

STATUTORY GAPS TO FUNDAMENTAL RIGHT TO EDUCATION IN PAKISTAN

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Framework of implementation:
Legal basis of the fundamental right to education in
Pakistan

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FRAMEWORK OF IMPLEMENTATION: LEGAL BASIS OF THE FUNDAMENTAL RIGHT TO EDUCATION IN PAKISTAN

Executive Summary

The right to education was recognized as an integral part of the fundamental rights framework of the Constitution of Pakistan, 1973 even prior to its enactment as a stand-alone and independent right. Judicial pronouncements acknowledged the importance of education for the attainment of the most basic human rights – the right to life, the right to dignity, and the freedom to engage in business and trade. In 2010, upon the promulgation of the 18th Constitutional Amendment and the introduction of Article 25A to the Fundamental Rights Chapter of the Constitution, the right to free and compulsory education of children aged 5 – 16 years, was recognized as an independent fundamental right, which could be directly enforced against the State. From 2012 to 2017, the federal and provincial governments enacted legislation for the implementation of the right to education guaranteed under Article 25A.

The right to education legislation (“**RTE legislation**”) promulgated for enforcement of Article 25A defines the scope of the right to education, sets out the obligations of provincial and local governments, and puts in place multi-tiered administrative structures for monitoring and enforcement. The State is bound to provide children aged 5 – 16 years education free of cost, and to take account of attendant costs related for instance; travel, uniforms and books. The legislation imposes an obligation on teachers to provide an all-rounded and balanced education to children, while keeping in mind their mental well-being. The laws strongly prohibit corporal punishment in schools, and provide mechanisms (albeit vague) to penalize parents who fail to send their children to school. Private schools are obligated to educate a particular percentage of their student body free of cost. The administrative structures set in place under the federal and provincial laws provide an important stake to parents in the monitoring and evaluation of schools.

With the exception of the province of Sindh, RTE legislation remains largely unnotified and inapplicable. Rules detailing standards for and the mechanisms of implementation of the right to education have not (except in Sindh) been framed. The laws are in several places vague and unclear, and permit exceptions that undermine the spirit and purpose of the RTE legislation. A comparative reading of the RTE legislation demonstrates a lack of uniformity and consistency with regard to the scope of the right to education. There is a need to reframe parts of an otherwise commendable legislative scheme for implementation of Article 25A, and more importantly to notify and implement the promises made therein.

The Right to Education: Constitutional Background

The 18th Amendment to the Constitution of Pakistan, 1973 (the “**Constitution**”) that came into effect in 2010 moved governance towards a more federal structure, devolving greater legislative powers to the provinces on various subjects, including education, and also expanded the fundamental rights chapter of the Constitution to include the right to education (Article 25A), the right to a fair trial (Article 10A), and (the right to information (Article 19A). It was upon the passage of the 18th Amendment and the introduction of Article 25A to the Fundamental Rights Chapter that the right to education came to be recognized as an independent and free-standing fundamental right in the Constitution. Article 25A provides:

25A. Right to education:
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.

However, even prior to 2010, jurisprudence developed by the superior courts of this country had, through a purposive and expansive interpretation of existing provisions of the Constitution – namely Article 9¹ (right to life), Article 14² (right to dignity), Article 18³ (freedom of trade, business and profession) – held that the State had an obligation to provide quality education to citizens.⁴ In PLD 2003 Lah. 752 *Ahmad Abdullah v Government of Punjab*, the Lahore High Court, while dealing with a case of disaffiliation of medical colleges from the University of Punjab, held that:

*“26. ... Right to life is no longer considered as merely a right to physical existence or a right not to be deprived of life without due process of law. It means a sum total of rights which an individual in a State may require to enjoy a dignified existence. In the modern age, a dignified existence may not be possible without a certain level of education and the State has to play a role in ensuring by positive action that citizens enjoy this right. In *Brown v Board of Education* (1953) 98 Law Ed. 873, the US Supreme Court acknowledge this right and held as under: -*

“Today education is perhaps the most important function of State and Local Governments it is required in the performance of our most basic responsibilities, even service in the Armed Forces, it is the very foundation of good citizenship. Today, it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”

...

¹ Article 9: Security of person. No person shall be deprived of life or liberty save in accordance with law.

² 14 Inviolability of dignity of man, etc.

(1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.

(2) No person shall be subjected to torture for the purpose of extracting evidence

³ 18 Freedom of trade, business or profession.

Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent:-

(a) the regulation of any trade or profession by a licensing system; or

(b) the regulation of trade, commerce or industry in the interest of free competition therein; or

(c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.

⁴ Other relevant judgments include: PLD 2005 Lah. 428.

29 ... *Right to education is a fundamental right but the State regulates in more than one ways.*”

In case reported as PLD 2007 Kar 116 *Imdad Hussain v Province of Sindh*, the Sindh High Court explored the religious importance of education and went on to interpret Articles 14, 18 and 37(b) of the Constitution as providing for the right to receive education:

“6. The importance of education can be visualized from the fact that the very first Quranic revelation was for reading and writing and the Holy Prophet (PBUH) declared the pursuit of knowledge obligatory upon every Muslim male as well as female, even if one might have to go to China. Thus, from the religious point of view also the pursuit of education is one of the religious obligations of a Muslim practice which is guaranteed by Article 20 of the Constitution. Similarly, freedom of profession guaranteed under Article 18 cannot be enjoyed without technical and professional education vowed to be made generally available to all on the basis of merit under Article 37(c). In modern civilized society, education is equally important for living a dignified life guaranteed under Article 14.

7. Viewed from all angles, it is abundantly clear that the right to education is a fundamental right covered by Articles 9, 14, 18 and 20 read with Article 37(c) of the Constitution, and therefore, any unreasonable restraint, hindrance or condition on its exercise will be ultra vires the Constitution, irrespective of whether same was imposed by an administrative or executive act, by some statutory rule or even the statute itself.”

Article 37(b) of the Constitution refers to the State’s duty to remove illiteracy and provide free secondary education. It is important in particular to compare the wording of Article 37(b) with Article 25A, and understand the difference in the nature of duties the two impose upon the State. Article 37(b) provides:

“37 Promotion of social justice and eradication of social evils.
The State shall:
...
(b) remove illiteracy and provide free and compulsory secondary education within minimum possible period;
...”

It is clear that Article 25A expands the State’s obligation beyond the stipulation of Article 37(b), to provide free and compulsory education to the primary level as well. It is also pertinent to note that Article 37(b) is not a fundamental right, but is part of the Chapter on Principles of Policy, which unlike, fundamental rights are not directly enforceable against the State through a court of law. Principles of policy instead operate as guidance for the State’s legislative and executive actions.⁵ The introduction of Article 25A to the fundamental rights chapter provides

⁵ In PLD 1988 SC 416 *Benazir Bhutto v Federation of Pakistan* the Supreme Court held:
“The directive principles of policy are to be regarded as fundamentals to the governance of the State but they are not enforceable by any Court. Nonetheless, they are the basis of all legislative and executive actions by the State for implementing the principles laid down therein.... However, while implementing the directive Principles of Policy, the State should not make any law which takes away or abridges the Fundamental Rights guaranteed by Chapter 1 in view of the embargo placed by Article 8(1) and (2). Necessarily therefore, the directive principles of State Policy have to conform to and to operate a subsidiary to the Fundamental Rights guaranteed in Chapter 1, otherwise the protective provisions of the Chapter will be a more rope of sand. Law, in the achievement of this

courts with a broader basis of judicial review of State action or inaction with regard to the provision of free education to children aged five to sixteen years.

Legislation for Implementation of the Right to Education

Following the devolution of greater legislative powers to the provinces under the 18th Amendment, the provinces have the jurisdiction to frame laws with regard to education, including the State's obligation to provide free and compulsory education under Article 25A of the Constitution. As a consequence, the federal government and each of the four provincial governments have enacted separate legislation to implement/enforce their obligation under Article 25A:

- i. The Right to Free and Compulsory Education Act, 2012 applicable to the Islamabad Capital Territory (“ICT”);
- ii. The Sindh Right of Children to Free and Compulsory Education Act, 2013 read with the Sindh Right to Free and Compulsory Education Rules, 2016;
- iii. The Punjab Free and Compulsory Education Act, 2014;
- iv. The Balochistan Free and Compulsory Education Act, 2014; and
- v. The Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act, 2017.

No laws with regard to the Right to Education have so far been promulgated for Gilgit-Baltistan and Azad Jammu and Kashmir.

There is a significant similarity between legislative enactments at the federal and provincial levels. The provincial laws largely follow the scheme and structure for implementation of Article 25A adopted by the Federal Government through the Right to Free and Compulsory Education Act, 2012. This report shall first review the Right to Free and Compulsory Education Act, 2012 applicable in the ICT, and shall then discuss additional aspects/weaknesses of the provincial enactments.

Right to Free and Compulsory Education Act, 2012 (“2012 Act”)

The 2012 Act defines the nature and importance of the right to education guaranteed under Article 25A of the Constitution, and sets in place a scheme of administration and management for the enforcement of the right. The 2012 Act is to be applicable in the ICT, but has been intended to be applied in a phased manner, when and where the Federal Government may through notification specify.

Scope of the right to education

Section 3(1) of the 2012 Act defines the right to education as entailing free, compulsory, and non-discriminatory access to all children, defined in section 2(c) as the male or female child of 5- 16 years of age, including a child with special education needs, in a “neighbourhood school.” It is pertinent to mention that a transgender child has not been included in the definition of a “child”.

ideal, had to play a major role, i.e., it has to serve as a vehicle of social and economic justice which the Court is free to interpret.”

The 2012 Act does not define a “neighbourhood school,” however, pursuant to section 6 leaves it upon the Federal Government to determine the limits of a “neighbourhood”, and imposes an obligation on the Federal Government to establish a school in every neighbourhood within three years of notification of the Act. Pursuant to section 9, the Federal Government is not obligated to provide pre-school education, though it may do so.

Pursuant to section 11, the admission procedure in every school must be fair and not permit payment of any capitation fee, which is defined in section 2(b) to include any donation, contribution or payment, by whatever name, other than the fee notified by the school or the appropriate government.

The obligations of the Federal Government with respect to provision of free and compulsory education are defined in broad terms in section 3(3) to include: provision of free education to every child; (b) ensuring admission of children of migrant families; (c) ensuring compulsory admission, attendance and completion of education; (d) ensuring safety of travel of the child and the teacher to and from school ; (e) ensuring availability of a neighbourhood school ; (f) ensuring that the disadvantaged child⁶ is not discriminated against and prevented from, on any grounds whatsoever, pursuing and completing education; (g) provision of infrastructure including school building, playgrounds, laboratories, teaching-learning material and training staff; (h) monitoring the functioning of schools within its jurisdiction; (i) deciding the academic calendar; (j) providing all training facilities for teachers and students; and (k) ensuring good quality education conforming to the prescribed standards and norms.

Section 3(3) does not, however, make reference to health and safety standards that must be implemented in all schools to ensure the safety of children.

The obligations listed above are largely self-explanatory; others require more clarity and definition. For instance, does the obligation to provide free education to all children, which is defined to include children with special education needs, require that the Federal Government provide specialized education to such children? The 2012 Act in 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,” but does not clearly stipulate that the Federal Government is bound to provide such special education.

Similarly, does the obligation to ensure safe travel to and from school for students and teachers (s. 3(3)(d)) impose an obligation on the Federal Government to provide free and safe transport?

Duty of parents

The 2012 Act places a concomitant duty on parents to send their children to a neighbourhood school (section 8). This duty, however, is subject to an exception of “reasonable excuse” viz. where there is no school in the neighbourhood; or where the School Management Committee (see discussion below) is satisfied that the child is incapable of attending school by reason of any infirmity or mental incapacity. The exception is unreasonable, and lends irrationality to a

⁶ Section 2(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.

piece of legislation, which otherwise, quite nobly mandates the provision of education on a non-discriminatory basis to all children including children with special needs, but then permits the School Management Committee to exclude a child from receiving education on the ground of infirmity or mental incapacity. This is particularly problematic because the 2012 Act does not promise an alternative, more appropriate forum/form of education for children who are physically or mentally disadvantaged. Similarly, the non-availability of a school in a neighbourhood should not exempt parents from sending their children to another school in an adjacent neighbourhood.

Duty of private schools

Pursuant to section 10 of the 2012 Act, all private schools in the ICT are bound to draw 10% of the student strength in every class/grade taught at the school from “disadvantaged children,” defined in section 2(d) as children who belong to a socially and economically disadvantaged class, or group or belong to such parent whose annual income is lower than the minimum limit specified by the appropriate Government. This is an important provision within the scheme of the 2012 Act, in that it not only mandates a certain level of social responsibility on behalf of private educational institutions but also provides room for more diversity in their student body.

Out of school children

Section 4 of the 2012 Act takes account of the problem of out of school children and permits their admission into appropriate classes, in formal or non-formal schools. It is unclear from the provisions what non-formal or formal schools are.

Registration of schools

Pursuant to section 14, private schools and schools receiving grants-in-aid from the Federal Government must register with the designated authority, or be subject to a penalty for failure to do so. The provision of a certificate of registration to a school is subject to compliance with an undefined set of “norms and standards.”

Curriculum development and standards

Pursuant to section 7(3) of 2012, the Federal Government is to establish, through a notification, an academic authority which would be responsible for designing the curriculum and the procedures for evaluation of students, approval of syllabi and textbooks, and developing standards for training of teachers. Furthermore, pursuant to section 15, all schools are bound to comply with an undefined set of “norms and standards,” while failing to do so can result in withdrawal of registration.

The absence of clarity as to the nature of such “authority” or the “norms and standards” renders these provisions of the 2012 Act unworkable.

Appointment of and duties of teachers

Pursuant to section 17, only those persons may be appointed as teachers in schools who fulfil the prescribed requirements. The Act is silent as to what the prescribed requirements are. Section 18 lays down the duties of teachers to include: (a) maintenance of regularity and

punctuality in attending the school; (b) completion of the curriculum and syllabi within the specified time; (c) assessing the learning abilities of every child and supplementing additional instructions, if any, as required; (d) ensuring all-round development of the child; (e) building up a child's knowledge, potential and talent; (f) adopting learning through activities, discovery, and exploration in a child-friendly and child-centered manner; (g) making the child free of fear, trauma, and anxiety and helping the child to express views freely; (h) holding of regular meetings with parents and share with them the relevant information about the child; and (i) performing such other duties as may be prescribed.

Pursuant to section 19, the prescribed (but currently undefined) student-teacher ratio is to be maintained in every school, and the vacancy of teachers does not exceed 10% of the designated strength. This is an important provision given the prevalent problem of ghost schools and teacher absenteeism.

Finances

Pursuant to section 7, the Federal Government and the Local Government are to share the financial responsibility for carrying out the provisions of the 2012 Act. There is no clarity on how such responsibility is to be shared.

Administrative Structure

The 2012 Act sets in place a multi-tiered administrative structure for its implementation. Pursuant to section 22, the Federal Government may appoint an “Education Advisory Council” to advise on the effective implementation of the 2012 Act. The Education Advisory Council is comprised of a maximum of 9 members, appointed from amongst persons who have the knowledge and practical experience in the field of education, child rights, and child development. Part of the Council’s responsibility is to ensure the attendance of children at school, though it remains unclear how exactly this is to be done.

Pursuant to section 16, every government school and government-funded school is bound to establish a School Management Committee, comprising of representatives of the appropriate government, teachers, and parents of children admitted to such school. At least 2/3rd of the membership of such Committee must comprise parents; while 1/3rd of members of the Committee must be women.

The School Management Committee is responsible for: monitoring the general working of the school; ensuring that the prescribed (but undefined) norms and standards are observed; ensuring that the education policy of the appropriate government is implemented; preparing and recommending the annual development plan; and monitoring the utilization of the aids and grants received from the appropriate Government or any other source; performing such other functions as may be prescribed or entrusted to it by the appropriate government; and taking measures to ensure attendance of children in school.

The School Management Committee has a particular responsibility to ensure attendance of children at school and may for such purpose summon parents who fail to send their child/children to school and pass appropriate orders to ensure attendance. Any parent who fails to comply with such an order may be subject to a fine and/or imprisonment for a maximum period of three months.

This penal provision fails to take account of the reality of many poor households who on account of their penury are forced to put their children to work, and need to be incentivized to enrol their children in school. Such incentives could take the form of rations or daily stipends (subsistence allowance). It appears that the 2012 Act was enacted without due regard to this aspect of our educational conundrum.

The School Management Committee is also authorized to take action against child labour, and may in this regard send a warning to any employer who employs a child. The failure to abide by such a warning may be subject to a fine and/or imprisonment for a maximum period of six months. However, until the law declares child labour as illegal in all its forms,⁷ and subjects those responsible with penalties, children aged 5 – 16 years will not fully be able to access their constitutionally guaranteed right to education, and will remain at risk of instead being employed somewhere for remuneration. According to some estimates, Pakistan has the third-highest number of child labourers in the world after Mauritania and Haiti.⁸

It is also important to consider whether the penalizing powers of the School Management Committee against employers are a sufficient deterrent. Also, while the imposition of penalties on employers may be more straightforward, it may be difficult to subject parents who have their children engaged in employment/work to penal action.

The Federal Government is further empowered to inspect schools to ensure compliance with the provisions of the 2012 Act.

Child Rights Violations and Medical and Dental Check-ups

Section 20 of the 2012 Act makes a vague reference to the duty of the appropriate government – presumably meaning the Federal Government – to inquire into matters of child rights violations, in particular into violation of the rights guaranteed in the 2012 Act, and pass an order within 1 month. The issue of child rights violations is a pressing and grave cause of concern. Such passing reference in the law lacking details of the forum before which such complaints are to be brought and the nature of orders that can be issued, lacks any real value.

Pursuant to section 21, a school is bound to provide for medical and dental inspection of its students, to the extent reasonable and practicable, or may require their parents to do so. It is unclear whether the school itself arranges for such inspection, the same will be at the cost of the school.

The 2012 Act is a commendable piece of legislation, but suffers from lack of clarity and lacunae that have been identified and discussed above.

⁷ Pursuant to Article 11 of the Constitution, a child under fourteen years of age may not be employed in any factory, mine or in hazardous work. Under various provincial laws, minimum age for employment of children is prescribed as 14 or 15 years of age, and varies according to the nature of the work/industry. (Mines Act 1923 (15 years), Factories Act 1934 as well as its provincial variants enacted after devolution (14 years), Shops & Establishments Ordinance 1969 and its provincial variants enacted in Sindh and Khyber Pakhtunkhwa (14 years) and Road Transport Workers Ordinance 1961 (18 years); also see the Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015; Sindh Prohibition of Employment of Children Act, 2017; Punjab Restriction on Employment of Children Ordinance 2016). There is an obvious contradiction in the age for compulsory education prescribed as 5 – 16 years under Article 25A and the permissible age for employment of children under Article 11 and the 1991 Act viz. 14 years.

⁸ Dawn editorial, 21.03.2022, <https://www.dawn.com/news/1681084/child-labourers>

The Sindh Right of Children to Free and Compulsory Education Act, 2013 (the “Sindh Act”)

The obligations imposed on the Government of Sindh with respect to the enforcement of the right to education, under the Sindh Act, are similar to those prescribed in the ICT enactment. This section discusses additional aspects/weaknesses of the Sindh Law.

Expanded scope of “free education”

It is important to point out that the Sindh Act was notified immediately upon promulgation across the province of Sindh (s. 1(3)). The Sindh Act defines “free education” more broadly to include the free provision of textbooks, stationery, school bags and uniforms, meaning thereby that the provincial government is bound not only to provide free instruction but ensure that all ancillary costs connected to attending schools are also borne by the provincial government (s. 2(f)).

Non-formal schools; special education

The Sindh Act, like the ICT enactment, makes provision for the enrolment of out of school children in a class appropriate for them, but unlike the 2012 Act does not permit the enrolment of such students in non-formal schools. The critique that the law while defining “special education,” does not mandate the provision of such education to handicapped children or children with special needs is equally applicable to the Sindh Act.

Finances

Under section 7 of the Sindh Act, the Government of Sindh and the relevant local authorities (defined at s. 2 (i) to include a Metropolitan Corporation, District, Taluka, Town, Union Councils, or by such other authority or body which administrative control over the schools) are jointly responsible for providing funding for the implementation of the provisions of the Sindh Act. Section 7 further designates the Sindh Education and Literacy Department with the responsibility of moving relevant government officials/authorities to assess additional financial needs for the implementation of the Sindh Act.

School Management Committee

The composition of the School Management Committee set up under section 16 of the Sindh Act is quite similar to that provided under the 2012 Act and includes Government, teachers, parents of children admitted and members of the school management. It is, however, important to note that under the Sindh Act private schools are equally bound to establish School Management Committees.

Curriculum development and incentivization

Although the Sindh Act, like the 2012 Act, does not specify the authority responsible for curriculum design and development, however, the section 20 lays down a set of principles that are to guide the prescribed authority when exercising such responsibility, including: conformity with the values enshrined in the Constitution; all- round development of the child; building-up a child's knowledge, potential and talent; development of a child's physical and mental abilities to the fullest extent; learning through activities, discovery, and exploration in a child-friendly and child-centered manner; comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same.

Section 23 of the Sindh Act builds in a method of incentivizing and rewarding teachers and school management committees for their performance in meeting the objects of the law.

Protection against Corporal Punishment

Section 13(3) of the Sindh Act provides an additional protection to children against corporal punishment and mental harassment in schools. This is an important provision given the horrific reports of physical and mental abuse of children in schools which have come to the fore in the past.

The Right to Free and Compulsory Education Rules, 2016 (“**2016 Rules**”) framed under the Sindh Act supplement the provisions of the former enactment, and address certain areas of ambiguity.

Non-formal education is not a substitute for formal education

Rule 3 of the 2016 Rules specifies that the provision of non-formal education (defined at R. 2 (h) and 2(f) as organized educational activity outside the established formal education system, which runs from primary level to university level) is not a substitute for formal education, and in no way takes away from the obligation of the Government of Sindh to provide free and compulsory formal education to children.

Free Education

As per Rule 9, the provision of free education includes the provision of free textbooks by the Sindh Government, and the provision of free supporting and learning materials by the Sindh Textbook Board.

It is pertinent to point out that pursuant to Rule 10, the Government of Sindh is under an additional obligation to provide free pre-school education based on the Early Childhood Care and Education Policy 2013, through the establishment of pre-primary classes/sections in all government and government-funded schools. Such classes/sections are to be set up in a phased manner within a period of three years. As an interim measure, Rule 10(4) directs the Government of Sindh to set up a pre-primary classes for 4-5 years old children in every school.

Establishment of neighbourhood schools

The obligation of the Government of Sindh to establish neighbourhood schools is further clarified by R. 2(g) which defines a neighbourhood school as one which is within walking

distance of a primary school set up in an area. However, this begs the question of what would happen in a situation where there is no primary school in a neighbourhood.

Responsibilities of the local authorities

Rules 5 and 7 of the 2016 Rules further clarify the responsibilities of the local authorities (defined in section 2(i) of the Sindh Act) to include the obligation to undertake “school mapping” i.e. to plan school location in order to overcome social barriers and geographical distance, and to accordingly establish schools. Rule 5 obligates local authorities to maintain a record of all children that fall within its jurisdiction, with the purpose of identifying out of school children and for school mapping. Rule 5(2) provides that such record must include the following information regarding each child: name, sex, and date of birth of the child; basic medical record of the child; names, addresses, and occupation of the parent; details of pre-primary elementary school attended; present address of the child; class in which child is studying; details of children requiring special facilities and special help. Such record is to be transparently maintained in the public domain. The question of how this record is to be collected, and whether its availability in the public domain is a violation of a child’s right to privacy, remains unanswered.

Out of school children and special training

Rule 6 of the 2016 Rules authorizes the Head of a government-controlled or government-funded school to identify children (who had not been enrolled in school at the right age, but were admitted pursuant to section 4 of the Sindh Act in an appropriate class) who require special training, which is to be imparted by a specially appointed teacher for a minimum period of 3 months. Neither the Sindh Act nor the 2016 Rules define what “special training” means or entails.

Private Schools

Pursuant to Rule 11, all private schools are bound to publicize through newspapers/radio/television and other modes of electronic media the number of seats offered for the provision of free education. Such schools are also obligated to submit a report to the prescribed authority with regard to admissions on a free basis made by them.

Reporting requirements and Inspection.

Pursuant to Rule 14, all schools, other than those established and controlled by the Government of Sindh are bound to regularly submit a declaration of compliance (which is to be made available in the public domain) with norms and standards to the District Education Officer. Such schools are to be open to inspection by any officer designated by the Government of Sindh.

The District Education Officer is empowered under Rule 15 to withdraw the registration of a school which is found to have violated the terms and conditions of registration/recognition or has failed to conform to the prescribed norms and standards.

Complaint mechanism

It is important to note that pursuant to Rule 27, the Government of Sindh or the relevant local authority is to set up a complaint hotline accessible via SMS, telephone or letter for receiving complaints (from children or parents) regarding violation of any provision of the Sindh Act.

Additional Administrative arrangements

In addition to the School Management Committee established under section 16 of the Sindh Act, Rule 17 introduces two more layers to this administrative structure: the General Body and the Executive Committee. The General Body is comprised of all parents of students enrolled in a school, teachers and students of the highest two grades, and is bound to meet at least once a year. The role of the General Body is to conduct elections for membership of the Executive Committee; approve the School Improvement Plan (which has not been defined in the Rules); mobilize enrolment of out of school children and facilitate their access to school; and approve the school budget in the annual meeting of the General Body.

Pursuant to Rule 18, the Executive Committee is to be comprised of a minimum of 7 members and a maximum of 13 members, and must include parents; head teacher, two elected students of the highest grades, and local capable and good citizens. The Chairperson of the Executive Committee must be a parent; the Head Teacher is to serve as Secretary of the Executive Committee. Rule 18 prescribes that gender balance be maintained in the composition of the Executive Committee.

The Executive Committee is elected for a term of 3 years, and is to meet once in 2 months. Its mandate is to monitor the general working of the school; prepare, recommend and execute the School Improvement Plan; monitor the use of budgets aids, etc.; monitor teacher and student performance; communicate and coordinate with other government departments; monitor child abuse incidents and demonstrate zero tolerance for corporal punishment, trafficking/kidnapping and in extreme cases register formal complaints at police stations.

It is unclear from a reading of the Sindh Act and the 2016 Rules whether the School Management Committee is distinct from the Executive Committee, and if so, how the two are meant to interact.

Rule 28 provides more clarity on the nature of the role of the Education Advisory Council. The Government of Sindh is to notify the Education Advisory Council, comprising of the Chairperson plus 8 members (drawn from a set of individuals with experience in education; knowledge of education needs of special children; and teacher instruction). The Council is to play an advisory role in the implementation of the Sindh Act; assess the level of school education and analyse survey reports; ensure compliance with norms and standards; act as an interface with media, appropriate government bodies, and the public with a purpose of creating awareness and mobilization. The Council is obligated to prepare reports on reviews, studies and research undertaken by it for submission to the Government of Sindh. The Council is elected for a term of 3 years and is to meet bi-annually.

Rules 29 and 30 of the Sindh Rules, add two more bodies within the administrative scheme of implementation of the Sindh Act. The Sindh Right to Education Secretariat set up under Rule 29, is tasked with the responsibility to map out school children in coordination with the relevant union councils; undertake an overall analysis of the availability of infrastructure; continuously monitor every district through quarterly appraisal of; and track students in school to pre-empt drop-out cases.

Rule 30 established a Steering Committee, with representation from all wings of the Education and Literacy Department. The Secretariat established under Rule 29 is to submit a quarterly progress report to the Steering Committee.

The Sindh Rules have introduced additional tiers of administration, review and reporting to the structure set up under the Sindh Act. It is unclear how these different tiers will interact and coordinate with one another, and therefore questionable whether these will be effective.

Punjab Free and Compulsory Education Act 2014 (the “**Punjab Act**”)

The Punjab Act is to be applicable across the province, as and when notified by the provincial government. The Punjab Act is different from the 2012 Act in certain material aspects which will be discussed below.

The different and more expansive scope of the duty to provide free education.

Section 3 of the Punjab Act obligates the Punjab Government to provide free and compulsory education (presumably read as formal education), non-formal education and vocational training, and special education. Section 2(d) of the Punjab Act defines education to include madrassah education, vocational training, special education and non-formal education. The Punjab Act, however, is silent on what special education and non-formal education mean or entail. In a departure from the ICT and Sindh enactments, section 2(k) of the Punjab Act, includes a Deeni madrassa or any school providing religious education, which has been recognized by the Government of Punjab, within the definition of a “school”.

If the duty to provide free and compulsory education, includes the duty to provide free religious instruction and vocational training – which modes of instruction generally operate outside the formal educational sector – it is pertinent to question whether under the scheme of the Punjab Act, religious instruction and vocational training can serve as substitutes to formal education. In principle, the answer is “no”. However, section 3 of the Punjab Act can be read as providing some room for exemption to the Government of Punjab from ensuring the provision of formal education, by instead providing vocational training or madrassa education.

Duty of the Local Government

Pursuant to section 2(2), the local government has been made responsible for maintaining the record of children up to the age of sixteen years who reside within its jurisdiction, and ensuring and monitoring admission, attendance, and completion of education by every child residing within its jurisdiction. This set of obligations is vague and without the framing of rules on this point, it will remain unclear how these are to be met.

Evening Schools

Section 8(2) of the Punjab Act permits the Government of Punjab to devise a scheme for providing education to the children at schools in the evening hours and for making arrangements for providing non-formal education to the children in other educational institutions.

Penalty against a derelict parent

A parent who fails to comply with his/her duty to send a child to school as provided under section 9 of the Punjab Act may be subject to denial/withdrawal of any subsidy or poverty targeted support by the Government of Punjab to which he/she is otherwise. This penal structure assumes that parents of children attending schools are in receipt of such subsidies/benefits, which may not always be the case.

Private Schools

The merit of the obligation imposed on private schools to reserve a set proportion of their seats for the provision of free education has already been discussed. Section 13(b) of the Punjab Act provides room for private schools to steer their way out of such obligation, by issuing vouchers to disadvantaged children (defined in section 2 of the Punjab Act as including children belonging to a socially and economically disadvantaged class), for instruction in other government-designated schools. It is submitted that the rationale behind section 13(b) must be revisited.

Corporal Punishment

Section 16 of the Punjab Act is distinct from the 2012 Act and it obligates teachers or persons in-charge of a school to ensure that a child studying in the school is not subjected to corporal punishment or harassment, subject to disciplinary action.

Taleem Fund

Section 12 of the Punjab Act prescribes the establishment of a Taleem Fund by a school, with the approval of the Punjab Government. The Fund is to consist of voluntary contributions from the philanthropists, alumni, students and parents and utilized for the welfare of the students of the school, in a yet to be defined manner.

It is pointed out that the Punjab Act has not as yet been notified and rules thereunder have not been framed.

Balochistan Free and Compulsory Education Act, 2014 (the “**Balochistan Act**”)

The Balochistan Act promulgated for the purpose of implementation of the right to education is in some aspects less detailed than the 2012 Act, and in other aspects expands the extent of rights provided under the former enactment. The Balochistan Act is applicable across the province except the tribal areas (which have now partly merged with KPK) and came into effect in June 2013. It has reportedly been notified.⁹

Scope of the right to education

Section 2(f) of the Balochistan Act defines “free education” to include the provision of free textbooks, stationery, transport and one-meal a day in school. However, the definition of schools provided in section 2(l) includes only government-maintained schools and madrassahs

⁹“Govt urged to notify Free, Compulsory Education Act”, The News, 03.10.2021
<https://www.thenews.com.pk/print/897168-govt-urged-to-notify-free-compulsory-education-act>

registered with the provincial government. Private schools are excluded from the scope of the Balochistan Act.

It is also interesting to note that the wording of section 3 of the Balochistan Act, which pertains to the provision of free education, does not impose an obligation on the Government of Balochistan to establish schools. Instead, it is worded such that **parents are obligated to send their children to school**. The Balochistan Act quite implausibly shifts the onus away from the provincial government for fulfilling its constitutional duty to provide free education by setting up schools, on to parents.

Parent-Teacher School Management Committee

Section 4 of the Balochistan Act provides for the establishment of a Parent-Teacher School Management Committee, which presumably is to perform the functions entrusted to the School Management Committee under the other enactments discussed above. The Parent-Teacher School Management Committee is to be elected through a democratic process of elections. Section 4(2), however, provides that matters regarding the membership, appointment, and nomination of, qualification and disqualification of members of the “Management Committee” are to be prescribed by the provincial government. It is unclear whether the “Management Committee” is distinct from the Parent-Teacher School Management Committee, and unlike the latter is to be constituted through a nomination and not election. The roles prescribed to the Management Committee are similar to those prescribed for the School Management Committee under the other laws discussed above, including the issuance of orders to parents who fail to comply with their duty to send their children to school.

School Attendance Authority

Section 7 of the Balochistan Act also provides for the establishment of the School Attendance Authority, which has the mandate to require every child to attend school, and to take measures to re-admit children who have dropped out of school. The School Attendance Authority is also authorised with the duty to look into and issue appropriate orders in cases of delinquent parents who fail to send their children to school and of employees guilty of child labour. In the event of failure to comply with such orders, the School Attendance Authority can register a case against the accused before the Magistrate.

It is unclear whether such Authority is to be established at the school level, union council level or at the provincial level. It is also unclear what the composition of such authority will be.

Reasonable excuse and delinquent parents

Sections 3 and 6 of the Balochistan Act replicate the provisions regarding the duty of parents to send their children to school, subject to the provision of reasonable excuse found in the other federal and provincial laws on the subject. However, the Balochistan Act imposes a much-needed obligation on a parent to have his/her child attend a special education school where on account of mental or physical disability, the child is unable to attend a regular school.

There are several lacunae in the Balochistan Act, which makes no reference to: the geographical bounds/limits within which the Government of Balochistan is obligated to establish a school; provision for a fair and transparent admission procedure; definition of

special education; the obligation on private schools to provide free education; the registration and monitoring of schools; curriculum development; qualification and training of teachers; student-teacher ratio and the problem of absentee teachers; the establishment of Education Advisory Council at the provincial level; protection against corporal punishment; and mechanism to address child rights violations.

The Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act, 2017 (“KP Act”)

The KP Act came into effect in 2018, and has reportedly been notified by the KP Government.¹⁰ The KP Act, in comparison to the 2012 Act, Sindh Act and Punjab Act is more skeletal in form and lacks the detail and administrative structure provided in the enactments discussed above. It is reported that the KP Act is in the process of being reframed.¹¹

Scope of right to education

Section 2(d) of the KP Act defines schools as primary school, middle school and higher secondary school in the public sector. Schools which receive grants in aid from the provincial government and private schools are excluded from the scope of the KP Act. Furthermore, the definition section of the KP Act does not define “education” or “free education”. Section 3 of the KP Act imposes an obligation on the KP Government to provide free and compulsory primary and secondary education to all the children from the age of five to sixteen years. The KP Act is unclear as to how this provision is to be made – are neighbourhood schools to be established; is the government to enter into partnerships with the private sector for such purpose? The KP in this regard suffers for lack of clarity.

Administrative Structure – School Attendance Authority

Section 5 of the KP Act prescribes the establishment of the School Attendance Authority in each school, with mandatory representation from parent-teacher council (PTC). It is unclear what the PTC is, and who are to be the members of the Authority, and what is to be the process of their appointment. The Authority is to ensure the attendance of children at school, and may issue orders similar to those issued by the School Management Committee against delinquent parents who fail to send their children to school. It is pertinent to mention that the KP Act does not detail other duties and responsibilities that are to be performed by the Authority. Such lack of detail is critical particularly since the KP Act does not make provision for the establishment of the School Management Committee or the Advisory Council, as provided in other laws, along with a detailed list of their role and responsibilities.

Taleem Fund

Section 7 of the KP Act stipulates the establishment of the Taleem Fund, on the lines similar to those in the Punjab Act.

The KP Act suffers from vagueness, and uncertainty. Like the Balochistan Act, the KP Act makes no reference to: the geographical bounds/limits within which the Government of KP is obligated to establish a school; provision of a fair and transparent admission procedure;

¹⁰ Govt urged to notify Free, Compulsory Education Act”, The News, 03.10.2021

<https://www.thenews.com.pk/print/897168-govt-urged-to-notify-free-compulsory-education-act>

¹¹ Ibid.

definition of and duty to provide special education; the obligation on private schools to provide free education; the registration and monitoring of schools; curriculum development; qualification and training of teachers; student-teacher ratio and the problem of absentee teachers; the parent-teacher committee; the establishment Education Advisory Council at the provincial level; protection against corporal punishment; and mechanism to address child rights violations.

The laws discussed above were promulgated with the view to enforce the fundamental right to education guaranteed under Article 25A of the Constitution. Ten years have nearly elapsed since the promulgation of the 2012 Act for the ICT. Little has been done to implement the law. The Punjab Act is yet to be notified and no rules thereunder have been framed.

Non-implementation of the laws

The superior courts of Pakistan have on multiple occasions decried the non-implementation of the legislation on the right to free education. Excerpts from some of these judgments are reproduced below.¹²

PLD 2012 SC 224 *Fiaqat Hussain v Federation of Pakistan* in a case regarding the ability of the Federation to legislate with regard to education, following the devolution of legislative subjects to the provinces, held that:

“4. In the successful life of an individual, education plays an important role. Generally, it is considered to be the foundation of society which brings economic wealth, social prosperity, political stability, and maintaining a healthy population. In case of a deficit of educated people, the further progress of the society is stopped. Educated individuals enjoy respect among their colleagues and can effectively contribute to the development of their country and society by inventing new devices and discoveries.

5. The main purpose of education is to educate individuals so that they get prepared to form the next generation of leaders. It will yield strong families and strong communities. Education plays an important role to promote knowledge and understanding of rural communities. In almost all societies, receiving an education and attending school is necessary to achieve success. It is the key to moving forward and ultimately succeeding in life. For preparing children and young people to effectively participate in the development of society, schools play a vital role. Knowledge and wisdom can only be gained through the experience of learning. It is important to note that the teachers are the most important factors for an innovative society because teachers' knowledge and skills not only enhance the quality and efficiency of education, but also improve the prerequisites of research and innovation.

6. In the Constitution of Islamic Republic of Pakistan, through the 18th Constitutional Amendment, Article 25A has been added which identifies the education as one of the fundamental rights of the people.”

¹² 2011 CLC 1375 *Kiran Shahzadi v Quaid-e-Azam University* the Islamabad High Court held that the right to education is a fundamental right guaranteed in the Constitution and the courts are under an obligation to protect such rights.

In 2013 SCMR 764 *Petition regarding the miserable condition of the schools*, the Supreme Court decried the non-implementation of the Article 25A of the Constitution, in particular with regard to law-making for enforcement of such a right, and directed the Additional District Judges and district education officers to undertake a survey on the condition of schools across the country. The reports on such surveys were thereafter submitted before the Supreme Court and in a subsequent judgment reported as 2014 SCMR 396 the Supreme Court, on the basis of the reports observed that: staff and teachers in schools are not recruited on merit; transfers and postings of teachers is marred by political considerations and influence; there is overstaffing of teachers in some schools; there is a shortage of teachers in other schools; teachers obtain leave without due cause or absent themselves from duty; officials of the Education Departments do not visit schools and have no control over the teachers/staff; head teachers are paid excess amount without proof or cause; there is a misuse of funds; encroachments exist on a large number of school properties/buildings; a large number of schools are found without electricity, drinking water, washrooms, and proper furniture. The Supreme Court then went on to observe:

“153. ... The above state of affairs shows that the most important aspect of life viz. imparting of education to future generations is being ignored like anything.”

“162. ... Physical inspection of the Government-run educational schools conducted under the supervision of the judicial officers being the survey which has been carried out for the first time in the history of the country has brought to the limelight the miserable conditions and numerous problems both in urban and the rural area that the schools are afflicted with throughout the length and breadth of the country ... This exercise has been undertaken from two points of view, namely the Constitution guarantees the basic right of life to all citizens/subjects of the Constitution under Article 9 of the Constitution, and secondly Article 25A has envisaged a Fundamental Right of compulsory and free education for the children of 5 to 16 years of age. ...”

“154. ... The direction on imparting education contained in the Constitution by way of a Directive Principle has now been translated into a Fundamental Right, which is enforceable by the superior courts in the exercise of the jurisdiction vested in them under Article 199 and Article 184(3) of the Constitution.”

The Court went on to suggest certain measures that could be undertaken:

“174. Now after the devolution of the subject of education to the Provinces, it is obligatory for the Provincial Governments to ensure that the children of respective areas receive education as a Fundamental Right at all tiers of the education system; and it will only be possible if all the Provincial Governments as well as the Federal Government to assign top most priority to the subject of education because by imparting good education to our children, we can make progress and ensure the prosperity of the country; but unfortunately, as so far it has been noticed during the hearing and after getting conducted a survey through judicial officers, there is no occasion to express satisfaction on the education system in all the Provinces as well as ICT. One can understand that at certain levels, measures have been or are being taken to improve the educational system by ensuring the regular functioning of the schools. However, in our view, to achieve the goal of compulsory and free education for the children of the age of 5 to 16 years in view of Article 25A of the Constitution, the following measures are required to be taken:--

- (a) Accreditation Boards in all Provinces and ICT be established under the law with an authority, inter alia, to improve current miserable conditions of the institutions and also to ensure removal of ghost schools immediately with penal action against responsible persons who had been receiving salaries and other perks without performing their duties;
- (b) The Accreditation Boards shall be responsible to continue to strive for achieving the objects and purposes for which they have been established. The recommendations of the Board shall be liable to be implemented forthwith by the competent authority so that the improvement in the conditions of the schools is made visible;
- (c) The Accreditation Boards may also consider approaching the respective Governments with the plea that the teachers be allowed to perform their task of imparting education, which is their basic assignment and respective institutions may make alternate arrangement of manpower from other departments to achieve the objects for which the teachers are always engaged and involved because on account of their authorised absenteeism, the task of teaching the students has been suffering badly, which is an issue of national importance adversely affecting the future prosperity of Pakistan;
- (d) The Provincial Governments shall be bound to enforce Fundamental Rights enshrined in Articles 9 and 25A of the Constitution as in some of the Provinces, legislation has already been made to enforce Article 25A, therefore, same may be acted upon strictly;
- (e) The Provincial Governments and ICT must enhance budgetary allocations for improvement of the education system and also provide a mechanism to ensure the presence of students at the primary, middle and high schools levels;
- (f) The Provincial Governments through the concerned authorities must ensure recovery of the possession of the schools' buildings, which have been illegally occupied by influential persons and if there is any litigation pending, the Registrars of the respective High Courts shall ensure the decision of the cases expeditiously; and
- (g) Similarly, cases pending before the High Courts and Supreme Court concerning the schools' properties shall also be disposed of expeditiously."

In 2014 CLC Quetta 1810 *Maher Gul v Government of Balochistan*, in a case concerning pilferage of money for the renovation of schools, the Quetta High Court observed at para 8:

"Article 25A of the Constitution provides that, "the State shall provide free and compulsory education to all children of the age of five to sixteen years as may be determined by law." However, this salutary principle remains a tall order when it is not even known where many of the schools are. As a result, a substantial number of the children of Balochistan are being deprived of this fundamental right of theirs. ..."

In public interest litigation concerning the non-provision of books to students of government schools by the Government of Balochistan, the Quetta High Court in PLD 2014 Quetta 86 Syed

Nazir Agha v Government of Balochistan observed that the duty cast upon the State to ensure that all children go to school and remain in school was not even close to fulfilment, and female students were being neglected the most. The Court held:

“5. Article 25A of the Constitution has made the Right to Education a Fundamental Right and calls for free and compulsory education to be provided to all children from the ages of five through to sixteen, therefore, the Government has to ensure compliance with the Constitutional directive. There are two aspects to Article 25A, firstly, the provision of free education and, secondly, it being compulsory that all children, boys and girls, attend school from the age of five through to the age of sixteen, i.e. from 1st Class till the 10th Class or matriculation. Whilst the Government may be making some efforts towards the provision of free education, no effort appears to be made to ensure compulsory education. The State has to ensure that all children get to school and remain in school, but unfortunately, the duty cast upon the State is not even close to fulfilment and amongst children, the girls are being neglected the most. Merely, constructing a school and providing free textbooks is not enough to get the children to school. An environment needs to be created, whereby there is a desire on the part of the parents to send their children to school and the school environment is such that it beckons children who would be unhappy to miss school.

6. We can take notice that Government school buildings generally are badly designed and with little regard for their functional aspect. The cement structure vandalized and with peeling paint, presents a haunted look. After the schools are constructed, they rarely receive a fresh coat of paint. School buildings are inscribed with political slogans and with the slogans of those propagating their own view or agenda, rather than learning pictures. Government school teachers appear to be disinterested in their pupils, which is self-evident by their non-attendance and the local administration apathy to the present condition of education in the province. Usually, in rural areas, schools do not even have a small boundary wall to mark out the school property and to protect it from marauding goats, sheep, and cattle, thereby ensuring the survival of the plants and trees that may be planted within the premises of the school. It is with dismay that one can state that it is a rare school in Balochistan which has within its premises a single tree or plant.

7. The people of the area even sometimes do not know that there is a school in their area, since the possession of the school building has been taken over by another department, its officers or an influential person of the area without any resistance or objection by the teacher/s or by the District Education Officer ("DEO"). A simple way to ensure against such practice would be to enter into the revenue records of the area, the owner of the land and building of the school and that the same is the property of the Education Department of the Government of Balochistan. Furthermore, to build a wall demarcating the area covered by the school and to identify clearly the building as a 'School' by placing a plaque or painting/writing the same on or in the front of the school building.

8. The school buildings that are constructed often do not take the environment into consideration, rendering such buildings very cold in the winter and extremely hot in the summer. Since schools are normally not provided with electricity to run fans in the hot months, and with no gas to heat them in winter, the school building should be checked and readjustments should be made taking into consideration the environment.

Architectural design has made considerable strides and buildings can be easily designed/remodeled to make them functional, visually appealing, environment friendly, and structurally sound to attend to the seismic risk of the area.

9. That there also appears to be a very weak mechanism, if at all any, in place to ensure that those who have been engaged to teach actually attend to their duties. In innumerable cases, it has been found that the people of the area in which a particular school is situated are not even aware of the teacher/s employed or posted there. If a teacher attends to his/her teaching duties daily, it is primarily dependent upon the teacher's own conscious and nothing else. There are also cases where there are a number of teachers employed in a school on paper and drawing salaries on a monthly basis, only one or two attend to their duties which reflects the dismal state of the education system in Balochistan.

10. That whilst we appreciate that the Government has increased the budget earmarked for education we are concerned that by simply throwing money at a problem will not ensure the attendance of children in schools or ensure that they are educated. There are a number of issues that have to be addressed at different levels. Schools should be welcoming, teachers should be in attendance and the school buildings and their land must not be encroached upon. Textbooks should also be distributed on time and to all students. A nation rises to excellence or remains mired in ignorance primarily depending on the education of its children. By simply making the Right to Education a Fundamental Right does not ensure that the children are educated. Concrete and sustained steps have to be taken to provide free and compulsory education. This requires all the more attention in a country that proclaims to be the Islamic Republic.”

“15. These petitions are being disposed of by passing the following specific directions:--

(1) The Government of Balochistan to carry out a physical audit of the schools situated in each district of Balochistan and maintain a hardcopy as well as a computerized / photographic record with the names of the teacher/s employed / posted at each school and periodically update the same.

(2) The Government of Balochistan should measure the lands on which schools are situated and relevant entries be made in the revenue records to secure the same and to prevent the encroachment and illegal transfer of school properties.

(3) The Government of Balochistan to ensure that school buildings display in a conspicuous place the fact that it is a school and within the school building, there should be a disclosure of the teachers employed at each school.

(4) The Government of Balochistan should inform the Board about the number of subjects and the books that are required for the next academic year well in advance and the Finance Department should make a necessary allocation in the budget.

(5) The Board should print and distribute school books in a timely manner to ensure that the same are available when the academic year starts.

(6) The principal or teacher/s of each school should maintain a record of children attending school and mark their daily attendance.

(7) The Education Department, Government of Balochistan should devise a comprehensive format for inspection of schools and the DEO should ensure that such inspection is carried out periodically in his/her district.

(8) The Government of Balochistan should take tangible measures to ensure that all children, boys and girls, from the age of five through sixteen attend school.”

In 2015 YLR Quetta 58 *Akhtar Hussain v IG Police, Balochistan*, the Quetta High Court held that the State’s duty to provide education extended to the provision of sports facilities. The Court held:

“9. That another fundamental right is the right of education for every child till the age of sixteen (Article 25A of the Constitution) and education cannot be limited to the pursuit of academic knowledge alone. A complete education attends to a student’s mind as well as body, therefore, it can be contended that the fundamental right to education includes the provision of sports facilities. The physical development of a student is as important as the development of his/her mind and it is the duty of the Government to the extent resources permit to provide them with sporting facilities.”

In PLD 2018 Lahore 509 *City School Pvt. Ltd. v Government of Punjab, the Lahore High Court* directed that the Provincial Government notify The Punjab Free and Compulsory Act (2014) to ensure enforcement of the Fundamental Right of Education under Article 25A, and that the Government frame a uniform regulatory regime through rules to determine the increase claimed by schools in fees by considering certain factors.

Despite directions provided on different occasions by the superior courts of Pakistan, legislation for the implementation of the right to education has still not been implemented.

Conclusions and Recommendations

The discussion above has highlighted the failure of the State to implement RTE legislation, promulgated in some instances over a decade back, as the primary challenge to the implementation of the constitutional guarantee of the “right to education.” The RTE legislation remains largely un-notified, and therefore inapplicable to the territories with respect to which they were promulgated. The failure of relevant executive bodies to frame rules for implementation of the laws means that the mode and mechanisms for enforcement remain undefined and uncertain. Until the RTE legislation is notified immediately in all provinces and rules are framed, the grand promises enumerated are of no value. It is therefore imperative that the federal and provincial governments notify the legislation and frame and notify rules for its implementation.

The RTE legislation is vague and unclear in several aspects, details whereof have been mentioned in the discussion above. For instance, the laws provide that the financial cost incurred with regard to implementation is to be borne by the provincial and local governments, but it is unclear how this responsibility is to be shared. Similarly, the legislation makes provision for the redressal of complaints regarding child rights violations, but the mechanism

for doing so remains unspecified. Rules which would otherwise provide clarity to questions are non-existent.

A comparative reading of the federal and provincial legislation on the right to education reveals a lack of uniformity and consistency with regard to the scope of the right to education. The Punjab Act is distinct in that it includes madrassa education, vocational training, non-formal education, and special education within the definitions of education and schools, meaning thereby that institutions imparting such education are regulated under the Punjab Act, and that the obligation of the government of Punjab extends to the provision of, for instance, vocational and madrassa education. Furthermore, the Sindh and Balochistan enactments define free education more broadly. The Sindh Act includes the free provision of textbooks, stationery, school bags, and uniforms in the definition of free education, while the same phrase is defined under the Balochistan Act to include the provision of one-meal-a-day. The Punjab Act is also distinct in that it permits private educational institutions to opt out of the statutory obligation to provide free education to a certain proportion of its student.

Such differences between the provincial enactments on the provision of the right to education are problematic. The right to education is a constitutional guarantee provided to the children of Pakistan without distinction or discrimination. The 2012 Act is restricted in its scope to male and female children only, and could arguably be read as excluding transgender children. There is, therefore, a need to rationalize the scope of the right to education across the federating units, so as to ensure equality and uniformity in the provision of such right to the children of Pakistan.

The right to education legislation is fundamentally flawed that it does not make proper provision for education for children with special needs. Where enactments define special education, they do not obligate the provincial or federal governments to ensure that the educational requirements of children with special needs are accounted and provided for. The “reasonable excuse” exceptions in the law in fact permit the School Management Committees to exclude a child from receiving education on the ground of infirmity or mental incapacity. The legislation must be amended and reframed to correct this lacuna in the law.

The legislation recognizes the problem of “out of school children” as a fundamental challenge to the achievement of the right to education, and imposes an obligation on parents to send their children to school, subject to the imposition of certain penalties. The legislation fails to consider the reality of many poor households who on account of their penury are forced to put their children to work, and must be incentivized to enrol their children in school. Furthermore, until the law declares child labour as illegal in all its forms, and subjects those responsible with penalties, children aged 5 – 16 years will not fully be able to access their constitutionally guaranteed right to education, and will remain at risk of instead being employed somewhere for remuneration.

The laws put in place a multi-tiered administrative structure for enforcement of the right to education including committees, councils and secretariats. The relationship between the different administrative tiers will remain unclear until rules with regard thereto are framed. However, it is important to consider whether the administrative scheme envisaged is excessive.

Proposed Amendments to the Punjab Free and Compulsory Education Act, 2014

It is suggested that the Punjab Act may be amended in the following manner:

Section 1(3) of the Punjab Act may be substituted with the following:

“It shall come into force at once.”

The definition of “free education” in section 2(e) may be substituted with the following:

“free education” implies that the Government or a local authority shall not charge any fee or expense for providing education, shall endeavour to remove financial barriers that may prevent a child from completing ten years’ education including but not limited to the provision of a free daily meal in school;

The definition of “school” in section 2(k) may be amended so as to include institutes imparting “special education”:

“school” means an educational institution imparting primary, elementary, secondary or special education to children and includes:

- (i) a school owned or controlled by the Government or local authority;*
- (ii) a school receiving aid or grant to meet whole or part of its expenses from the Government, Federal Government or local authority;*
- (iii) a school not receiving any kind of aid or grant from the Government, Federal Government or local authority; and*
- (iv) a Deeni madrassa or any school providing religious education recognized by the Government;*

After section 2(g), section 2(gg) may be inserted to provide a definition of “non-formal” education:

“non-formal” education means education imparted in an addition, alternative and/or a complement to formal education within the process of the lifelong learning of individuals, which does not necessarily apply a continuous pathway structure;

After section 2(l) in the definition section, section 2(ll) may be inserted to provide a definition of “special education”:

“special education” means educational programmes and practices designed for students, such as handicapped or gifted students, whose mental ability, physical ability, emotional functioning, require special teaching approaches, equipment, or care within or outside a regular classroom;

Section 3 of the Punjab Act may be substituted with the following:

3. Right to free and compulsory education.— (1) Every child shall have a right to free and compulsory formal education from class one to ten, special education, non-formal education, vocational education or a combination of all or any of the two as notified by the Government considering the needs, capability and age of the child so as to ensure

completion of education or specified education in a school in the neighborhood or the school allocated for the child.

Provided that the Government ensures that all children have sufficient access to institutes providing formal education.

Provided further that the provision of non-formal education and vocational education shall not substitute the Government's obligation to provide formal education.

(2) The Government shall prescribe an academic calendar for class one to class ten and for non-formal education, vocational education and special education.

(3) For purposes of subsection (1), 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.

(4) The Government shall, in the prescribed manner, provide or cause to be provided suitable special education to a child suffering from a disability or a gifted or special child.

Section 9 of the Punjab Act may be substituted with the following:

9. Duty of parent.—(1) A parent shall, except in the case of a reasonable excuse, admit or cause to be admitted the child for education in a school or, as the case may be, in the school allocated for the child, till he has completed the prescribed years of education.

(2) 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. The non-compliance by a parent of the duty prescribed under section 9(1) shall be brought to the Government's attention by the school management body.

(3) Where a school management body 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.

(4) Any parent who fails to comply with an order issued under sub-section (3) of this section, shall be punishable with a fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the punishment for which the failure continues.

Explanation: 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;*

Provided that the school management body shall facilitate the parent in such instance to access suitable education for his child.

or

(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.*

Section 11 of the Punjab Act may be substituted with the following, to provide more clarity as to the composition of and the nature of tasks performed by the school management:

11. (1) Every school shall constitute a school management committee with equal representation from the Government, teachers, parents of children admitted and management of the schools in such school, which shall be headed by the Principal or Head of an Institution of such school. This management committee shall have nine members including the Principal or Head of Institution.

(2) The school management committee shall meet at least three times in an academic year.

(3) 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 Government is implemented;

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

(e) perform such other functions as may be prescribed or entrusted to it by the Government or by the management committee itself.

Section 13 of the Punjab Act may be amended to exclude reference to the provision of vouchers by private schools

13. Responsibility of private schools for free education— For purposes of this Act, a private sector school:

(a) specified in sub-clause (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;

(b) 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 neighbourhood or other children as may be determined by the Government, and shall provide free and compulsory education to such children;

(c) shall provide the information pertaining to the students admitted under clauses (a) and (b) to the Government, the local authority or any other prescribed authority; and

(d) 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.

In section 17 after sub-section (1), sub-section (1-A) may be inserted to provide reference to the qualifications of teachers:

No person shall be appointed as a teacher unless he possesses the prescribed qualifications.

It is pointed out that the administrative structure proposed under the Punjab law does not include an Education Advisory Council. The Punjab Government may consider establishing an administrative structure, with a provincial level advisory body coordinating efforts for implementation with local government bodies. Such a body may be established through amendment in the Punjab Act or provision in the rules, which are still to be framed and promulgated. The Punjab Act also makes no reference to the institution responsible for curriculum design, and the mode in which the administrative structure established under the Punjab Act shall liaise with such institution.

The discussion above has provided an analysis of the substantive right(s) to education guaranteed under the various federal and provincial laws and the administrative structure designed to enforce such right(s). The lacunae in the laws have been highlighted above. Till such gaps in the legislation are corrected and the State demonstrates the political will to enforce the rights promised thereunder by notifying the law, the guarantee of the right to education promised under Article 25A shall remain a distant reality.