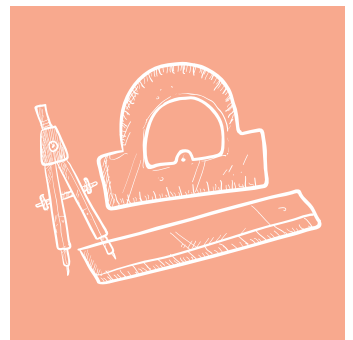
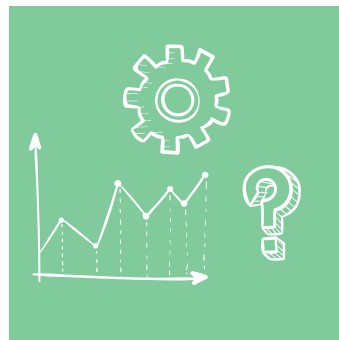
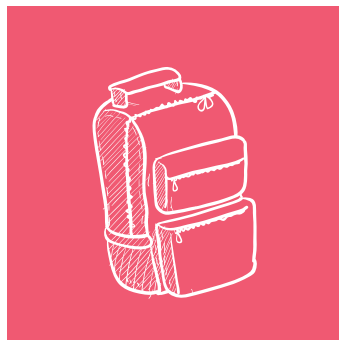
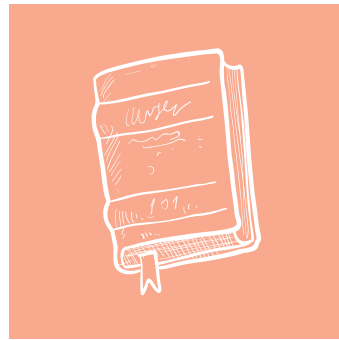
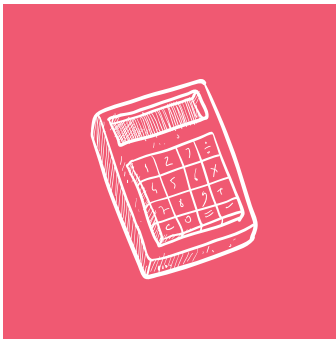


POLICY BRIEF

# LEGISLATION ON RIGHT TO FREE & COMPULSORY EDUCATION IN KHYBER PAKHTUNKHWA





## Introduction

Khyber Pakhtunkhwa is the only province which has not yet legislated on Right to Free and Quality Education. All other provinces, Islamabad Capital Territory, and even Federally Administered Tribal Areas (FATA) are having laws on Right to Free and Quality Education. This policy brief aims at advocating for the Right to Free and Quality Education Act in Khyber Pakhtunkhwa.

## Right to Education

The importance of education for personal, social and economic development can hardly be overlooked. Article 25-A of the constitution of Pakistan provides for free and compulsory education for all children between the ages of 5 and 16. Education is a non-negotiable fundamental right of every child - and in every society it is the responsibility of the state to provide free and quality education to every child. According to many International Laws, Right to Education is a recognised basic human right, where Right to Education basically refers to a universal entitlement to education. Article 26 of the Universal Declaration of Human Rights; Articles 13-14 of the International Covenant on Economic, Social and Cultural Rights; UNESCO Convention against Discrimination in Education; Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities, all reaffirm the Right to Education. The RTE includes the right to free and compulsory primary education and progressive introduction of free secondary education. Right to Education even includes an obligation to develop equitable access to higher education i.e. by the progressive introduction of free higher education.

Education is usually divided into three levels, namely Primary, Secondary and Higher. Regarding legislation on RTE, each level of education entails different responsibilities on part of the state as well as on part of the legislature and education providers. According to the several laws on Right to Education, Primary Education must be compulsory and free for any child regardless of their gender, nationality, place of birth or any other discrimination. States, which have ratified the International Covenant on Economic, Social and Cultural Rights, are bound to provide free Primary Education within two years of ratification. In terms of Secondary Education, laws require it to be generally available and accessible. However, for Higher Education (University/Professional Level), the duty to provide it only relates to a state's capacity. That is, only those states, which are able to provide education for free at higher level with ease, should do so, while others should strive to reach that goal.

RTE may also include other responsibilities such as providing basic education to individuals who did not complete primary education when they should have. It may also include the obligation to remove discrimination at all levels of the educational system and set a minimum standard of education and also improving the quality of education. In Europe for example, Article 2 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms states "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions." The above article not only states that the Right to Education is a basic human right, but also defines a further obligation of states i.e. respecting the right of parents to ensure education and teaching in conformity with their own religion.

## The 4 As Framework

The most important tool that has been developed to assess the fulfilment of the RTE is the 4 As framework. This framework basically measures the degree of RTE's implementation on the basis of four factors which are availability, accessibility, acceptability and adaptability. The framework was developed by Katrina Tomasevski, a former UN Special Rapporteur on the RTE. It should however be noted that this framework, despite being a very important instrument, is not a universal guide to measure the implementation of Right to Education.

Apart from proposing that governments are the prime duty-bearers with respect to providing Right to Education by making education available, accessible, adaptable and acceptable, the 4 As framework also places duties on other stakeholders. The framework suggests that the child and the professional educator have the duty to comply with compulsory education requirements; while parents have the duty to act as the first educators as children usually learn first from their parents.

The paragraphs below elaborate on the 4 As of the Framework:

- » **Availability:** Availability refers to the fact that education should be universal, free and compulsory. It places the duty on governments to fund education to provide proper infrastructure and facilities with adequate materials and books for students. It also refers to school/education buildings to meet both safety and sanitation standards such as availability of clean drinking water along with ensuring that enough qualified staff is available at schools.
- » **Accessibility:** Accessibility suggests that all children should have equal access to school services regardless of their gender, religion, race, ethnicity and/or socio-economic status. For the purpose of making education accessible, efforts should be made which ensure the inclusion of marginalized groups including the homeless, disabled and/or children of refugees – a summation would be to have universal access to education i.e. access to all. Any form of segregation or denial of access to any students would make education inaccessible. Therefore, accessibility also requires that laws are in place which protect against any child labour or exploitation, activities which prevent children from obtaining primary and/or secondary education. Accessibility also refers to schools being within a reasonable distance for children and if not, transportation should be provided, particularly to those that might live in rural areas, ensuring ways to school are safe and convenient. Accessibility also requires education to be affordable to all, with textbooks, supplies and uniforms provided to students at no additional costs.
- » **Acceptability:** It should be noted that the quality of education should always be free of discrimination and be relevant and culturally appropriate for all students. Acceptability therefore proposes that students should not be expected to conform to any specific religious or ideological views for every individual may have different views on different matters. Teaching methods should be objective and unbiased with the teaching material available reflecting a wide array of beliefs and ideas. There should also be an emphasis on health and safety, eliminating any and all forms of corporal punishment.

- » **Adaptability:** Adaptability requires for educational programs to be flexible which may adjust according to societal changes and the needs of the community. Adaptability also requires for schools to respect religious or cultural holidays by their observance in order to accommodate different students from different backgrounds, along with providing adequate care to students with disabilities.

## Right to Education in Pakistan

The Government of Pakistan has included the Right to Education in its Constitution (Article 25-A) through the 18th amendment. Article 25-A of the Constitution states “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”. The 18th Amendment of the Constitution of Pakistan shifted some powers from the Federation to the Provinces, thereby making education a completely provincial subject. Even though the insertion of Article 25-A can be considered a huge milestone for Pakistan, the real challenge is to materialize this constitutional amendment.

Urgent action is required for accelerating the pace of implementation of Article 25-A along with launching an awareness raising campaign on rights and responsibilities of all stakeholders. Since, the Provincial Governments are more responsible than the Federal Government - after the 18th Amendment in terms of legislation on and provision of education, it is their responsibility to launch the implementation process.

Even though, work has started on providing free education in all provinces of Pakistan – it can be argued that the real gigantic task is still ahead. The following progress can be seen in terms of education in the provinces of Pakistan following a comparison:

- a. The first Right to Free and Compulsory Education Bill 2012 has been signed by the President on December 19th, 2012 whereby it is now a declared law for the Islamabad Capital Territory (ICT);
- b. In terms of Provinces, Sindh has taken the lead by passing the “Sindh Rights of Children to Free and Compulsory Education 2013 Bill – with the Governor’s assent the law has become an Act”;
- c. The Governor of Balochistan on 4th of February, 2014 approved the Ordinance on Free & Compulsory Education for Balochistan making it the Balochistan Compulsory Education Act;
- d. Punjab Government has enacted the law on November 24, 2014
- e. The KP Province compared to others is still on the way to making the RTE law as it is still on a draft stage.

Note: AJK and GB assemblies have drafted their RTE laws but they are still in the process of negotiation and redrafting.

## Impact of Right to Education Laws

Although it is understandable that the expected change in the education/literacy profile of the provinces where the RTE laws have been enacted will require some time, however it should also be kept in mind that a good law on paper does not necessarily ensure any improvement unless other supportive

measures for implementation are guaranteed. In this regard, resource allocation for the provision of education is very important. So far, it is seen that the budget allocations in different provinces are not adequate to translate the written laws of RTE into action. Implementation of these laws as the spirit of the law requires, is a matter of a comprehensive set of different implementation, supervision and monitoring measures. An aspect of such oversight, for instance, is to see whether the budget allocation in respective provinces is adequate to support the struggle of bringing 25 million out-of-school children in Pakistan to school. Another relevant question in this regard is whether these laws identify the mechanism of adequate financial support for their implementation. Also, there are some other issues in these RTE laws e.g. the ‘punishment for parents’ in RTE laws is debatable. These laws seem to focus more on enrolment and retention than on the quality of education.

## Overview of Right to Education in Khyber Pakhtunkhwa

Khyber Pakhtunkhwa (KP) is located in the far north of Pakistan and comprises an area of 74,521 square kilometres, constituting 9.4% to the area of Pakistan.

In 2012-13, the overall literacy rate in KP was 52% which was far less than the national average of 60%. There are a total of 22,760 primary schools in KP. Out of the total primary schools, 286 have been reported without a building and 10,318 schools having two rooms only. It should also be noted that more than 1,000 schools have been destroyed in terrorist attacks in KP.

Besides these problems, cultural barriers in the exercise of right to education in Pakistani society in general and KP in particular constitute a stumbling block. Female enrolment in KP is less than male enrolment. The following table shows the difference between male and female enrolment in KP at different levels of school as per Annual School Census Report 2013-14.

Stages	Boys	Girls	Total	Percentage
Primary (Kachi to Class-5)	1,647,946 (55%)	1,364,647 (4%)	3,012,593	72%
Middle (Class-6 to Class-8)	485,617 (62%)	295,391 (37%)	781,008	19%
High (Class-9 to Class-10)	211,294 (65%)	112,094 (35%)	323,388	8%
Higher Secondary (Class-11 to Class-12)	27,980 (62%)	17,496 (41%)	45,476	1%
Total	2,372,837 (57%)	1,789,628 (42%)		

Source: Annual Schools Census Report 2013-14, Government of KP

## Draft KP Right to Education Bill

The draft KP RTE Law provides for universal access and free education at the primary and secondary levels. Right to Education has to be available, acceptable, accessible and adaptable. For Pakistan, this means that in order to implement Right to Education, education not only has to be free and compulsory, but schools also need to provide a conducive learning/teaching environment. Furthermore, the law also

has to devise a strategy to identify out of school children and their enrolment. The law has to promise incremental increase in education budget over the years to come, and should set the target to ensure right to education of all children within shortest possible time. (Please see Annex 1 for comparative analysis of the RTE laws vis-à-vis draft KP RTE bill).

## Recommendations

Enacting a good Right to Education law is a constitutional obligation and Khyber Pakhtunkhwa government is supposed to enact the law as soon as possible. However, the experiences of other provinces should be taken into consideration. The KP government should make all the necessary provisions to ensure right to education in Khyber Pakhtunkhwa. A good law will not ensure right to education without the required budgetary support, technical skills and education department's capacity to utilize the available budget effectively. Therefore, the KP government should consider the following points while enacting the RTE law:

- » Since the financial support required for ensuring RTE in Khyber Pakhtunkhwa will be crucial, the government should ensure that this support is incrementally provided, if not available within the existing resource envelop.
- » In the existing pattern of budgeting, number of rooms in a school is used as a criterion for fund allocation. It needs to be revisited and replaced with number of students/children enrolled in a school as the criterion of school/education funding.
- » Political interference in the decisions regarding construction of new schools should be rationalized. The sole justification of building a new school should be a substantial number of children in the area of catchment of the proposed school instead of the vote bank of a politician.
- » In case of parents being found negligent about sending their children to school, the method of punishing negligent parents should be revised with giving incentives to the parents sending their children to school. Thus, the negligent parents will be motivated to send their children to school as well.
- » A supervisory body should be constituted to oversee, monitor and advise and ensure the implementation of the RTE law in KP.

## Comparative Analysis of Provincial RTE Laws in Pakistan

	ICT	Sindh	Punjab	KP (DRAFT)	Balochistan
Stage of Legislation on the RTE Laws	Act	Act	Act	Draft	Act
Title of Law	Right to Free and Compulsory Education Act 2012	Sindh Right of Children to Free and Compulsory Education Act, 2013	Punjab Free and Compulsory Education Act 2014	Khyber Pakhtunkhwa Right of Children to Free and Compulsory Education Act, 2014	Balochistan Compulsory Education Act 2014
Date of Effect	On such date by Federal Government may notify in Official Gazette	Immediately	Government may by notification determine on date or on Different Dates	Immediately	12th June, 2013 (Previously the Act was operational as an Ordinance)
Extent of Law	In such areas as Government may Notify in Official gazette	The whole of the Sindh Province	The whole of the Punjab Province	The whole of the Khyber Pakhtunkhwa Province	The Whole of the Balochistan Province except the Tribal Areas
Inclusion of Pre-School education	Yes, above the age of 3 years until a school is joined	Yes	Yes, above the age of 3 years until a school is joined	Yes, above the age of 3 years until a school is joined	Yes, above the age of 3 years until a school is joined
Type of Education Included	As prescribed by academic authority, notified by the Government	As prescribed by academic authority, notified by the Government	Teaching and training of mind, character, religious education, vocational training, special education and/or education prescribed by the Government	Education includes Islamic Madrassa registered with Wafaq-ul-Madaaris Board and education prescribed by the academic authority, as notified by the Government	Education pertaining to all or any of the classes from Grade I to X in a school, of minimum quality as per prescribed standards
Degree of Free and Compulsory Education	Free Education to all Children including Migrant families. School bags, stationary and transport to be provided for free as well	No liability to pay any kind of fees, charges or expenses which may prevent the child from completing school education	Free education from Grades 1 to 10th class including no liability of fees, charges and expenses	No liability to pay any kind of fees, charges or expenses which may prevent the child from completing school education	No fees for tuition either directly or indirectly with the provision of free textbooks, stationary, and a single meal/day along with transport facilities



	ICT	Sindh	Punjab	KP (DRAFT)	Balochistan
Provision of Education Advisory Council	Yes	Yes	No	No	Yes
Formation of Parent School Management Committee	Yes, in the shape of a School Management Committee	Yes, in the shape of a School Management Committee	Yes, in the shape of a School Management Body	Yes, in the shape of a Parent Teacher Council	Yes, in the shape of a Parent School Management Committee
Responsibility of Private Schools	Free education to not less than ten percent of total strength	Free education to not less than ten percent of total strength	Free education to not less than ten percent of total strength	Free education to not less than ten percent of total strength	Not Specified
Requirement of Registration of Schools	No school allowed to function without registration	No school allowed to function without registration	Not Specified	No school allowed to function without registration	Not Specified
Duty of Government and Local Authority for the Establishment of Schools	Within a period of 3 years from the commencement of this Act	Within a period of 2 years from the commencement of this Act	Local Authority shall establish the requisite number of schools to carry out the purpose of education	Not Specified	Not Specified
Provision of Transference to Other Schools	Student shall have a right to seek transfer for completing his/her education	Student shall have the right to transfer for completion of elementary and secondary education	Parents may opt for transfer to any other school	Child may transfer from one school to another for completing elementary and secondary education	Not mentioned
Punishment in case of Parents' Failure to Send Children to Schools	Fine of up to 5 thousand rupees with a further fine of up to 500/day. Failure to send children could also result in imprisonment of up to 3 months in addition to the fine.	Fine of up to 5 thousand rupees with a further fine of up to 500/day. Failure to send children could also result in imprisonment of up to 3 months in addition to the fine.	No entitlement to a subsidy or poverty- targeted- support of the Government	100 rupees/day or imprisonment of up to 3 months or both	Fine may extend to a minimum of 2 hundred rupees with a further fine of up to 50 rupees/day or imprisonment up to 1 week or both

	ICT	Sindh	Punjab	KP (DRAFT)	Balochistan
Punishment of Employer (if child is employed) after receiving a warning	Fine of up to 50 thousand rupees or imprisonment which may extend up to 6 months or both - Further fine may extend to 1 thousand rupees every day.	Not mentioned	Not mentioned	Fine of up to 20 thousand rupees with a further fine of 2 hundred/day or imprisonment up to 1 year or both	Fine may extend up to 5 hundred rupees with a further fine which may extend to 50 rupees/day or imprisonment up to 1 month or both
Provision of Farogh-e-Taleem Fund	No	No	The Government may permit a School Management Body to establish the need for the fund	No	No
Provision of Funds for Education	Both the Federal Government and the Local Government shall share responsibility for providing funds	The Provincial Government and Local authority shall be responsible for funds. The Education and Literacy Department may make requests to the Chief Minister to refer to the Finance Department to examine the need for additional resources	The Provincial Government and Local Government shall share responsibility for providing funds. The Government may also approach the Federal Government to provide grants-in-aid for Education	The Provincial Government shall be responsible for providing funds to carry out provisions of Act and other effective measures for its implementation.	Not Specified
Provision of Evening Classes	Not Specified	Not Specified	Yes, the Provincial Government shall devise a scheme for using schools in the evening	Yes, the Provincial Government may initiate 2nd shift to increase the ratio of admissions	Not Specified
Rules of Admission and Expulsion	No denial of admission and no provision of expulsion	No denial of admission and no provision of expulsion	No denial of admission and no provision of expulsion	Not Specified	Not Specified

	ICT	Sindh	Punjab	KP (DRAFT)	Balochistan
Provision of Medical and Dental Inspection	Provision of medical & dental inspection at appropriate intervals	No such medical & dental inspection mentioned	Not Specified	Not Specified	Not Specified
Provision of Various Awards	Awards are prescribed for children, teachers, educational administrators, researchers, individuals and organizations which meet criteria of excellence	Awards are prescribed for children, teachers, educational administrators, researchers, individuals and organizations which meet criteria of excellence	Not Specified	Not Specified	Not Specified
Inspections & Directions for Registered Schools by Government	Yes	Yes	Yes	Yes	Not Specified
Punishment of Teachers for Failure in Discharging Duties	Liable to disciplinary actions	Liable to disciplinary actions	Liable to disciplinary actions	Not Specified	Not Specified
Punishment for Breach of an Order of Act/Law	Not Specified	Not Specified	Imprisonment which may extend up to six months or fine which may extend up to 50 thousand rupees or both	Imprisonment which may extend up to one year or fine which may extend up to 50 thousand rupees or both	Not Specified

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