

Background Paper

Right to Free and Compulsory Education in Pakistan

Enforcement of Article 25-A of the Constitution of Pakistan

June 2011

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Head Office: No. 7, 9th Avenue, F-8/1, Islamabad, Pakistan
Lahore Office: 45-A, Sector XX, 2nd Floor, Phase III Commercial Area, DHA, Lahore
Tel: (+92-51) 111-123-345; Fax: (+92-51) 226-3078
E-mail: info@pildat.org; Web: www.pildat.org

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**Right to Free and Compulsory Education in Pakistan
Enforcement of Article 25-A of the Constitution of Pakistan****Foreword**

With the passage of 18th Constitutional Amendment and abolition of the concurrent list, education has become a provincial subject. Another important and positive change is the insertion of Article 25-A in the Constitution of Pakistan that guarantees the right to free and compulsory education to all children of age 5 to 16 years in Pakistan. This free and compulsory education is to be provided by the State, which, by definition, includes both Federal and Provincial Governments.

After declaring education a provincial subject, will it be the exclusive responsibility of the provinces to ensure that Article 25A is implemented in letter and spirit, or the Federal Government will also be responsible to fully or partially support the provision of this Constitutional Right to all children in the country? This Article (25-A) also necessitates further legislation (by the provincial Assemblies) to facilitate the enforcement of free and compulsory education. This and some other associated questions need to be discussed and adequately answered now for a greater clarity for implementation.

The Government of Pakistan has declared education in general and Education for All (EFA) in particular, its top priority. Pakistan is also a signatory to international commitments like the Millennium Development Goals (MDGs) signed by the world leaders in the year 2000, and the Dakar Framework of Action for Education For All (April 2000) by 2015, which includes free and compulsory primary education to all children.

Realizing the fact that the implementation of Article 25-A will be a key challenge in the future as there are millions of out of school children, the capacity of the provinces and a possible supportive role of the Federal Government need to be discussed with all possible stakeholders. It is in this context that this Background paper has been specially commissioned to brainstorm on all these issues at this stage. This background paper has been jointly prepared by PILDAT and UNESCO.

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Education and Development

In today's era of technological advancement, development of nations is linked largely with the education of their citizens and availability of trained human resources for the economy. Education not only nurtures talent and personality of children from the beginning of their childhood, it also prepares them for their role as responsible and productive citizens. Education enables nations and local communities to gradually evolve and strengthen their systems of social justice, democratic institutions, and foster values of peace, harmony, tolerance, and mutual respect among their new generations. Education is a fundamental right of all human beings, and an unequivocal path to sustainable socio-economic development. No society can dream development if substantial proportion of its population is illiterate and a considerable ratio of its children are not in school. Rates of literacy and participation of children in primary education are the two important indicators of Human Development Index (HDI), which is globally used to rank human development status of different countries on annual basis. Education promotes individual freedom, empowers people, and is the most effective vehicle for upward social and economic mobility for the disadvantaged groups.

Status of Basic Education in Pakistan

Pakistan has not been able to bring all children in school. Low enrolment rate and rapid population growth have led to steady increase in out of school children and resultantly number of illiterates in the country gradually multiplied from 20 million during 1951 to 50 millions in 1998. It is estimated that at present about 55 million Pakistanis of age 10+ can not read and write and 7 million children of age 5-9 years are out of school. In rural areas, about 52% girls are not enrolled in school, and 67% women are illiterate (PSLM Survey 2008-09). Low education indicators in Pakistani society have negatively affected all spheres of life and developmental processes, including economic uplift, social evolution, and political stability. Due to low rates of literacy and

primary education, Pakistan is being ranked at lowest ranking of below 125th position in the Human Development Index (HDI) for the last 20 years.

International Conventions and Practices about Right to Free Education

Provision of Free and compulsory elementary education for all human beings has been declared a fundamental right. Universal Declaration of Human Rights, approved by the world nations at UN General Assembly in 1948, has recognized this right in following words.

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory...

(Article 26 (1), United Nations Universal Declaration of Human Rights, 1948)

It is evident from the above quoted provision that education is a fundamental human right and essential for the exercise of all other human rights. Convention on the Rights of the Child (CRC), adopted by General Assembly on 20 November 1989, explicitly recognized this right in following Article:

1. *States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:*
 - a. *Make primary education compulsory and available free to all;*
 - b. *Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*

(Article 28, Convention on the Rights of the Child-1989)

In April 2000 more than 1,100 participants from 164

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countries gathered in Dakar, Senegal, for the World Education Forum and unanimously resolved to promote Education For All. Dakar Framework of Action (2000), adopted by all participants including Ministers and government officials from 164 countries and international community, set Six Goals to be achieved by 2015. An important Goal of Dakar Framework of Action is to provide free primary education to all children. Full text of this EFA Goal is given below:

- ii) *ensuring that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete free and compulsory primary education of good quality;*
(Article 7, Goal No 2, Dakar Framework of Action)

In September 2000, world leaders adopted United Nations Millennium Declaration, consisting of 8 Millennium Development Goals. Millennium Development Goal (MDG) No 2, envisaged to ensure that by 2015, all children complete good quality primary education. MDG 2 committed to achieve following:

Ensure that by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary education

All these global commitments indicate that international community and world nations have recognized the importance of education for the society and for the individuals, and they have recognized the right to free elementary education.

International Conventions and Practices about Right to Free Education

The Constitution of Pakistan, approved in 1973, contained commitment of the state for eradication of illiteracy and provision of free education up to secondary level. Under the Section on Principles of Policy, this determination was reflected in following words:

The State shall: *remove illiteracy and provide*

free and compulsory secondary education within minimum possible period;

(Constitution of Pakistan, Chapter No 2, Article 37-b)

Implementation of above Article of the chapter on 'Principles of Policy' has practically remained slow which resulted in low literacy rate in the country and exclusion of millions of children from their fundamental right of free basic education. Parliament of Pakistan deserves appreciation for recognizing free education as a constitutional right and accepting the provision of free and compulsory education to all children as a responsibility of the State. As part of the Constitutional Amendment No 18, the following Article has now been added to the Chapter No 1 of the Constitution which is titled as 'Fundamental Rights'. These Fundamental Rights are guaranteed for all citizens of Pakistan by the Constitution. Full text of this Article is given below:

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, Chapter No 1: Fundamental Rights)

Although, federal and provincial governments had started the process of reducing the opportunity cost during 2004 by abolition of fees and distribution of free textbooks to the students enrolled in government schools, the inclusion of Article 25-A in the constitution is a historical step. This new constitutional provision has opened the door for making elementary education completely free, compulsory, and bringing all out of school children into the school.

Enforcement of Article 25-A: Next Steps and Pre-Requisites

The passage of Article 25-A and declaring free and compulsory education as a constitutional right on papers is not enough. Latest surveys and estimates indicate that over 55 million Pakistanis of age 10+ can not read and write. Why the number of illiterates has increased over the years? Mainly, because education system in Pakistan failed to provide free educational opportunities

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to all school aged children. Resultantly, out of school children grew as illiterate adults. At present, even after the abolition of school fees and provision of free textbooks to the students, over 7 million children of school age are not in schools. Based on 1998 Census data, it can be easily estimated that about 15 million young Pakistanis of age 10 to 24 are illiterate. All these alarming figures suggest that unless concrete steps are taken to ensure provision of complete free education to all children, like many developed countries, Pakistani children will continue to be deprived of their right to education. The following steps or pre-requisites are essential for enforcement of Article 25-A in letter and spirit:

- i. Legislation:** Further legislation is needed to define and elaborate different modalities and rules for provision of free and compulsory education, as spelled out in last part of Article 25-A, *“in such manner as may be determined by law.”* This law has yet to be framed and approved by the Assemblies.
- ii. Provision of additional Financial Resources:** A stumbling block inhibiting the expansion of education in Pakistan has been the insufficiency of budget. On average, Pakistan has been spending about 2% of the GDP on education, whereas short fall at present requires doubling of this ratio. National Education Policy (2009) has committed to raise education budget up to 7% of the GDP. Can we expect that federal and provincial governments will be able to allocate and spend enough financial resources needed for the enforcement of Article 25-A, to bring all children into the school. Hence, special steps need to be taken to increase the education budget. Otherwise, provincial governments will continue to follow traditional and routine trend. Following of the past trend means that Pakistan will have to wait for another 30 years to achieve universal primary education. Hence, availability of substantial amount of funds for education is a pre-requisite for enforcement of constitutional provision of right to free education for all Pakistani children.
- iii. Incentives:** About 30% people in Pakistan live below poverty line. Poverty compels poor parents to retain their children for work, either at home or for their family occupation, or send them out for some income generation activity. Poor families are less inclined to send their children to school, unless there are some incentives offered at the school. A number of studies and pilot projects have demonstrated that school enrolment increases when incentives in the form of food, free uniform, or stipend are offered to the students.
- iv. Compulsory Dimension:** Universal Declaration of Human Rights (1948) and Article 25-A contains the provision of making elementary education compulsory. The government and society can introduce disincentives or punitive actions only when education has been made completely free (with no financial liability on parents, like in many developed countries or welfare states) and an enabling environment has been created by the leadership. Disincentives and punitive provisions can though be legislated by the Provincial Assemblies, but these should be enforced only after adequate incentives are offered to the parents.
- v. Motivational Drive:** Even after legislation and provision of incentives for education, factors like lack of awareness, conservatism, and ignorance of parents about benefits of education may still impede enrolment of all children into the school. Certain groups in some under developed areas or pockets may be reluctant to send their children, particularly girls to school. Here we need to launch a motivational drive for convincing local communities and the parents to send their children to school. Political and religious leaders, social workers, civil society organizations and all educated people should participate in the campaign for enrolment of all children into schools in their respective areas. Media can play an important role in this respect.

The dream of universal primary education and a literate

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Pakistan can not be materialized without implementation of strategic actions listed above.

Role of the State: Responsibilities of Federal and Provincial Governments

All sections of the society and all tiers of the government should jointly support the implementation of Article 25-A. This section aims to highlight the rationale of collective responsibility and role of federal and provincial governments for ensuring availability of free educational opportunities to all children in Pakistan.

Responsibilities of Federal Government

Although, school education has now been completely devolved to the provinces, nonetheless, the Federal Government, in its position as part of the State, can not absolved from its statutory responsibility of guaranteeing fundamental rights to its citizens enshrined in the constitution. Definition of State, as provided in the Constitution, is reproduced below as reference:

In this Part, unless the context otherwise requires, "the State" means the Federal Government, [Majlis-e-Shoora (Parliament)], a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess

(Article 7, Part II, Fundamental Rights and Principles of Policy)

Since provision of free and compulsory education of all children of aged 5 to 16 years is now a Fundamental Right guaranteed by the Constitution, and as the federal government by definition is part of the state, therefore, federal government must facilitate in the provision of this right to all children in all parts of the country. In other words, responsibility of the Federal Govt. with respect to provision of constitutional right to free education is not restricted to Federal Capital or Federally Administrative Areas only. Secondly, it is important to note that this Constitutional Right of free education was approved by the National Assembly and the Senate, whereas its enforcement, which entails huge financial liabilities, has

been left to the provinces alone. Insertion of Article 25-A in the constitution is an initiative of the federal government and it should come forward to fulfill its constitutional responsibilities in following ways:

- i. **Special financial support** to the provinces/Areas, linked with literacy rate and population of out of school children in various regions.
- ii. **Monitoring and harmonization.** Federal government should institute and support mechanisms for monitoring of enforcement of Article 25-A. This can be done by supporting surveys, studies, and compilation of annual reports on status of implementation of Article 25-A in different provinces/Areas. Findings of such studies or progress reports should be presented in the National Assembly and the Senate, and also included in the Economic Survey and other reports released by the federal government on periodical basis.

Secondly, it is pertinent to ensure that modalities and norms of free and compulsory education, including incentives for children and parents offered by different provinces are uniform in nature or at least meet the minimum standards. This objective can be achieved by organizing exchange of experience or coordination meetings or considering such issues in the meetings of Council of Common Interests (CCI).

- iii. **Enabling Environment:** The Federal Government, National Assembly and Senate should create enabling environment through a well organized campaign or enrolment drives, urging parents to send their children to school. State television and other electronic media should be advised to broadcast advocacy messages. Political parties and Members of National Assembly and Senate should lead such drives.

In the past as well, Federal Government has played a supportive role for the development of certain neglected sectors and themes in Pakistan, including population planning, environment, and Education Sector Reforms

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(ESR) etc. In many developing and developed countries, federal governments do contribute, partially or fully, for the provision of free education to all children. Subsidies or special grants are provided to states or provincial governments.

Role of Provincial Governments

Since 1973, financing, planning and administration of school education have been the responsibility of the provincial government. Federal government was responsible for curriculum and standards only, which in case of school education, has also been now devolved to the provinces. Hence, provinces have the major responsibility of providing free education and bringing all children living in their areas into the school. They are expected to fulfill their newly enhanced responsibility of school education in following ways.

- i. **Legislation:** Article 25-A mentions about a law which will define and elaborate modalities of implementation of this constitutional provision in detail. After Constitutional Amendment No 18, and devolution of school education to the provinces, National Assembly or Senate can not legislate on matters relating to primary, elementary or secondary education. Unless, such a law in the form of an Act or Bill is presented and passed by the Provincial Assemblies, the process of enforcement of Article 25-A at provincial level will not move forward. In other words, this is the first step towards implementation of Article 25-A. After approval of law, Rules are to be framed by respective Departments of Education in the provinces to spell out detailed procedures and norms for the provision of free and compulsory elementary education to all the children in their respective areas.
- ii. **Education Budget:** Provinces are now provided with increased funds through NFC Award and they also generate their own revenue through different taxes. Provinces plan and approve their own budgets. Provincial Governments and Provincial Assemblies should now accord greater priority to investment on education. Ratio of increase in provincial education budget of next financial year (i.e. 01 July 2011 to 30th June 2012) will be an indicator of their commitment for the enforcement of Article 25-A. Availability of additional funds is a must for expansion of access to elementary education and improving quality of learning in schools.
- iii. **Expanding Access:** In many under developed districts or areas, schools are distantly located, and many parents are not ready to send their children, particularly girls, to schools which are far away from their homes. Distance negatively affects enrolment as well as attendance of children in schools. Therefore, in some areas, provinces may be required to build more schools. Secondly, on average, about 60% Govt. Primary Schools have only two class rooms for six classes (five plus one-Katchi class). Certain urban schools are overcrowded and more rooms will be needed to accommodate additional children which are presently out of school and will hopefully be enrolled as a result of enforcement of Article 25-A, in letter and spirit. This means, provincial governments need additional resources to expand access to enhance the present Net Enrolment Rate of 57% (in 2008-09) to 100% within next few years.
- iv. **Enrolment Drive:** With a view to implement Article 25-A in letter and spirit and ensure compulsory enrolment of all children of age 5 to 16 years in schools, the provincial governments will have to launch enrolment drives at local and district levels. Without such drives, many parents will not be sensitized to send their children to school, and hence the objective of introducing free and compulsory education will not be achieved.
- v. **Incentives:** Provincial governments may announce certain incentives, monetary or in kind, to attract children towards school, particularly girls, from disadvantaged groups or in under developed areas. These incentives may include (dry) food ration, mid-day meals, free uniform, and stipend, linked

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with attendance and learning achievements.

Way Forward: Recommended Actions

Approval of the Article 25-A by the Parliament and recognition of free and compulsory elementary education as a fundamental right for all children of age 5 to 16 years is a historical step, which may pave the way towards a literate society in Pakistan. However, this important constitutional provision may remain unattended, producing no positive impact on school enrolment and educational scene in Pakistan, if appropriate actions are not taken by all the stakeholders in this country. The rationale for various strategic actions and role of stakeholders have been elaborated in above paragraphs. To recapitulate and summarize, following strategic actions are recommended for implementation of Article 25-A.

- i. **Legislation** by the provinces for enforcement of Article 25-A
- ii **Doubling of education budget** by the provinces to meet the new challenges
- iii. **Special Federal Grants** to the provinces, particularly for under developed regions, based on rates of illiteracy and out of school children
- iv. **Mass mobilization** by the political leadership and federal/provincial governments by declaring 'Education Emergency' and with the aim of bringing every child into the school
- v. **Free Education Fund:** A Basic Education Trust Fund may be established by the Government of Pakistan where donors and local philanthropists can deposit their contribution. A transparent and participatory mechanism (with proper representation of all provinces/Areas) may be instituted to monitor the financial resources received and their judicial utilization. This will increase confidence of the donors, expatriate Pakistanis, local philanthropists and industrialists to contribute in this fund.
- vi. **Role of Media and CSOs:** Civil society

organizations and media should come forward to make free education for all a movement and transform Article 25-A from a legal clause on paper to a reality for the disadvantaged and marginalized sections of the society in Pakistan. .

There is an urgent need for action on above lines. It is hoped that all stakeholders will play their role. United Nations, particularly UNESCO (United Nations Educational, Scientific and Cultural Organization) will support efforts of the CSOs and media and other partners for enforcement of Article 25-A, the right to free and compulsory education in Pakistan.



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Head Office: No. 7, 9th Avenue, F-8/1, Islamabad, Pakistan
Lahore Office: 45-A, Sector XX, 2nd Floor, Phase III Commercial Area, DHA, Lahore
Tel: (+92-51) 111-123-345; Fax: (+92-51) 226-3078
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