
LEGISLATION

ON

FREE AND COMPULSORY EDUCATION
IN PAKISTAN:

DISCUSSION DOCUMENT

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LEGISLATION ON FREE AND COMPULSORY EDUCATION

INTRODUCTION

The present discussion document attempts to contribute to the policy and legal debate on the provision of free and compulsory education to children between the ages of 5 to 16 years in Pakistan. It raises certain policy questions and moot points that have over-arching significance while framing law on free and compulsory education. The paper also draws upon the review of international education governance models including legal and institutional frameworks to gather evidence of best practices and attempts to contextualize them for having an informed debate on legislation on free and compulsory education. The document attempts to highlight and synthesize key policy issues in the debate of free and compulsory education in Pakistan. We earnestly hope that this paper will contribute to the policy and legal debate on Free and Compulsory Education in all the four provinces in Pakistan.

The right to free and compulsory Education has been acknowledged in a number of international conventions, covenants and declarations¹. 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 Policy². The right however remained non-justiciable ever since. In April 2010, Parliament passed Constitution (Eighteenth Amendment) Act, 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 law³. The 18th Amendment also abolished the Concurrent Legislative List, thus

¹ 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...”

²“The State shall remove illiteracy and provide free and compulsory Secondary Education within minimum possible period” Article 37 (b), Part II, Chapter2, Constitution of Islamic Republic of Pakistan 1973

³ 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.

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 education⁴. It now rests with the Parliament and Provincial Assemblies to legislate for the provision of Free Education in their respective jurisdictions.

Progress has been made in all the provinces regarding framing of a law for provision of free and compulsory education. However the draft bills so far prepared have yet to be made public for soliciting inputs from the civil society, academia, or legal fraternity. At the federal tier the Parliament has enacted Right to Free and Compulsory Education Act 2012⁵ to ensure the provision of free and compulsory education to Islamabad Capital Territory and areas as may be notified. While the Act 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 for in the law. This highlights the necessity of a more inclusive debate which could inform the process of legislation for implementation of Article 25-A. Furthermore the limitations in the newly enacted law underscore the potential areas requiring more profound deliberations by the policy makers at provincial tiers. In the following sections the present document will focus on the overarching issues of the debate on legislation for the right to free and compulsory education, and map some important moot points that need to be addressed.

⁴ 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.

⁵ Right to Free and Compulsory Education Act 2012 was passed by the Parliament on November 13, 2012, though the law has yet to be notified.

RIGHT TO FREE AND COMPULSORY EDUCATION

KEY MOOT POINTS

1. FREE EDUCATION:

- 1.1. How to define free education and what constitutes as “Free” in this context. There has been a debate over this, and a review of the existing practices in different countries informs that it has been addressed in various ways. One of the existing approaches treats “Free Education” as charging no fee for the education of children up to a certain age. This is at the moment is being practiced in Sri Lanka, where no fee is charged for any admission or education in any government owned schools⁶. In case of India, however, the respective governments not only waive the admission and tuition fee, but also provide free meals to the children till they complete the primary education.

As can be inferred from above examples, it is not the question of education being “free”, but the question of “who pays the bill?” Putting the example of India, Sri Lanka and many other countries in this perspective, the State in these countries has agreed to pay the cost of education. It should be clear that the States are not giving up revenues in these cases, as it would involve surrendering of all the proceeds of tax incomes from salaries, equipment etc. in the process of free and compulsory education⁷.

- 1.2. In case of recently enacted legislation on right to education in Pakistan i.e. Right to Free and Compulsory Education Act, 2012, the State will not only pay for the cost of education but is also responsible for providing stationery, schoolbags and transportation to children entitled to Free and compulsory Education⁸. But there are some other expenses related to the education of children other than the ones mentioned above such as meals, uniform etc. Pakistan can also look to its neighbor, India, where 120 million

⁶ Section 47 (1) of Sri Lanka’s Education Ordinance 1939 states: “No Fee shall be charged in respect of admission to or education provided in a government school.”

⁷ For instance, the whitewash in the schools, salaries of teachers, utility bills, furniture, laboratory equipment etc all are taxed multiple times before being consumed at the school. If the state gave up its revenues it would mean that the state would calculate and waive all the tax proceeds on these expenses by the schools

⁸ Section 2(e) of Right to Free and Compulsory Education Act, 2012 defines “Free education” as including any education related costs e.g. expenditure on stationery, schoolbags, and transport.”

children are fed at free and compulsory education at government owned schools⁹. As far as the expense on uniforms is concerned, some of the experts propose that uniforms should altogether be removed from the formalities of school education. In this way neither the parents, nor the government has to foot the additional bill.

- 1.3. In context of the right to free education, another important consideration 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 education cost incurred by the government in government schools.
- 1.4. There are number of questions requiring attention including but not limited to; whether the education of children going to private schools should be subsidized by the government to the extent of average per child cost in public sector schools? 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?
- 1.5. If the prospective legislations intend to restrict these privileges only to the students of government owned schools, then it needs to be addressed clearly in the forthcoming enactments. The only legislation done so far i.e. Right to Free and Compulsory Education Act 2012 fails to address the issue. As is the case in Sri Lanka where Education Ordinance 1939 specifically ties the word “Free” with education in Government Schools. This becomes more intricate when “Access” is introduced into the debate. For instance, if the state in Pakistan does restrict the “Free Education” to government owned schools, and there appears no government owned school within reasonable access from child’s residence, will the state finance his/her education in a privately owned school or not? If yes, to what extent will it be financed by the state?

2. DEFINING CHILD UNDER RTE: PRESCRIBING AGE OR GRADE:

- 2.1. 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”. Everywhere in the world where the right to free and compulsory education has legal protection, two types of norms exist in order to specify the beneficiaries. The first norm is to prescribe an age bracket of children which will receive free and compulsory education, while the second is to prescribe the grades in the schools [private/public] for which education is free and compulsory. Prescribing the age-bracket ensures that all the children of a certain age-limit receive free and compulsory education;

⁹ “How India feeds 120 million kids a day” by Ben Arnoldy; published in Web Magazine *The Christian Science Monitor* (<http://www.csmonitor.com/World/Asia-South-Central/2011/0209/How-India-feeds-120-million-kids-a-day>)

whereas, the prescription of grades allows the individuals beyond a certain age to benefit from it as well.

- 2.2. Pakistan has been following the practice of prescribing age for the eligible. For example the Punjab Compulsory Primary Education Act 1994 defines the age-group from 5-10 years¹⁰. The Right to Free and Compulsory Education Act, 2012, in Section 2(c), 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 he/she reaches the age of 16. Although section 13 (2)¹¹ states that no child shall be expelled from school until the completion of prescribed education, but “expulsion” can be interpreted 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 age¹². In case of India, Section 4 of The Right of Children to Free and Compulsory Education Act 2009 provides that regardless of age, a child once admitted shall leave the school after the completion of Elementary Education.

3. SCHOOL- MULTIPLE CATEGORIES:

- 3.1. School refers to the facility or premises which is used for imparting education. There are various ways of defining it in a given legal framework. In case of South Africa, “School” is defined as “a public school or an independent school which enrolls learners in one or more grades between grade zero and grade twelve¹³”. At present, there are many categories 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 etc. Even the privately owned schools can be subcategorized in terms of their syllabus, examining bodies, fee-structures etc.
- 3.2. At the policy level, there is a need to acknowledge the fact that each category of schools cater to a specific group of people in the society. Any legislation without appreciating this fact may result in confusion and inefficiency. Unfortunately, the laws enacted in Pakistan do not quite maintain this distinction¹⁴. Even the latest legislation that

¹⁰ Section 2 (a) of The Punjab Compulsory Primary Education Act, 1994 states that ‘child’ means a child of either sex whose age at the beginning of the school year is not less than five years and not more than ten years;

¹¹ It states that “No child admitted in a school shall be expelled from school till the completion of the prescribed education.”

¹² The rule whereby education should be free and compulsory until children reach the minimum age of employment was set in 1921 in order to move towards the elimination of child labor. At the time, the minimal school-leaving age was 14; today’s standard has moved to 18 for the worst forms of child labor.

¹³ Section 1 (xix) of South African School Act 1996

¹⁴ Section 2 (c) of The Punjab Compulsory Primary Education Act, 1994 states that ‘primary school’ means a school in which primary education is imparted; and

guarantees free compulsory education fails to account for various categories of educational institutions operating in the country. 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 religious seminaries and tuition centers.

4. NEIGHBORHOOD: ISSUES OF ACCESS & DELIMITATION

4.1. 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 school for education. Definition of Neighborhood has direct bearing on the access to education in any locality. A related aspect which was treated above is the role of privately owned education institutions. The role of these schools needs to be debated if we consider a situation where there is no government owned school in the neighborhood. In this scenario, the education of children going to these privately owned schools may be subsidized fully or to the extent of average per child education cost incurred by the government in government schools; or some other formula of cost-sharing may be arrived at.

4.2. It seems pertinent that neighborhood should preferably be defined in the law for provision of right to free and compulsory education. The provincial compulsory primary education legislations in Pakistan provided a radius of two (2) kilometers to be considered as neighborhood¹⁵. However, In case of Right to Free and Compulsory Education Act, 2012, some of the critics have rightly pointed out that the term “neighborhood” has neither been defined nor referred to. As the rules under the Right to Free and Compulsory Education Act 2012 have yet to be notified, however it is considered important that it should be defined in qualitative terms so as to clarify the meaning of the term. The actual task of delimiting neighborhood may remain a subject to be addressed by the Rules of Business. Like in case of India, 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 classes 6 to 8¹⁶.

Section 2 (7) of Compulsory School Attendance Act states that “National Primary School” means any institution for the provision of full-time primary education, being,-

- (a) a school organized and conducted directly by the Government;
- (b) a private school supervised by the government educational boards;
- (c) a school made under grant-in-aid policy; or
- (d) such other school as may be prescribed;

¹⁵ Punjab Compulsory Education Act 1994; North West Frontier Province Compulsory Primary Education Act, 1996; Sindh Compulsory Primary Education Ordinance, 2001; Islamabad Capital Territory Compulsory Primary Education Ordinance 2002

¹⁶ Section 4 (1), The Right of Children to Free and Compulsory Education Rules, 2010.

http://righttoeducation.in/sites/default/files/Right_of_children_to_free_and_compulsory_education_rules.pdf

- 4.3. 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. The question of delimitation also becomes important in context of providing transport under Free Education. In this regard the neighborhood could be defined at two levels. At the first level, neighborhood may include all the residents within the walking distance of the school. At the second level, it may include the residents to whom, due to the significant distance from school, transport facility could be extended.
- 4.4. The way neighborhood is defined, also has a bearing on the composition of School Management Committees. If neighborhood really is defined at two levels then these levels need to be treated distinctly in the composition of School Management Committees. For there is more likelihood that parents living closer to school will participate in Committee’s activities, meetings and proceedings than the parents dwelling over a distance.

5. NON-DISCRIMINATION:

- 5.1. When a state takes the responsibility of free and compulsory education, it tries to ensure the access to education of the entire population of a specific age-group. The state then usually guarantees non-discrimination against gender, caste, creed, color, ethnicity, social status and religion etc. As far as the Constitution of Pakistan is concerned, it is quite unequivocal regarding who will receive free education: every child from age 5 to 16. The legislations for compulsory primary education in the past attempted to explain the beneficiaries and provided that regardless of gender, a child within prescribed age-limit will receive compulsory education¹⁷. Although the new legislation, Right to Free and Compulsory Education Act 2012, does guarantee this right indiscriminate of gender, but it makes no mention of non-discrimination with regard to religion¹⁸. There is a concern among the civil society organizations, academicians and practitioners that necessary guarantees for religious minorities and girls should be the part of any legislation on education.

¹⁷ Punjab Compulsory Education Act 1994; North West Frontier Province Compulsory Primary Education Act, 1996; Sindh Compulsory Primary Education Ordinance, 2001; Islamabad Capital Territory Compulsory Primary Education Ordinance 2002

¹⁸ Section 3 (1), 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.”

6. INCLUSIVE EDUCATION:

- 6.1. Special education is the education for physically and mentally challenged children. The Constitution, after 18th Amendment, and the previous legislations on education do extend 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 children¹⁹. The Right to Free and Compulsory Education Act, 2012 does mention “Special Education” but there is practically no mention of the form, method and procedure to provide them with free and compulsory education²⁰.
- 6.2. Multiple questions arise if we consider this scenario; what specific measures are required for educating students with special educational needs? Should they be required to undertake the same curriculum or a different one? What should be the criteria for selection of teachers for these special children? Either the legislations need to go in greater detail with regard to establishing institutions and procedures for special education or there should be entirely separate legislation on the subject.

7. HEALTHCARE FACILITIES:

- 7.1. In many countries across the globe public schools provide regular medical checkup facility for their students and medical treatment in case of an emergency at school. Who pays for the treatment – is a question, however, that is treated differently in different countries. The existing legislations on education until the recent Right to Free and Compulsory Education Act 2012, made no mention of medical treatment of students at schools. The present law provides for medical and dental inspection of the children at appropriate intervals and also mandates the school authorities to ask the parents of a child for having a detailed medical or dental examination of their child. The provision is welcome step, however 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. Section 21 of the Act makes the schools responsible to provide medical and dental inspection to the children as far as practicable²¹.

¹⁹ Punjab Compulsory Education Act, 1994; and Right to Free and Compulsory Education Act

²⁰ Section 2 (m) defines “Special education” as 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”

²¹ Section 21 of Right to Free and Compulsory Education Act 2012 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.

7.2. 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 the 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.

8. ONUS AND QUANTUM OF LIABILITY:

8.1. Onus and liability constitutes a significant role in any legislation to account for the non-compliance with the stipulated provisions. In the context of right to free and compulsory education, the onus of ensuring access to education rests with the state. In such a case if a child does not go to school who will be held accountable and to what extent; whether the parents will bear the sole responsibility or the local education authorities have to be liable too. In most of the countries including Canada, Sri Lanka, Pakistan and India, the onus lies with the parents/guardians.

8.2. The existing legislations in Pakistan for compulsory primary education and the recent enactment for provision of free and compulsory education hold parents/guardians responsible for a child not going to School. In fact, there is a heavy fine if certain parents/guardians in Pakistan fail to send a child to the school according to these legislations. Considering the issue in the backdrop of Pakistan’s socioeconomic milieu, it will be important for the policy makers to deliberate whether the onus be shared by the appropriate governments as they have a fundamental role in providing an enabling environment encouraging the parents to send their children to school.

9. SPECIFIED CATEGORY OF EDUCATIONAL INSTITUTIONS:

9.1. At the moment along with the mainstream school education, there are multiple streams of institutions having distinct traits, which include institutes for religious education/madrassahs, skill and craft education, education for children with special needs, etc. It seems pertinent to examine how the prospective legislations will take account of this diverse situation.

9.2. The case of institutions providing religious education is of particular importance. Invariably all the Madrassahs provide free religious education, books, food and sometimes even accommodation to their students. The latest legislation for Islamabad Capital Territory (ICT), Right to Free and Compulsory Education Act, 2012, instead of

capitalizing on the opportunity to mainstream and formalize the role of Madrassahs, makes no mention of the institutions in the entire document. The issue of mainstreaming Madrassah education in Pakistan is a tough call indeed. In the past, governments took many steps to streamline and mainstream Madrassahs but these moves amounted to no major change in the status-quo owing to the pressure and resistance from these institutions. Another view is that Madrassahs form a separate stream of educational institutions. Although the children attending these institutions may be counted as the recipient of free and compulsory education, but the legislation should refrain from bringing Madrassah education in its ambit. These proponents cite the fates of previous programs instituted by government in the past to mainstream Madrassah, and apprehend that any provisions regarding these institutions in the legislation on free and compulsory is likely to meet the same results.

- 9.3. In this backdrop the policy makers needs to consider the possibility of inclusion of a provision which may provide government with an opportunity to include the children between 5-16 years of age in institutions other than the mainstream educational institutions to benefit from prospective legislations.

10. OVER-RIDING CLAUSE & REPEALS:

- 10.1. The overriding or notwithstanding clause in a legislation allows the government to override specific sections/provisions of enactments which are in conflict with the provisions of new law. Likewise the new enactments also tend to repeal laws on same subject and with limited scope or being redundant.

- 10.2. In case of legislation on right to free and compulsory education, it will be of significant importance how clearly such clause and provisions are formulated. As introduction of right to free and compulsory education laws in provinces will make the existing compulsory primary acts redundant. Similarly the stipulated provisions may have bearing on multiple provisions of laws relating to school education such as laws dealing with regulation of private education sector, curriculum, text book boards, education foundations, etc. Therefore, the articulation of such provisions need to be very thoughtfully calibrated so as to fulfill the need without creating any further confusion

11. TIME FOR ENFORCEMENT AND IMPLEMENTATION:

- 11.1. Every legislation sets out a time-frame wherein the 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 stipulated provisions. In respect to free and compulsory

education, it is significant because of two reasons. First, it has a direct bearing on the access to free and compulsory education. After the right to free and compulsory education has been acknowledged in the Constitution of Pakistan as the fundamental right, how long a child living in remote area of Sind - or Balochistan for that matter – should wait for a school in the neighborhood?

11.2. Similarly in the case of a child who is of 16 years of age at the moment and perfectly qualifies for free and compulsory education, but not after the lapse of gestation period three years later²². These potential scenarios pose serious challenge for the policy makers necessitating their attention. One way to cope with it is imparting education through informal means on immediate basis²³. For instance, in the neighborhoods, where no school or educational institution exists, the appropriate governments, in consultation with the community, notify teachers and places where the children may receive free and compulsory education until the school is established.

11.3. Secondly, the significance of time for implementation is that it has to be differently calculated for each province in view of their different infrastructural and administrative status. For example, if the Right to Free and Compulsory Education Act, 2012 stipulates 3 years as gestation period in Islamabad Capital Territory. The same may not be stipulated for Balochistan owing to the difference in size and population. It is, therefore, suggested that a study may be conducted by all the provincial governments into the resources and time required to start the provision of free and compulsory education in every neighborhood.

11.4. It seems pertinent to add here 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.

12. FINANCIAL CONSIDERATIONS:

²² The stipulated time period in case of Right to Free and Compulsory Education Act, 2012 is 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.

²³ Non-formal Education is not only an immediate but also a cheaper alternative to no education at all. The statistics by School Education Department, Government of Punjab say that per child education cost incurred by government in government school is 1166 PKR, while for non-formal education, the per child education incurred by government is 204 PKR.

- 12.1. 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 governments to a certain extent. Apart from these traditional methods, funds can be raised through other means as well. For instance in Canada²⁴, the School Councils also raise funds in form of donations from the residents of that area.
- 12.2. The provincial legislations on 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.

²⁴ Section 67 (5) of Canadian School Education Act states that the functions of School Council includes fund-raising among other things