



# Report on 'Right to Education' in Pakistan

# A Draft for Discussion

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Education is seen as a sine qua non for human well being and for the development of conscious, responsible and capable individuals and societies. Not only is it deemed necessary, it is considered a fundamental non-negotiable *right* of every child, hence, implying that it is a primary state responsibility to enable citizens to access education as an entitlement. While some societies are still in the process of declaring education as a fundamental right, the adoption of this right formally as a provision in the constitution backed by laws has been successfully done in many countries.

Recently, the government of Pakistan has also included *Right to Education* (RTE) in its constitution through Article 25 A of the 18<sup>th</sup> amendment in 2010. That said, the mere amendment to the constitution is just the first step; it is now imperative that efforts be made for making a law for the provision of this right and simultaneously work towards its implementation. This report aims at analyzing the issue of Right to Education and proposes the necessary steps required for a more meaningful enforcement of this right.

### **Background and Introduction**

Education entails numerous advantages, a pivotal one being capability expansion. According to Amartya Sen (1989)<sup>1</sup>,

"...the ability to exercise freedom may, to a considerable extent, be directly dependent on the education we have received, and thus the development of the educational sector may have a foundational connection with the capability-based approach.

In fact, educational expansion has a variety of roles that have to be carefully distinguished. First, more education can help productivity. Secondly, wide sharing of educational advancement can contribute to a better distribution of the aggregate national income among different people. Thirdly, being better educated can help in the conversion of incomes and resources into various functioning and ways of living.

Last (and by no means the least), education also helps in the intelligent choice between different types of lives that a person can lead. All these distinct influences can have important bearings on the development of valuable capabilities and thus on the process of human development."

Several benefits of education are illustrated by United Nations Educational, Scientific and Cultural Organization (UNESCO) as follows:

"Literacy is a human right, a tool of personal empowerment and a means for social and human development. Educational opportunities depend on literacy.

Literacy is at the heart of basic education for all, and essential for eradicating poverty, reducing child mortality, curbing population growth, achieving gender equality and ensuring sustainable development, peace and democracy. There are good reasons why literacy is at the core of Education for All (EFA).

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<sup>&</sup>lt;sup>1</sup> Sen, A., 1989. *Development as capabilities expansion*. Journal of Development Planning, 19:41-58.pp.55

A good quality basic education equips pupils with literacy skills for life and further learning; literate parents are more likely to send their children to school; literate people are better able to access continuing educational opportunities; and literate societies are better geared to meet pressing development."

Considering these advantages, the promulgation of education as a right is now a global concern. Laws and acts are being passed and proposed in this respect. According to the Right to Education Project<sup>2</sup> – which provides a full-fledged service in spreading awareness on RTE and its status in all countries – 'The right to education has been universally recognised since the Universal Declaration of Human Rights in 1948 (though referred to by the ILO as early as the 1920s) and has since been enshrined in various international conventions, national constitutions and development plans.' UNESCO's programme adopted in 1951 includes "the measures for respecting the right to free and compulsory education in the spirit of Article 26 of the Universal Declaration of Human Rights". Moreover, The Education for All (EFA) movement is a global commitment to provide quality basic education for all children, youth and adults. At the World Education Forum (Dakar, 2000), 164 governments, including the Government of Pakistan, pledged to achieve EFA and identified six goals to be met by 2015. Governments, development agencies, civil society and the private sector are working together to reach the EFA goals. Pakistan has also committed to fulfill the Millennium Development Goal for Education, pledging that by 2015: "Children everywhere, boys and girls alike, will have equal access to all levels of education."

Right to Education in Pakistan was not as precisely spelled out as it is not now, nor was it binding. Earlier, Article 37 B of the constitution stated:

"the state shall remove illiteracy and provide free and compulsory secondary education within minimal possible time".

Evidently, this statement is vague and incomplete. As pointed out by Malik Saleem Iqbal – from Centre for Peace and Development Initiatives (CPDI) – in his petition:

"Article 37... was a part of the Principles of Policy in the Constitution, whose implementation was an obligation of the State but subject to the availability of resources. But, since the insertion of Article 25-A in the Chapter on Fundamental Rights, the State is duty bound to provide free and compulsory education to all children of the age of 5 to 16 years without offering any excuses about lack of resources."

Clearly, the previous article was not sufficient for initiating campaigns or filing petitions for instigating enforcement of Right to Education. However, the inclusion of Article 25 A in the Chapter of Fundamental Rights changes the circumstances and responsibilities of the State.

 $<sup>^1\,</sup>http://www.unesco.org/new/en/education/themes/education-building-blocks/literacy/$ 

<sup>&</sup>lt;sup>2</sup> http://www.right-to-education.org/node/233

Accordingly, steps are now being taken to create awareness to demand this right and develop a law with a complete set of guidelines for implementation.

The statement of Article 25 A is as follows:

"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".

### Analysis of Recent Documents on Article 25 A

As education is justifiably considered a right, even if the statement of Article 25 A did not specify, its provision being free and compulsory is self-explanatory. The specification of such leaves no doubt whatsoever that the state is in fact responsible for proving *free* and *compulsory* education. For the promotion of RTE, several documents have been written which include proposition of the Draft Bill by UNESCO and Background papers by Pakistan Institute of Legislative Development and Transparency (PILDAT) and Pakistan Institute of Labor and Research (PILER). The following is an analysis of the Draft Bill proposed for Islamabad Capital Territory (ICT) in comparison to the Right to Education Act of India which is already in practice.

The Right to Free and Compulsory Education Act, 2011 (Draft Bill) and its comparison with Right to Education Act India, 2010

In an effort to devise a law, UNESCO has helped draft an Act for the enforcement of Right to Education in the Federal Capital of Pakistan which has been presented by Senator S. M. Zafar in the Senate. While the bill maybe incomplete in some areas, it is nevertheless a bold initial step towards stimulating the government and the civil society to become active on this issue. The Act may serve as a good starter since it addresses the key issues and somewhat describes the roles and responsibilities for the provision of free and compulsory education. However, there are several ambiguities and deficiencies which may be highlighted to make the Act more practical for implementation. The following table identifies these inadequacies and compares the proposed Draft Bill for ICT (2011) with Right to Education Act India (2010).

## **Comparison**

(Proposed) Right to Free and Compulsory Education Act (2011) for Islamabad Capital Territory	Right to Education Act India (2010)
• The age defined for a <i>child</i> is five to sixteen	• The age defined for a <i>child</i> is six to fourteen
• The Mode of implementation shall be decentralized, i.e. each province would be independent.	• The mode through which this right is being implemented is centralized.
• The term 'neighborhood' in clause 3 is not defined. In fact it is left to be defined by the appropriate government in the future. If this	The meaning of 'neighborhood' is clearly defined

(Proposed) Right to Free and Compulsory Education Act (2011) for Islamabad Capital Territory	Right to Education Act India (2010)
Act is to be enforced, such terminologies need to be defined <i>now</i> .	
• Even though there is no mention of whether the right to education applies to children above sixteen years of age who have not completed their education, the bill states that "the child will be admitted if he could not complete his education". It is not defined what the level of this education is and what would be the case if the child is above 16. It again mentions that the child maybe given a transfer to complete his education. Again, what this <i>complete education</i> refers to is unknown.	<ul> <li>It is specified that a child may be enrolled without any cost borne "till completion of elementary education". The term elementary education has also been defined as from first to the eighth grade. This implies that a child will be provided with free education even if it takes longer than the time he is fourteen years.</li> <li>If a child is above six years of age and has not been admitted to a school, or even though he was admitted but he could not complete his elementary education, he has to be admitted to the appropriate class even after he is of fourteen years of age.</li> </ul>
• In clause 3(g), it is stated that the government has to "provide infrastructure including school building, playgrounds, laboratories, teaching learning material and teaching staff", keeping in view children's hygiene, the provisions must include clean and adequate water and functional clean toilets. A library should also be included in the list. These provisions may have been taken for granted; however, they leave room for doubt and negligence when it comes to enforcement.	Clearly mentioned that clean and adequate water and functional toilets will be provided.  Also a Library will be part of the infrastructure.
• The Act fails to specify an evaluation method for children so as to ensure provision of <i>quality</i> education. There is no clause stating what curriculum would be followed and how its quality would be ensured.	This Bill clearly defines the evaluation process for the students, hence, a more standardized provision of quality education.
• Although it is mentioned that no school maybe registered unless it follows the <i>Norms and Standards</i> , there is no explanation as to what these norms and standards would be and who will decide them. The monitoring of the registration process is also not obvious in this draft.	Clearly described who will register the schools and the Norms and Standards according to which they will be registered.
• The draft does not specify any qualification	• It is defined who will determine the minimum

(Proposed) Right to Free and Compulsory Education Act (2011) for Islamabad Capital Territory	Right to Education Act India (2010)
criteria for teachers – in fact the supposed criteria is allowed to be relaxed for a couple of years after the enactment of this law, but there is no mention of where the teachers may get the required qualifications if they do not meet the supposed criteria. No specific body has been designated for ensuring teacher's training.	qualification of teachers. Also, after mentioning the responsibilities of the teachers, the Act states that the teacher will have a chance to be heard if it seems he/she has lacked anywhere which is definitely a positive point towards attracting teachers. Only laying down penalties could be counter productive.
• No prohibition for teachers to give private tuitions	• Prohibition for teachers to give private tuitions.
<ul> <li>No incentives or guidelines for teachers' appointment and training.</li> <li>It is stated that vacancies in schools may not exceed 10% of the total required teachers, and that this vacancy has to be filled within four months. In the absence of a training institute and a proper qualification criterion, there is a huge tendency of unqualified teachers coming in.</li> </ul>	No mention of incentives or guidelines for teachers' appointment and training. Even after the enforcement of the Education Act in India, the low teacher-to-student ratio is posing huge problems for provision of quality education.
• The Education Advisory Council shall implement the law; however, it is unclear which body will monitor this implementation and whether this monitoring body will be independent of the Education Advisory Council. Independence would enable better accountability of the process.	• It is specified that the body which oversees the implementation would be independent of the body that monitors this implementation. This would ensure a more transparent enforcement of the law and better accountability.
• Responsibility of the private schools for provision of free education to the disadvantaged class is 10% of its total enrollment.	• Responsibility of the private schools for provision of free education to the disadvantaged class is 25% of its total enrollment.
Rules for reimbursement to the private schools are not clearly specified.	• Independent Private schools will be reimbursed but those schools who have land etc. granted free or on concessional rates by government shall not be reimbursed.
• The fine for charging of capitation fees is 20 times the capitation fee.	• The fine for charging of capitation fees is 10 times the capitation fee.
• Representation of parents in The School Management Committee is 2/3, representation	• Representation of parents in The School Management Committee is 3/4, representation

(Proposed) Right to Free and Compulsory Education Act (2011) for Islamabad Capital Territory	Right to Education Act India (2010)
of women is 1/3 and no representation of disadvantaged children's parents.	of women is half and representation of disadvantaged children's parents is proportionate to the percentage of disadvantaged children in the school
No set of guidelines for immediate implementation	• Guidelines for forming the curriculum and implementation clearly laid down. For this, the responsibility of the respective authorities is very clearly defined.
Roles and responsibilities very vaguely defined	• The responsibilities of the Appropriate Government and the Local Authority have been clearly spelled out.

## Background papers by PILDAT and PILER

The Background paper by Pakistan Institute of Legislative Development and Transparency (PILDAT) and Pakistan Institute of Labor and Research (PILER) serve as good documents for the knowledge of the issue of the Right to Education. While both papers first define the advantages of education and the need for promoting it considering the unfortunate state of literacy in our country, the paper by PILER is much more direct and quickly moves on to the efforts required. Both the papers list down why it is the state's responsibility to enforce this right i.e. the commitment to MDGs, EFA and so forth.

The paper by PILDAT is more comprehensive and lists the steps required for implementation of Article 25 A and the responsibilities of the federal and provincial government quite systematically. It states that legislation is required for the implementation of this right, also, higher budget allocation, incentives for parents and children, motivational drives and so on. PILER identifies the deficiencies in the current budget allocation and suggests the way forward for a more widespread provision of education. Unfortunately, both papers fail to mention *what* the legislation should include to make it more practical. Moreover, no incentives are proposed for encouraging teachers' involvement in the enforcement of Article 25 A.

Hence, although these papers are commendable in their efforts to awaken the country on the issue, they might not be enough to form a basis for the Right to Education Campaign.

# Way Forward and the Role of ITA in the RTE Campaign

In due course, Pakistan will witness the enactment of Article 25 A. Being an active part of the Civil Society, ITA needs to devise a comprehensive action plan along with coalitions and civil society partners that concisely lists the steps required to make this enactment most

efficient and implementable. ITA has been engaged in collaborative actions with coalitions and alliances, working closely with the Pakistan Coalition for Education (PCE) as its active member for the promotion of education in Pakistan. Our collaboration ranges from joint efforts for Global Action Week, International Literacy and World Teachers Day, the Annual Status of Education Report (ASER), inputs to education policies, research on budgets, 18<sup>th</sup> Amendment and campaigning for girl's education in conflict and non -conflict areas across Pakistan. As active partners with OXFAM, both ITA and PCE work on ending violence against women and girls in Pakistan. Right to Education campaign is a priority area where PCE and ITA are in process of working out a strategy for implementation of this fundamental right. Specifically, ITA and PCE would jointly strive to initiate public dialogues for policy and action. Also, we would embark on the research on Right to Education, law and practices in other countries and relate it to Pakistan for better implementation. All in all, the whole campaign shall be a joint effort, with PCE and all organizations interested in working for the promotion of this fundamental right. In this respect, it is proposed that we follow a five pronged strategy i.e. drafting of the Law; filing of Public Interest Litigation; working with the Civil Society, teacher unions, media and parliamentarians on awareness and action; explore options for Innovative Financing to ensure RTE provision; and, undertaking research across South Asia and elsewhere on similar movements on RTE for informed action.

#### **Drafting a Law**

As mentioned, the first step towards enforcement of Article 25 A would be to draft a *complete* Education Act for each province which clearly states the definitions of the terminologies used and their meaning in the context of Pakistani culture and norms, the role of independent institutions and organizations, roles and responsibilities of the government bodies, compulsory provision of a support system to poor families, standards for the teachers and the schools and includes a system of accountability which can ensure the efficient implementation of this law.

For this, like minded organizations need to be urged to bring out their most appropriately talented individuals who would collaborate with the government to devise an Education Act which would be complete in all senses and it would fill in the deficiencies in the previous works. Then, efforts should be made to get this Law passed in both the houses.

#### **Filing of Public Interest Litigation**

Filing of PIL would be a very powerful tool for the promulgation of the Right to Education. Considering the absence of a law which would ensure provision of free and compulsory education, ITA needs to remind the court of law the negligence of the state and the importance of this right for the betterment of the Pakistani people and the country as a whole. A PIL similar to the one filed by Centre for Peace and Development Initiatives (CPDI) could be drafted and proposed. This would strengthen and speed up the process for formation of the

Law for Right to Education. This PIL should also include the need of a more comprehensive Act than the one already proposed for ICT by Senator S.M. Zafar.

One consideration while filing PIL would be whether to file it jointly with other members of the Civil Society or separately. Separate filing could put more pressure on the government given that all members are equally committed and urge the courts at the same time. Joint petition could also be effective in showing solidarity towards the agenda of RTE. Moreover, it would be advisable to make efforts for filing the PIL in the highest court possible.

# Working with the Civil Society, teacher unions and parliamentarians on awareness and action

Considering the networking capacity and its national recognition, ITA can start mass campaigns for the awareness of this issue. There are still many people and organizations that are unaware of the fact that this fundamental right is now in place that makes free education compulsory. These campaigns need to be aimed towards recognizing the hurdles that maybe faced for the implementation of this right and *helping* the government promote it – not just criticizing it.

Once an Education Act is enforced by law, there will naturally be problems with its implementation. This is where we can play the most productive role. As an organization which strives for better education and awareness, ITA can start the training of teachers – an area that seems to be neglected in most of the works compiled. As mentioned, one of the biggest problems India faced in implementation of its Act was that the teacher-to-student ratio was strikingly lower than required. As a precaution, Pakistan needs to come together with teacher unions and train as many teachers as possible so as to ensure the availability of this right to all. Collaborating with the other organizations, ITA can initiate campaigns for the awareness of the benefits of education which would urge parents to send their children to school. Also, we can join hands with CPDI in their efforts to promote Right to Information which will again spread awareness of rights to the people and instill the demand side of the education.

Since the coming year is the election year (2011-12), reaching out to teacher unions, political and religious parties could not be more significant than it is right now. Considering their influence and their need to take actions in this year, we need to invoke these unions and political and religious parties to drive campaigns for Right to Education.

Another very significant role ITA can play is to design and be part of a support system for people below the poverty line – who have to send their children to work for barely surviving. Since the global community recognizes Right to Education as a basic and most fundamental right, it can be urged to help in providing a support system to these masses so that they can send their children to school. Consequently, ITA can serve in capacity building for each province to ensure the provision of RTE.

## **Explore options for Innovative Financing**

Like several other countries, Pakistan has also committed to fulfill the MDGs. Financing these MDGs would require increasing the investment rate above the domestic saving rate, and, the financing gap has to be bridged with additional financing from abroad. However, official aid will not be sufficient which is why the private sector has to become the engine for growth in poor countries – hence, official aid efforts must catalyze innovative financing solutions for the private sector<sup>1</sup>. Education being a necessity for progress and development requires innovative financing for its dissemination. For the purpose of RTE campaign, two of the possible options to explore would be Diaspora Bonds and redesigning the Iqra Surcharge.

A Diaspora bond is a debt instrument issued by a country – or potentially, a sub-sovereign entity or a private corporation – to raise financing from its overseas Diaspora<sup>2</sup>. Diaspora bonds are not yet a widely used financing instrument. Israel (since 1951) and India (since 1991) have been on the forefront in raising hard currency financing from their respective diasporas. Bonds issued by the Development Corporation for Israel, established in 1951 to raise foreign exchange resources from the Jewish diaspora, have totaled well over \$25 billion. Diaspora bonds issued by the government owned State Bank of India have raised over \$11 billion to date. Having a large diaspora, Pakistan can also initiate these bonds for education promulgation. The rationale for Pakistan to issue these bonds would be the possibility of getting a patriotic discount; having a stable source of finance, especially in bad times; and, better sovereign credit rating. The Pakistani diaspora would be inclined towards investing as it may help risk management – since diaspora investors are likely to view the risk of receiving debt service in local currency with much less trepidation, and, also because of patriotic reasons – they may desire to do good in the country of origin.

However, apart from issuing diaspora bonds, funding basic education would require additional credit enhancements and investor protection. Examples of credit enhancement could be:

• Seek guarantees from multilateral/bilateral agencies or foundations – \$750 to 800 m in global private aid to education used to provide guarantees could raise \$5 b in bond funding.

<sup>&</sup>lt;sup>1</sup> Ketkar, S. and Ratha, D (2009) "Innovative Financing for Development" The World Bank, Washington D.C

<sup>&</sup>lt;sup>2</sup> Ketkar, S. and Ratha, D (2007) "Development Finance via Diaspora Bonds; Track Record and Potential" Paper presented at the Migration and Development Conference at the World Bank, Washington D.C.

- Encourage developing country banks to securitize future USD receivables from credit card vouchers, workers' remittances, and diversified payment rights (DPRs) to raise financing & use proceeds to provide loans to schools
- Extend partial local currency denominated International Finance Corporation (IFC) guarantees, which are currently available to support partner bank loans to schools in developing countries, to diaspora bondholder
- Explore possibility of Education Venture Funds providing guarantees

#### Examples of investor protections:

- Channel proceeds from Diaspora bonds to existing education funding structures –
   Multi-Donor Trust Funds, Education Pooled Funds and Catalytic Funds that are managed as partnership between governments and their development associates
- Establish Independent State Authorities to manage education funds especially where normal channels of providing public services have broken down
- Issue bonds against achieved results such as number of students who finish primary school & reach a minimum level of achievement

Considering how successful Diaspora bonds have been in India and Israel, efforts need to be initiated to introduce Diaspora bonds in Pakistan as well. The implementation of examples listed to ensure credit enhancement and investor protection would increase the likelihood of these bonds to be used as an instrument to finance education.

Iqra surcharge, on the other hand, is a 5% surcharge on imports for the expenditure on education provision. This was imposed in Pakistan in the 1985-6 budget from 1985-1995. This earmarking did contribute to raising the level of education expenditures but at the cost of further dependence on import taxation<sup>1</sup>. In this time, Rs 66 billion had been collected under the head of Iqra surcharge. This surcharge was abolished and the extent to which these 66 billion rupees were spent on education is still under scrutiny. There is a need for probe into the matter of failure of Iqra surcharge, i.e. why it did not deliver the expected results – was it because of inefficiency on part of the collectors or exploitation by the expenders or simply because of practical problems with the implementation of the surcharge...? Since there is proof of 66 billion rupees collected, it could be inferred that the use of this amount was inefficient. Therefore, Iqra surcharge reconceptualized and operationalized may be a viable option for financing RTE. There could be other options as well to explore.

# Undertaking research across South Asia and elsewhere on similar movements on RTE for informed action

<sup>&</sup>lt;sup>1</sup> Hasan, Pervez (1998). "Pakistan's Economy at the Crossroads: Past Policies and Present Imperatives". Oxford University Press

Free and compulsory education provision is a serious challenge for all parts of South Asia. Thus, it would be useful to undertake research on the scenarios other countries are facing and learn from the movements initiated by them. Also, collaborative efforts can be made to ensure enforcement of Right to Education in the whole region.

#### **Conclusion**

Although the insertion of Article 25 A is a huge milestone for Pakistan, the real challenge would be to materialize this constitutional amendment. The steps being taken are inadequate and slow. The state of education in Pakistan is complex and compromised. It requires urgent actions for accelerating the awareness process on rights and responsibilities particularly for the promulgation of free and compulsory education urgently. ITA and civil society action are synonymous since 2000 Right to Education (RTE) campaign is a historical opportunity for collaboration, where PCE and ITA will carve strategic partnership for implementation of this fundamental right. Specifically, ITA and PCE would jointly strive to initiate public dialogues for policy and action as well as an evidence based campaign with stakeholders/duty bearers. All in all, the whole campaign shall be a comprehensive multi-pronged effort. The government bodies need to be urged to create an enabling environment for the promotion of RTE and we need to ensure that the civil society diaspora joins hands with the government to achieve this aim. Making use of the fact that this is going to be the election year, all teacher unions, political and religious parties need to be enlightened with the importance of Right to Education. Once such an environment is in place and each member of the society is aware of this right, it is only a matter of time that each Pakistani child will be getting quality education and eventually Pakistan will move towards a new era of progress and development.

Prepared by Idara-e-Taleem-o-Aagahi (ITA) centre for education and consciousness – as input to the RTE Article 25-A campaign

The RTE campaign shall be a joint effort of ITA and Pakistan Coalition for Education (PCE) and other organizations that seek active engagement in this movement

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#### \*Annex:

Annexure A: Draft Bill, Right to Free and Compulsory Education Act 2011

Annexure B: Right to Education Act India, 2010

**Annexure C: Summaries** 

<sup>\*</sup>The complete report with annexures is available at www.itacec.org and www.safedafed.org