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According to ASER Pakistan (Rural) 2010, in Pakistan, about 80.8% children of 6-16 years of age are enrolled in different types of government and non-government schools in rural areas. Out of these, 29.1 % go to non-governmental schools, which is a significant percentage. Government schools are catering to the needs of only 70.9% of the enrolled children. As per ASER Pakistan 2010, about 20% of the children remain out of school in Pakistan.

ASER Pakistan (Rural) also provides estimates and insights about various aspects of education within the provinces. It informs us that, in Balochistan, 35.1% children of 6-16 years of age are out of school, total enrollment stands at 64.9%, including the 5% that go to private schools or madrassas. In Khyber-Pukhtunkhwa (KPK), the enrolment rate is 86.8%, but more than 31% percent of the enrolled children study in different types of non-governmental schools. In Punjab, the enrollment rate is 84.9% including 29.7% of the children studying in non-governmental schools with approximately 15.1% remaining out of school. In Sindh, 31.7% children are out of school. Whereas, out of the enrolled ones, 59.2% are enrolled in government and 39.1% in non-governmental schools.

This is a challenging situation, as a large number of children in Pakistan remain out of school. The number of out of school children is particularly high in Balochistan and Sindh, where at least 35.1% and 31.7% children respectively, of 6-16 years age, remain out of school. Furthermore, in terms of the national average, about one-fourth of the enrolled children are studying in non-governmental schools. Even those who go to schools continue to face a range of challenges, such as the poor state of basic services like clean drinking water as well as lack of quality education. Successive governments have failed to effectively respond to these concerns, which is obvious from the fact that budgetary allocations for education have consistently remained low. Moreover, the right to education was not recognized as a fundamental right in Pakistan for a long time.

While all sorts of challenges remain, one important development occurred in 2010, with the potential to fundamentally transform the way education sector is currently viewed, organized, managed and resourced in Pakistan. This is the recognition of the right to free and compulsory education as a fundamental right in the Constitution of Pakistan through the 18th Amendment. For this purpose, Article 25-A was included in the Constitution, which reads as follows:

“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.” [Article 25-A, Ch. 1 (Part II on Fundamental Rights) of the Constitution]

In view of this amendment, it has now become the primary responsibility of the state to ensure that no child between the ages of 5-16 is out of school. This is a very clear command of the Constitution, which is not subject to any restrictions including budgetary constraints. However, in light of Article 25-A, the Parliament and provincial assemblies need to enact comprehensive laws for their respective jurisdictions to give effect to this important fundamental right in an efficient and straight forward manner as the article clearly states that free and compulsory education shall be provided 'in such manner as may be determined by law'.

Prior to the 18th Amendment, right to education was not a fundamental right. Although the state obligation in terms of providing education had been mentioned in Article 37b of the Constitution, it had value essentially in terms of a policy direction, which could not be enforced by the courts as a right of the children. While Article 37b was and continues to be the part of Principles of Policy in the Constitution, Article 25-A has been inserted in the chapter on fundamental rights. Article 37b of the Constitution reads as follows:

“The State shall remove illiteracy and provide free and compulsory secondary education within minimal possible time”. [Article 37b (Ch. 2, Part II on Principles of Policy) of the Constitution]

As far as the Principles of Policy are concerned, the Constitution of Pakistan clearly states that:

“In so far as the observance of any particular Principle of Policy may be dependant upon resources being available for the purpose, the Principle shall be regarded as being subject to the availability of resources.” [Article 29(2) of the Constitution of Pakistan]

Hence, until the 18th Amendment, the Federal and Provincial governments could give the excuse that it is impossible for them to completely implement Article 37a of the Constitution due to paucity of resources. However, following the insertion of Article 25-A, it is no more a valid excuse, and the Federal and Provincial governments need to immediately act to ensure that all children of five to sixteen years of age are in schools. This has to be done without putting any financial burden on children or their parents.

In this background, the Federal and Provincial governments are required to enact comprehensive legislation, whereby duties and responsibilities of relevant authorities must be defined and an effective mechanism for implementing Article 25-A¹ must be established. Through the new legislation, the existing Federal and Provincial laws regarding compulsory primary education could be repealed for being inconsistent with Article 25-A. Existing laws are seriously inadequate and flawed for instance, these laws (a) make education compulsory but not free; (b) cover only the primary schools, while Article 25-A covers up to higher secondary schools; (c) put limited emphasis on responsibilities of the government and schools; and (d) have never been implemented in view of their inherent flaws and lack of political will.

Therefore, the new legislation under Article 25-A should not only take into account the experience of lack of implementation of compulsory primary education acts but also the regional and international best practices in this regard. In particular, the new legislation should:

- Define 'free' education in terms of no fees or charges of any kind; free books, notebooks and other study related materials; free transport in situations where schools are located beyond easily accessible distance; free boarding facilities if a school is not locally available or accessible; free lunch; and ban on private tuitions.
- Explain responsibilities of the State, schools and parents in terms of building schools, maintaining standards, providing basic facilities, school attendance, involving communities in school management, and addressing grievances of children or parents.
- Focus on a cost effective, comprehensive and effective mechanism for implementing Article 25-A of the Constitution.
- Define and elaborate the role of private or voluntary sector schools within the context of Article 25-A.
- Provide an effective grievance redress system, which should entitle children or parents to compensation, when a child cannot get admission or when he or she does not get quality education.
- Provide minimal mandatory standards for schools.
- Legally guarantee pupil- teacher ratio to ensure equal access.
- Make it mandatory that no vacancy in schools will remain unfilled for more than one week in case of retirement of a teacher, and for more than one month in case of a sudden death or resignation of a teacher.
- Guarantee that an amount equal to at least 20% of the total salary budget of any school will be made available for non-salary current expenses.
- Provide for prohibition of private tuitions; or at the least government school teachers should be strictly barred from involving themselves in private tuitions.
- Ensure maximum transparency in the education system in the light of right to information guaranteed under Article 19-A of the Constitution.
- Provide an effective and transparent monitoring system.
- Establish advisory or monitoring councils involving civil society at various levels Federal, provincial or district to support and oversee the implementation of Article 25-A.
- Legally sanction and elaborate the role of School Management Committees (SMCs).

In the presence of Article 25-A, there does not exist any justification that could absolve the Federal or provincial governments of their responsibilities in relation to unavailability of schools or out of school children. All the out of school children need to be immediately put in government schools and, if the government is unable to build enough schools of required grades and standards, these children and households should be compensated or financed to study in private schools. Furthermore, all fees that are being collected from children in up to higher secondary schools have become unconstitutional. With the right to education now being a fundamental right, the government not only needs to come up with elaborate legislation but also a clear plan in terms of mobilizing resources and building or up-grading educational facilities of required standards without wasting any time. However, since the Federal and provincial governments have so far not given any attention to implementing Article 25-A, there is a need for proactive civil society engagement on this matter at various levels.

¹ Existing laws on compulsory primary education include: Punjab Compulsory Primary Education Act, 1994; NWFP Primary Education Act, 1996; Sindh Compulsory Primary Education Ordinance, 2002; ICT Compulsory Primary Education Ordinance, 2002; and FATA Compulsory Primary Education Regulation, 2002.