **Comment**

- The summary trials are meant for extraordinary circumstances, the present law does not fall in to such a legal category or the offender in this particular case. There should be some cogent reason for establishment of such harsh regimes.

### **6.4. Section 23: Protection of Actions taken in Good Faith**

*“No suit or other legal proceeding shall lie against the Government, the prescribed authority, a local authority or any other person, in respect of anything which is in good faith done under this Ordinance, the rules or any order made under the Ordinance.”*

**Comment:**

- Good faith clause as enunciated under section 23, should distinguish between acts done honestly, and acts done negligently. Provisions of indemnity should not be applied where a citizen or community has suffered loss or harm due to negligence of a public functionary. Currently, most of the laws in Pakistan include ‘good faith’ clauses, which are generally interpreted to provide a cover to the inefficiency and incompetence of public officials.

**Recommendation:**

- It is proposed that the good faith clause should be removed, and all the actions by the relevant public officials should be open to oversight and scrutiny by the public representatives, parents and citizens.

**6.5.Section 24: Power to Make Rules:**

*“The Government may, by notification, make rules for carrying out the purposes of this Ordinance.”*

**Comment**

- It has been observed that the legislations are enacted however the instruments for their implementation i.e. rules of business are often not made. The case of the Punjab Compulsory Primary Education Act, which is repealed by this very ordinance was enacted in 1994 and as of now the rules for the same has not been made.

**Recommendation:**

- It is proposed that the law should provide a timeline for the drafting of rules of business for the Right to Education Law, so as to realize the implementation of this law.