

# Judicial Activism for Right to Education - Article 25-A; Excerpts from November 22, 2013, Supreme Court of Pakistan's Order

## Court Order/Judgement on RTE and Miserable Condition of The schools – issues on November 22, 2013

### IN THE SUPREME COURT OF PAKISTAN (Original Jurisdiction)

#### PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, C.J  
MR. JUSTICE IJAZ AHMED CHAUDHRY  
MR. JUSTICE GULZAR AHMED

#### CONSTITUTION PETITION NO. 37 OF 2012

(Petition Regarding Miserable Condition of the Schools)

Date of hearing: 12.06.2013

For the Applicants

Mr. Nazir Ahmed Bhutta, ASC (*in CMA 1386/ 13*)

Nemo (*in CMA 300/13*)

Mr. Saleem Tariq Lone (*in CMA 11/13*)

Mr. Zulfiqar Hussain Noon (*in CMA 14/13*)

#### ORDER

##### IFTIKHAR MUHAMMAD CHAUDHRY

174. Now after devolution of the subject of education to the Provinces, it is obligatory on 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 prosperity of the country; but unfortunately, as so far it has been noticed during hearing and after getting conducted survey through judicial officers, there is no occasion to express satisfaction on the education system in all the Provinces as well as ICT. One understand that at certain levels, measures have been or are being taken to improve educational system by ensuring 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, following measures are required to be taken: -

- (a) **Accreditation Boards in all Provinces and ICT be established under 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;

- © The Accreditation Boards may also consider to approach 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 authorized 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 mechanism to ensure 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.

CHIEF JUSTICE- JUDGE JUDGE

ANNOUNCED IN OPEN COURT ON 22.11.2013 AT ISLAMABAD  
CHIEF JUSTICE APPROVED FOR REPORTING

Pg No: 1, 98-100.

Available at: [http://rtepakistan.org/wp-content/uploads/2012/12/const.p.37\\_2012\\_final.pdf](http://rtepakistan.org/wp-content/uploads/2012/12/const.p.37_2012_final.pdf)

# ASER and Right to Education - Tracking Provisions for Fundamental Rights and Social Justice

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**A**SER 2013 is a citizens' compendium for tracking our journey towards the Right to Education (RTE) as contained in Article 25 A and its provincial and area enactments. The acts are in place for the Islamabad Capital Territory (ICT) and Sindh; the draft rules are being developed for ICT whilst in Sindh these are yet to be discussed. Balochistan Compulsory and Free Education Ordinance 2013 was notified on March 15<sup>th</sup>, 2013, with the Governor's assent but without the Assembly in session. Its validity is yet to be established; the provinces of Khyber Pakhtunkhwa and Punjab have yet to enact the legislation. The progress on implementation of 25 A is slow since it was added to the Constitution in April 2010 under the 18<sup>th</sup> Amendment. To remind ourselves the Article 25-A states "The State shall provide free and compulsory education to All children of the age of five to sixteen years in such a manner as may be determined by law".

This is a tall order; it means that the age defined includes pre- primary to grade 11 or higher secondary education. For a country that is still struggling with GER Early Childhood Education (91%), NER Primary (6-10) at 68%, NER Middle(11-13) at (38%) and NER Secondary(14-15) at 25% (PSLMs 2011-12) and with a GDP allocation hovering around 2%, RTE is still an elusive goal. The Sindh Right to Education Free and Compulsory Education Act 2013 provides for education beyond 16 years of age in order to ensure, "that a child so admitted to secondary education shall be entitled to free education till the completion of secondary education even after sixteen years". The constitutional provision of Article 25 A is our

Legislation	Characteristics	Status
<b>THE SINDH RIGHT OF CHILDREN TO FREE AND COMPLUSORY EDUCATION ACT, 2013</b> Enacted March 6 <sup>th</sup> , 2013	30 Articles divided in 8 chapters	Not implemented Education Advisory Council not notified
<b>RIGHT TO FREE AND COMPULSORY EDUCATION ACT, 2012 EXTENDED TO ISLAMABAD CAPITAL TERRITORY</b> Enacted on December 19 <sup>th</sup> , 2012	29 Articles	Partial Implementation in Govt. Schools and Rules being finalized Education Advisory Council not notified

best hedge to ensure that this takes place and for citizens to claim that right with evidence drawn from reports such as ASER: ([www.asperpakistan.org](http://www.asperpakistan.org)) that is well aligned to the age group focused on learning and also from the Pakistan Bureau of Statistics (PBS) household survey viz., Pakistan Social Living Standards Measurement (PLSM) survey ([www.pbs.gov.pk](http://www.pbs.gov.pk)) undertaken annually.

The ASER 2013 findings track several dimensions of the RTE Acts for ICT and Sindh. Both legislations have many common features as the former was enacted prior to Sindh. Some of the findings are presented below aligned to RTE provisions.

Chapter III Articles 7.4 in the Sindh Act and Article 3.3 in ICT Act both have the following all embracing provisions

### It is obligation of the Government to

- a) Provide free education to every child;
- b) Ensure compulsory admission and attendance to complete school education;
- c) Ensure that the disadvantaged child is not discriminated against and prevented from, on any grounds whatsoever for pursuing and completing education;
- d) Provide infrastructure including standard school building, playgrounds, and laboratories, teaching learning material and teaching staff;
- e) Monitor functioning of schools within its jurisdiction;
- f) Decide the academic calendar;
- g) Provide all training facilities for teachers and students;
- h) Ensure good quality education confirming to the prescribed standard and norms;
- i) Ensure timely prescribing of curriculum and courses of studies for education;
- j) Ensure enabling learning environment for better teaching learning in schools.

([www.rtepakistan.org](http://www.rtepakistan.org))

RTE ICT 2012 & Sindh 2013	RTE Tracked under ASER 2013
<b>Number of Surveyed Locations and Schools</b>	
<p>RTE extends to ALL children of Pakistan 5-16 years of age</p>	<p>ASER Rural : Villages surveyed = 4112  Govt. Schools found = 3959  Private schools = 1694  In Balochistan 839 villages surveyed but only 724 with govt. schools (115 villages without govt. schools)</p>
<b>OOSC (Out of school children)5-16 years of Age</b>	
<p>Article: 3. Right of Child to free education Every child of the age of five to sixteen years regardless of sex and race shall have a fundamental right to free and compulsory education in neighborhood school till completion of secondary education;</p> <p>“Child in both acts means a child including a child with special education needs, male or female of the age five to sixteen year of age”</p> <p>Article: 4.S pecial Provision for education where a child has not been admitted in any school or though admitted could not complete his education, then he shall be admitted in an appropriate class in a formal or non-formal school.</p>	<p>21% children 6-16 out of school, a 2% improvement from 2012 when it was recorded as 23% children 6-16 out of school.</p> <p>For 5 year old children the comparable data is 33% out of school and 67% enrolled, an improvement of 5% from previous year 2012 when 38% 5 year olds were not in any school.</p> <p>ASER 2013 reveals enrollment by grade, whilst 16% of the total enrolled are in grade 1, 15% by grade 2 and only 4% of the total enrolled are in grade 10- an unstable declining trend from primary to post primary levels  ASER 2013 has not tracked disability</p>
<b>Pre Schooling</b>	
<p>Article: 9. Appropriate government to provide pre-schooling education. The appropriate government may make necessary arrangements for providing free pre-school education and early childhood care for the children above the age of three years until they join the school for education.</p>	<p>59% children not attending any school in early years schooling (Pre-Schooling)</p> <p>Overall 3-5 year old enrolment (41%) has improved by 3% as compare to 2012</p> <p>For 5 years old age enrolment (67%) has improved by 5% as compared to 2012</p>
<b>Quality - Learning</b>	
<p>Under Articles 6 and 4 in respectively there are many provisions on quality as an obligation of the Government and similarly under -</p> <p>Article: 18. Duties of Teachers  (1). A teacher shall perform the following duties , namely:-  (c) assess the learning abilities of every child and supplement additional instructions, if any is required;  (d) all round development of child  (e) Building up child’s knowledge. potentiality and talent;  (f) adopt learning through activities , discovery and exploration in a child friendly and child – centered manner;</p>	<p>ASER’s core task is tracking children’s learning for Urdu/Mother tongue; English and Arithmetic up to grade 2 level competencies for 5-16 year olds. In fact it tracks minimum learning levels.</p> <p><b>ASER 2013 National results</b>  Urdu/Sindhi Pashto : Overall 51% children in class 5 will graduate without class 2 level competencies in Urdu/Sindhi/Pashto,</p> <p>English : 57% of class 5 children could not read sentences (class 2 level)</p> <p>Arithmetic. 57% class 5 children cannot do two-digit division.  Learning levels remain poor and have deteriorated as compared to 2012.</p>

Qualified Teacher																				
<p>Article: 17. Terms and conditions of service of teachers. (1) No person shall be appointed as a teacher unless he possesses the prescribed qualifications.</p>	<p>Qualifications in ASER 2013 have been recorded for a) General Qualifications and b) Professional Qualifications for public and private schools For B.A/B.SC and post graduate M.A/M.S.C levels in public and private school the ASER 2013 findings are:</p> <table border="0"> <tr> <td><b>General:</b></td> <td><b>B.A/B.SC</b></td> <td><b>M.A/MSC</b></td> </tr> <tr> <td>Public</td> <td>34 %</td> <td>37%</td> </tr> <tr> <td>Private</td> <td>39%</td> <td>25%.</td> </tr> </table> <p>For B.Ed and M.Ed the ASER 2013 findings are:</p> <table border="0"> <tr> <td><b>Professional:</b></td> <td><b>B.Ed</b></td> <td><b>M.Ed</b></td> </tr> <tr> <td>Public</td> <td>40%</td> <td>17%</td> </tr> <tr> <td>Private</td> <td>46%</td> <td>11%</td> </tr> </table> <p>Some positive trends can be seen for public sector teachers: 17% of Government teachers possess M.Ed as compared to 11% private schools. But to what extent resume effects have an impact on learning outcomes?</p>		<b>General:</b>	<b>B.A/B.SC</b>	<b>M.A/MSC</b>	Public	34 %	37%	Private	39%	25%.	<b>Professional:</b>	<b>B.Ed</b>	<b>M.Ed</b>	Public	40%	17%	Private	46%	11%
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<p>Article 18 (1) Sindh and ICT: A teacher shall perform the following duties, namely:- (a) maintain regularity and punctuality in attending the school;</p>	<table border="0"> <tr> <td></td> <td><b>Government</b></td> <td><b>Private</b></td> </tr> <tr> <td>Teachers</td> <td>87%</td> <td>93%</td> </tr> <tr> <td>Students</td> <td>85%</td> <td>89%</td> </tr> </table>			<b>Government</b>	<b>Private</b>	Teachers	87%	93%	Students	85%	89%									
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<p>Article: 3.3 (g) ICT Article 7.4 (d) Sindh Provide infrastructure including school building playgrounds laboratories, teaching learning materials and teaching staff (h/e) monitor functioning of schools within their jurisdiction.</p>	<p><b>Government Primary Schools Did not Have:</b></p> <table border="0"> <tr> <td>Working Toilets: 53%</td> <td>Drinking Water: 36%</td> </tr> <tr> <td>Boundary Walls: 43%</td> <td>Playground: 72%</td> </tr> <tr> <td>Computer Labs: 100%</td> <td>Libraries: 92%</td> </tr> </table> <p>From 2012 there is an overall decline in missing facilities. Private Primary Schools.</p> <table border="0"> <tr> <td>Working Toilets: 24%</td> <td>Drinking Water: 17%</td> </tr> <tr> <td>Boundary Walls: 28%</td> <td>Playground: 66%</td> </tr> <tr> <td>Computer Labs: 100%</td> <td>Libraries: 81%</td> </tr> </table> <p>Although government schools are receiving better financial grants than private.</p>		Working Toilets: 53%	Drinking Water: 36%	Boundary Walls: 43%	Playground: 72%	Computer Labs: 100%	Libraries: 92%	Working Toilets: 24%	Drinking Water: 17%	Boundary Walls: 28%	Playground: 66%	Computer Labs: 100%	Libraries: 81%						
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The tracking above shows the capability of the ASER tool to track RTE provisions with simplicity on core dimensions. This tracking must be accessible for ALL citizens, politicians and government alike to follow and take action if the citizens seek to assert their rights and claims through evidence. The constitution provides for key articles 9 (Security of Person-no person shall be deprived of life or liberty) 19 A (right to information) and 25 A (right to education) as the bare minimum for each citizen to claim their status and rights.

In 2014 ASER Pakistan will take bolder steps to track other areas of RTE legislation putting pressure, on the one hand, on governments to be accountable for ensuring compliance to the constitution and rights of citizens, and, on the other hand building an evidence

based platform for citizens groups to demand quality education for ALL children aged 5-16.

The annual exercise as its name suggests in Urdu "Impact" must inform through innovative data literacy sessions for the judiciary, departments of education, planning and finance, teachers and citizens groups. It is also hoped that taking inspiration from the 100 page report of the former Chief Justice of Pakistan on the miserable state of public sector schools and Ghost Schools (Supreme Court 2013), ASER Pakistan will help generate substantive evidence to be used for proactive judgments, thus supporting the claims and rights of citizens for social justice at all levels of the judicial system; the civil, high and supreme courts of Pakistan.