

Right to Education in Khyber Pakhtunkhwa	
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Right to Education in Khyber Pakhtunkhwa;
A critical appraisal

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Abstract

Right to free and compulsory education is the basic norm of international human rights law. It has been recognized in major instruments of human rights and states are required to provide free and secondary education. In Pakistan this right was recognized in 2010 and provinces are now bound to provide free and compulsory education at secondary level, which is the subject of this paper in the Khyber Pakhtunkhwa.

Key Words: *Human, Rights, International, Law, Education*

Introduction

The Parliament of the Islamic Republic of Pakistan passed 18th Constitutional Amendment and incorporated Article 25-A, which provides for the compulsory education. It states that "The State shall provide free and compulsory education to all children of the age of 5-16 years in such a manner as may be determined by law".¹ Now children can get compulsory education as a right² and State is duty bound to follow International Human Rights Law in this context. Islam has emphasized on getting education. There are numerous Holy Quran verses as well as Traditions of the Holy Prophet Muhammad (S.A.W.W). The first Divine Revelation on Holy Prophet (P.B.U.H) was the about knowledge. The Holy Quran first verse is;"Proclaim! (or Read) in the name of thy Lord and Cherisher, who created. Created man out of a (mere) clot of congealed blood. Proclaim! And thy Lord is most bountiful. He

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Who taught (the use of) pen. Taught man that which he knew not" (96: 1-5)³. Another Quranic verse is;"Say: Are those equal, those who know and those who do not know? It is those who are endued with understanding that receive admonition" (39:9)⁴. Prophet Muhammad (S.A.A.W) also emphasized on seeking knowledge. There are some holy traditions in this connection.

- "Seek knowledge from the cradle to the grave".
- "Seek knowledge even if it is far as China".
- "Seeking of knowledge is a duty of every Muslim, and wisdom is the lost property of the believer, he should take it even if finds it in the mouth of a mushrik."

Availability of educated and trained human resource is requisite for development of a nation in modern age of technology. Education cherishes hidden potentials of children but also prepare them to be productive citizens in future. It also evolves such a society which preaches social justice, democracy and nourishes values of peace, tolerance, harmony and respect. "Education is not only human right" but also an undisputed way to socio-economic growth. A society low literacy rate cannot dream of development in this age of science and technology.⁵ Many Human Rights Treaties like "Universal Declaration of Human Rights (UDHR)-1948", International Covenant on Civil and Political Rights (ICCPR)-1966, International Covenant on Economic, Social and Cultural Rights (ICESR)-1966, Convention on Rights of Children (CRC)-1989" and other International Instruments have also highlighted the significance of education. The Government of Pakistan, in compliance with these international legal treaties, incorporated Right to Education in its Constitution in April 2010⁶. After incorporation in Constitution, it is constitutional obligation of the federating units to enact effective legislation because "school education has been completely devolved to Provinces under 18th Amendment." Provincial Government of KP drafted "The Khyber Pakhtunkhwa Right of Children to Free and Compulsory Education Act, 2014".⁷

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Methodology

Right to Education is Fundamental Right of a child in Pakistan after incorporating “*Article 25-A in the Constitution of Pakistan 1973*” in 2010. Before 2010, it was given in Principles of Policy but due to pressing importance of education in the globalized world, the Government decided to place this Principle as a Right of the child. The challenge under discussion is, “what is the responsibility of Government of Khyber Pakhtunkhwa to respect and ensure respect to right to education”. After performing systematic review to find out research articles and relevant literature on topic for which different databases and literature resources were used. It was conducted under “Protocol of Preferred Reported Items for Systematic Review and Meta-Analysis (PRISMA) consisting of 27 items”, a checklist to improve reporting of systematic reviews and meta-analysis.⁸ Most of the items of PRISMA checklist are followed except Item number 5 (more relevant to clinical trials), Items number 16 & 23 (additional analysis in case of large studies) and Item number 27 (statement of funding).

Process

Wide literature was searched in November and December of 2015 by using SSRN, ResearchGate, JSTOR and Google Scholar. Following words were searched: “Right to Education”, “Education under International Law”, “Education and International Law” and “Right to education in Pakistan”. The search was limited to studies (conducted/translated) in English. Last research was conducted on 31st December, 2015. All sources like research articles, review, related essays, proceeding of conference etc. were saved for systematic reviews. All these articles which were retrieved from this searching focused on “Right to Education under International Law, State Law and Responsibility of Local Government”. The references list of all these articles was then hand-searched for any further existing literature searching.

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Time period for systematic review of relevant published data was from 2000 to 2015 because most of the work on subject has been undertaken after 2000. Information was extracted regarding study design, authors, study type, country, year of publication and characteristics of study participants.

A systematic search of literature was carried while keeping such like steps⁹ background reading & preparation; develop research question; Identify research terms; Identify research sources; analysis & summation of results.

1. Results and Analysis

From SSRN database, following 5 articles were selected for review

1. *“Lorie Graham, Reconciling Collective and Individual Rights: Indigenous Education and International Human Rights Law”.*
2. *“Constance De La Vega, The Right to Equal Education: Merely a Guiding Principle or Customary International Legal Right?”*
3. *“SukanyaNarain. Enforcement of a Child’s Right to Primary Education”.*
4. *“Foons Commans. Justiciability of Right to Education-discusses justiciability of Right to education”.*
5. *“Rahman Azhar. Taliban’s War on Schools in Khyber Pakhtunkhwa and FATA: International and Domestic Laws on Protection of Schools and Children’s Right to Education”.*

From ResearchGate database, following two articles were selected for review

1. *“Shahinshah Babar Khan. Challenges to Promotion of the Fundamental Right to Education in Pakistan”.*
2. *“Abdul Hamid. NaeemAkram. Muhammad Shafiq. Inter and Intra Provincial Educational Disparities in Pakistan”.*

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From JSTOR databases

No relevant article was found.

From Google scholar search engine, following article was selected

1. “Khan, S. B. (2010). *Problems in Universalization of Primary Education in Pakistan. Pakistan Journal of Commerce & Social Sciences, 4(2)*”.

From Hand Searching

It is worth mentioning that no article selected on hand searching was included in the critical appraisal.

Table No. 1: Critical appraisal of selected articles

Author /Country/ Year of publication	Title of the Paper	Key findings
“Lorie Graham/ Suffolk University Law School/ July 1, 2011”	“Reconciling Collective and Individual Rights: Indigenous Education and International Human Rights Law”	“ <i>Right to Education</i> ” is individual right which is a base for collective right.

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<p>“Constanc e De la Vega/ Universit y of San Francisco School of Law/ Harvard Blacklette r Law Journal, Vol. 11, No. 1, 1994”</p>	<p>“The Right to Equal Education: Merely a Guiding Principle or Customary International Legal Right?”</p>	<p>“<i>Right to Education</i>” is part of “<i>Customary International Law</i>”, which should be considered by American Courts while deciding such cases.</p>
<p>“Sukanya Narain/ The CSR Practice; National Law Universit y Jodhpur (NLUJ)/ April 28, 2014”</p>	<p>“Enforcemen t of a Child’s Right to Primary Education”</p>	<p>It critically examines Right to Education Act 2009 in India and its shortcomings and issues in implementation.</p>
<p>“Fons</p>	<p>“Justiciabilit</p>	<p>It highlights role of courts in cases</p>

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<p>Coomans/ Maastrich t Universit y - METRO Institute December 15, 2009 Erasmus Law Review, Vol. 2, No. 4, pp. 427-443, 2009”</p>	<p>y of Right to Education- discusses justiciability of Right to education”</p>	<p>dealing with Right to Education.</p>
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<p>“Rehman Azhar/ Fordham Universit y/ April 30, 2012”</p>	<p>“Taliban’s War on Schools in Khyber Pakhtunkhw a and FATA: International and Domestic Laws on Protection of</p>	<p>It discusses current situation, domestic & International Legal regimes for protection of schools in KP and recommendations.</p>
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	Schools and Children's Right to Education".	
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"Shahinshah Babar Khan/Journal of Educational and Social Research/ 2013"	"Challenges to Promotion of the Fundamental Right to Education in Pakistan"	It explains economic constraints on realization of Right to Education.
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"Abdul Hamid, Naeem Akhtar, Muhammad shafiq/Pakistan Journal of social Sciences/ 2013"	"Inter and Intra Provincial Educational Disparities in Pakistan".	This deals with economic impediments which result in inequalities of opportunities of education.
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"Khan, S. B. (2010).	"Problems in Universalizat	It brings to light various problems which are creating hurdles for
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Pakistan Journal of Commerce & Social Sciences, 4(2)".	ion of Primary Education in Pakistan".	universalization of this Right to Education.
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Summary of Findings

It is evident from the discussion in previous chapters that “*Right to Education*” is the “*Fundamental Right*” of every citizen in Pakistan on the basis of “*International Human Rights Law*”. This Right was placed in the Principles of Policy which was not enforceable in any Court of Law.¹⁰ However, after Eighteenth Constitutional Amendment, right to free and compulsory education is justiciable. This Right is guaranteed under International, regional and National Context as discussed in Chapter 2 of this Thesis. This Right is recognized and enforced by different Courts of Law in three levels of context.

After incorporating Article 25-A in the Constitution will not yield better results unless concrete steps are taken in the right direction. Although education is free and compulsory for six to sixteen years of children but millions are out of schools. They will grow without education and unable to compete with the world where advancement is almost at the peak. Proper implementation of Article 25-A will be ensured by taking steps like enactment of new laws, allocating proper budget, encouraging all and sundry, ensure punishments for violators, to sensitize the cause etc.

Responsibility of State

Dream of universal education and literate society cannot be realized unless all stakeholders support the cause. Here responsibilities of federal and provincial governments are highlighted.

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Responsibilities of Federal Government

After incorporating Article 25-A in the Constitution, Federal Government cannot be exempted from implementation of this basic right. According Article 7 of the Constitution of Pakistan, Federal Government is a part of the State and also this Article has been enacted and passed by National Assembly and Senate, so Federal Government is bound to provide free and compulsory education in all parts of the State, not only restricting to ICT and FATA. Only provincial governments cannot shoulder this responsibility as huge finances are involved in it. Also, free and compulsory education was the initiative of Federal Government, so it must come up with following incentives:

Finances. Special packages/incentives be given to those areas where literacy rate is low to encourage such people. This incentive must be based on performance.

Monitoring and evaluation. To check the performance of the stakeholders, Federal Government must ensure a proper mechanism. It can be done with different yardstick like periodic reports, progress reports; surveys etc. and same must be presented at a proper forum to ensure check and balance.

Conducive environment. Federal Government must start “ENROLMENT DRIVE” to encourage children and create awareness among masses. It can be done with the help of print, electronic media, seminars, civil society and political workers.

Responsibilities of Provincial Government

School education is the domain of provincial government after 1973 Constitution came into force. It is responsible for management and control of schooling. Federal Government was only responsible for curriculum and standard but the same have been devolved to provincial government after 18th Amendment in 2010. Therefore, the responsibility of provincial government is more and can cope with this responsibility in following ways:

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Legislation. The first step towards the implementation of Article 25-A is the proper legislation at the provincial level. As elementary and secondary education is the domain of provincial government after passage of 18th Amendment, so respective government must enact proper laws in light of which concerned departments will frame rules.

Finances. As provincial government make budget at its will, so it must increase the ratio/per cent age in the budget to work properly for the implementation of Article 25-A.

Special Package . In order to attract children and encourage parents in far flung/backward area, special packages must be given to construct new schools and renovate old ones. As schools are far from villages, it impedes enrolment of children due to distance. Similarly, government schools have normally two rooms which cannot accommodate large number of students, so construction of new schools is the need of hour.

Enrolment Drive. In order to create mass awareness, enrolment drive must be started by involving print & electronic media, civil society, political workers etc. at grass root level. Also, local government can be very helpful in this regard.

Encouragement. Government must provide some kind of incentives to parents to encourage them to enrol their children. This can be in the shape of food, uniform, stipend etc. to remove liability from shoulders of poor parents.

Recommendations

Following are the recommendations in light of discussion made so:

First, right to free and compulsory education is the “*Fundamental Right*” of people of Khyber Pakhtunkhwa, which is given under “*Article 25-A of the Constitution of Pakistan*”. Therefore drafting law on the subject is the responsibility of KP Government.

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Second, it is the responsibility of Government of KP to enact Laws for providing free and compulsory education. It then will enable the Education Department to frame rules for acquiring dream of universal education.

Third, government of KP must allocate special head in the budget for this purpose. Fourth, government of KP can approach International as well as Regional donors for this noble cause. Fifth, there should be enrolment drive to create awareness. Sixth, incentives may be given poor and needy parents to get their children enrolled in schools.

Seventh, awareness campaign should be undertaken. Lastly, cooperation should be extended to organizations working on the subject at National, Regional and International Level.

Conclusion

Owing to prime importance and pivotal role it plays in the development of nations, Education has been declared as a basic right under International Law. It is mentioned in numerous instruments besides its benefits extended to all who wanted to use it.

Since 1973, Education was mostly controlled by Provinces with exceptions of curriculum and standards. However, in 2010, education was devolved to provinces through “18th Constitutional Amendment in the Constitution of Pakistan, 1973.”

The 18th Amendment was passed in April 2010, which not only deleted the Concurrent List but also devolved the education to provinces as a provincial subject. Yet another impressive step was “incorporation of Article 25-A in the Constitution.”“It guaranteed free and compulsory education to children of age 5-16 years in Pakistan. It is to be provided by the State, which according to Article 7 of the Constitution of Pakistan, 1973 includes both Federal and Provincial Governments.”

References

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⁹ “Kmet LM LR, Cook LS. Standard quality assessment criteria for evaluating primary research papers from a variety of fields. Alberta Heritage Foundation for Medical Research 2004”.

¹⁰Article 31 of the Constitution of Pakistan, 1973