

Ensuring Right to Quality Education: From Ambition to Reality

“Education is a human right with immense power to transform. On its foundation rest the cornerstones of freedom, democracy and sustainable human development.”

- Kofi Annan

In 2010 the Eighteenth Constitutional Amendment Act introduced Article 25-A in the Constitution making education a fundamental right, whereby, the provision of free and compulsory education to the children of 5-16 years of age was made an obligation of the state.

“The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law”.

-Article 25-A, Constitution of Pakistan 1973

The 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 state. 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 right. Article 25-A is a leap forward in the right direction as it provides the foundation for putting in place a comprehensive framework for ensuring provision of quality education to all the children from 5-16 years of age. Even before the introduction of 25-A, federal capital and the 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 education. Since the introduction of the Article 25-A, considerable progress has been made at federal and provincial tiers however there are a host of issues which needs to be addressed by the governments for delivering on the constitutional obligation.

Ensuring Right to Quality Education: Some Challenges

As the established legal principle Ubi Jus Ibi Remedium states that there can be no right without a remedy, a constitutional guarantee of right entails a legal framework which can provide means for redress in case of violation of a right. Rights if not justiciable i.e. not enforceable through the courts of law, are seldom beneficial for the people. Since the introduction of Article 25-A, it is encouraging to note that the federal and provincial governments have introduced laws to comply with Article 25-A. These enactments provide the legal framework for the implementation of right to education. However the RTE legislations and the subsequent developments at the federal and provincial levels have resulted in a number of concerns being raised by the legal experts, academics and civil society organizations (CSOs). These pertain to the definitional and procedural limitations, delay in

Islamabad Capital Territory	• Right to Free and Compulsory Education Act 2012. Act No. XXIV of 2012. (December 24, 2012)
Sindh	• The Sindh Right of Children to Free and Compulsory Education Act, 2013. Act No. XIV of 2013 (February 13, 2013)
Balochistan	• The Balochistan Compulsory Education Act 2014. Act No. V of 2014 (Originally Introduced as an Ordinance in March 2013, enacted on February 4, 2014)
Punjab	• The Punjab Free and Compulsory Education Act 2014. Act XXVI of 2014. (Originally introduced as an Ordinance on May 13, 2014, enacted on November 10, 2014.)
Khyber Pakhtunkhwa	• The Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act, 2017. No. XII OF 2017 (26th April, 2017).

¹ 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).

² 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.

³ 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.*

framing of the rules of business, and absence of an objective implementation strategy. Some of the key moot points include the following:

a. **Commencement of the Right to Education Laws:** Though enacted, the RTE laws of Islamabad, Khyber Pakhtunkhwa and Punjab have yet to come into force. The commencement clauses in the respective laws are restrictive in multiple ways. First, enforcement of the laws has been made dependent on the notification by the government; secondly, the laws also empower the respective governments to selectively enforce the different provision of the laws in areas of their choice.

b. **Defining Free Education:** How to define free education and what constitutes as “Free” is a key question and has been a matter of great debate. A review of existing laws indicates that it has been addressed in a diverse manner. The RTE laws have of Islamabad, Balochistan and Sindh have included tuition fee, textbooks, stationery, schoolbags, and uniform in it. Islamabad RTE Act 2012 has also included provision of transport to the students. Similarly, Balochistan Compulsory Education Act 2014 stipulates the provision of a meal too. The definition of free education in the Punjab RTE Act 2014 seems deficient on number of counts. It only provides a fee waiver and stops short of clearly outlining other essential items including, books, school bag, stationery, uniform, transport etc. The most significant in this regard is the case of Khyber Pakhtunkhwa, the KP Free Compulsory Primary and Secondary Education Act, 2017 neither includes free education in the section on definitions, nor deals with it in any subsequent sections. The deficiency has serious limitations in terms of ensuring universal access to quality education.

c. **Age/Defining Child:** Child in the context of right to education refers to the individual of an age-group who is entitled to receive free and compulsory education. The delimitation of the age group has direct implications on the access of “Free Education”. For instance there are a number of children who due to late enrollment are unable to complete secondary education till the prescribed age of 16 years, similarly children who do not make it to the next grades, ending up in lower grades than their age warrants. The RTE legislations need to address this important issue. The existing RTE laws in Pakistan provide for free and compulsory education to the children of 5 to 16 years of age. Except for the Balochistan and Khyber Pakhtunkhwa RTE laws, rest of the statutes provides special provision to complete education up to secondary level for the children who were not admitted to School at the age of 5 or were unable to complete education even if they grow beyond 16 years of age. This limitation in case of Balochistan and Khyber Pakhtunkhwa is a matter of serious concern.

d. **Inclusive Education:** Inclusive education refers to the provision of means for including the physically and mentally challenged children in age-appropriate, regular classes and are supported to learn, contribute and participate in all aspects of the life of the school. Whereas, special education refers to separate educational facilities for these children. All the RTE legislations fall short of taking inclusive education into account. However, all the enactments except for the Balochistan and Khyber Pakhtunkhwa, 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.

e. **Role and Duties of Teachers:** The Islamabad, Punjab and Sindh RTE laws elaborately outline the duties of the teachers and provides for the disciplinary action against them if they are found in default of these duties. The laws however are silent on how and in what manner will the commission of default will determined. Another key concern is the common clause in each of these laws pertaining to performance of “such other duties as may be prescribed”. This clause clearly implies that the governments intend to engage school teachers in all sort of non-academic activities such as inoculation campaigns, census, elections, and other non-academic activities.

f. **Role of Private Sector:** All the RTE legislations except for Balochistan and Khyber Pakhtunkhwa, envisage a special role for the private sector in provision of free and compulsory education. The private schools are required to allocate 10percent seats in each class for provision of free and compulsory education to the disadvantaged children in the neighborhood. In case of obligating the private sector schools, the most important question pertains to the rationale for allocating 10 percent of seats in these schools. Is this obligation a result of corporate social responsibility or the extraordinary circumstances for responding to the educational challenge have provided the rationale? In absence of strong regulatory mechanisms it may not be possible for the government to ensure the application of this provision.

g. **Framing of Rules of Business:** The RTE laws have been enacted and are on the statute books however their effective implementation will be contingent upon the framing of Rules of Business. Except for Sindh, the federal and provincial governments have yet to formulate the rules under their respective laws.

Table 1: RTE Legislations in Pakistan at a Glance

Subject	Islamabad Capital Territory (ICT)	Sindh	Balochistan	Punjab	Khyber Pakhtunkhwa
Free Education	Stationery, School bags, and transport	Textbooks, Stationary, Schoolbags, and Uniform	Textbooks, Stationary, One Meal and Transport	Tuition fee/ Commitment to remove financial barriers	Not defined
Age/Grade for Free Education	5-16 years	5-16 years with Special provision for the Grade 1 to 10	Grade 1 to 10	5-16 years	5-16 years/Grade 1 to 10
Commencement	After notification from Federal Government	Immediately	Retrospectively, on June 12, 2013	After notification from Provincial Government/ Partial Commencement can be notified by Provincial Government	From next School year i.e. 2018, however will only be extended to a district notified by the government in the official gazette.
Gestation Period	3 years	2 years	2 years	No Mention/ 5years for bringing Education related laws in conformity with Punjab RTE Act 2014	No Mention
Onus of Liability for Out of School Children	Parents	Parents	Parents	Parents	Parents
Role of Private Schools	Obligates to enroll 10% children in each class from the Disadvantaged Group	Obligates to enroll “at least” 10% children in each class from the Disadvantaged Group	Does not compel the Private Schools to provide Free Education.	Obligates to enroll 10% children in each class from the Disadvantaged Group	No role for the private schools
Rules of Business	Yet to be formulated	Formulated: <i>The Right of Free and Compulsory Education Rules, 2016.</i>	Yet to be formulated	Yet to be formulated	Yet to be formulated

Ensuring Right to Quality Education: The Role of Parliamentarians

The parliament not only keeps an accountability check on the government as a key oversight institution but also creates an effective feedback loop between government and the citizens. Parliamentarians have an important role to play in ensuring the implementation of right to quality education. The implementation also necessitates robust administrative and financial measures to meet the challenges of access, quality and inclusion.

Parliamentarians, as the elected representatives of the people, have a crucial role in ensuring implementation of the right to free and compulsory education. They can use their position for addressing the key challenges identified above. Following are some recommendations for the parliamentarians to leverage their role and position for contributing towards effective implementation of RTE laws:

a. Formulation of Rules of Business for RTE Laws

The foremost challenge which necessitate attention and role of parliamentarians in the National Assembly of Pakistan and Provincial Assemblies of Balochistan, Khyber Pakhtunkhwa, and Punjab is the formulation of Rules of Business for RTE laws. Despite the enactments, except Sindh, the governments have yet to formulate the Rules of Business for respective RTE laws. Besides being a challenge this also presents an opportunity for addressing various deficiencies in the existing RTE laws such as defining or making the definition of free education more responsive. The parliamentarians can request the concerned ministry or the respective department at provincial level to apprise them of the status and reasons for the delay in this regard. They can also engage with the respective ministers' office to optimize the process for formulation of the rules. Within the house, the Parliamentarians can highlight the issue through engaging with the standing committees. Similarly, they can draw the attention of the government for formulation of rules during the question hour, or presenting a resolution on it.

b. Introducing Amendments in the Existing RTE Laws:

As discussed in the foregoing sections, there are a number of deficiencies in the existing RTE legislations. The parliamentarians can propose amendments to address the gaps such as commencement clause, limitations in defining free education, age/definition of child, inclusive education, role of private sector, etc. The parliamentarians can introduce a private member bill to propose the amendments.

c. Allocation of Adequate Budgets for Ensuring Right to Quality Education

A major consideration for ensuring the implementation of right to quality education is the availability of financial resources to make equitable and quality education available for all children of 5-16 years of age. In this regard the parliamentarians have a key role for ensuring that adequate resource are allocated in the annual budget for school education.

The rules that guide the budget process usually limit the ability of parliaments to make major changes to the proposed budget, therefore it remains important for the parliamentarians to engage proactively with the budget cycle at the commencement stage. The budget cycle initiates in October with the issuance of budget call circular completing with the presentation and final vote on the budget in the assembly in June next year. The parliamentarians can request for a special briefing from the respective education department before the pre-budget session to be updated on the status of existing status of resources being allocated to the department and the estimate of required resources for ensuring universal access to quality education. The information will assist them to contribute during the whole of the budget cycle, and lobby for allocation of required resources for education in their respective provinces. Additionally, it will help them raise questions and cut-motions during the budget session.

d. Oversight to Ensure Effective Utilization of the Resources Allocated for Education

Oversight of the executive is a fundamental role entrusted to the legislatures. The parliamentarians can play an effective role in ensuring effective utilization of the resources allocated for school education. The parliamentarians can request a quarterly report on the status of the funds released by the ministry/department of finance to the respective education department and the status of utilization thereof. The quarterly review of the progress by the legislatures will have a significant impact on the performance of the ministry/department.

References

- Committee on Economic, Social and Cultural Rights, 1999. *General Comment 11, Plans of Action for Primary Education* (Twentieth session).
- ICJ. 2008. *Courts and the Legal Enforcement of Economic, Social and Cultural Rights – Comparative Experiences of Justiciability*. International Commission of Jurists. Geneva.
- I-SAPS. 2014. *Review of Punjab Free And Compulsory Education Ordinance 2014: Comments And Recommendations Presented to Standing Committee on Education*. Islamabad: Institute of Social and Policy Sciences. Islamabad
- I-SAPS. 2015. *Implementing Eighteenth Amendment: A Review of Legal, Institutional and Financial Developments in the Education Sector 2010-2015*. Institute of Social and Policy Sciences. Islamabad
- K. Tomasevski. 2003. *Education Denied: Costs and Remedies*. New York: Zed books.
- Planning Commission of Pakistan. *Pakistan Millennium Development Goals Report 2013*
- The Gazette of Pakistan, Extr. Pt.1, *Constitution (Eighteenth Amendment) Act 2010*, Act No X of 2010, P 267, 20th April 2010.

Acknowledgements

This briefing note was prepared by a team led by Ms. Nargis Sultana (FOSI-P) and Mr. Ahmad Ali (I-SAPS) with technical support from Mr. Kamal Zada (I-SAPS).