

**RIGHT TO EDUCATION OF GIRLS IN PAKISTAN - A LEGAL  
EXAMINATION FROM THE PERSPECTIVE OF LOW – INCOME  
HOUSEHOLDS**

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### Abstract

*Education of girls is of vital importance for the success of a country. However, it is viewed that Pakistan has not performed in a promising way in terms of providing education to female children, especially those who belong to low-income groups and rural areas. For this purpose, it is necessary that the provincial and federal legislations are perused to effectively understand the extent of the legal mechanisms which are present currently in Pakistan. Lastly, the jurisprudence of Pakistani courts must also be examined to capture the nuanced reasoning of these courts to protect the fundamental right to education of young girls in Pakistan.*

**Keywords:** International Human Rights Law, International Covenant of Economic, Social and Cultural Rights, International Covenant of Civil and Political Rights, Right to Education, Constitution of Pakistan, Convention on the Elimination of Discrimination Against Women, Right to Free and Compulsory Education Acts

## - **Introduction**

Girls in Pakistan who belong to low – income backgrounds are present at the bottom of the pecking order of the education system. The rate of literacy among young girls is especially low in rural and remote areas due to economic reasons such as lack of investment in state schools for girls as well as the poverty of parents. There are also legal reasons such as there are no specific laws which deal with the education of young girls who come from low – income backgrounds. In Baluchistan, it was reported that 81% of the girls did not complete their primary school while 1.8 million children aged between 5-17 are out of school in Khyber-Pakhtunkhwa of which 64% are girls.<sup>1</sup> In light of these abysmal conditions for the education of young girls in Pakistan, this research brief shall focus particularly on the legal policy to determine the extent to which legal framework in Pakistan has facilitated to secure school education of girls in Pakistan.

## - **Legal Obligations under International Laws**

Pakistan has signed and ratified several international treaties which put a positive obligation on the Pakistani state to protect the right to education of young girls belonging to low – income households. Under Article 13 of the International Covenant of Economic, Social and Cultural Rights (“ICESCR”), Pakistan is bound to recognize the right of everyone to education; to direct education to the full development of the human personality and the sense of its dignity, and to enable all persons to participate effectively in a free society.<sup>2</sup> Similarly, under Article 28 of the Convention on the Rights of Children (“CRC”), Pakistan must recognize the right to education of the children on the basis of equal opportunity, and should take measures to encourage regular attendance at schools as well as to ensure that drop-out rates are reduced.<sup>3</sup> Moreover, Article 10 of the Convention on the Elimination of Discrimination Against Women (“CEDAW”) creates an obligation on Pakistan to take all appropriate measures to eliminate discrimination against young female children in order to ensure they have equal rights in the field of education. CEDAW also obliges Pakistan to recognize, on a basis of equality of genders, the same conditions in vocational guidance, access to education, the reduction of

<sup>1</sup> PTI Govt Urged to Invest More in Education as More than Half of Children in Tribal Areas Are out-of-School, *The Express Tribune* (Islamabad May 26, 2019); Imtiaz M, “Girls’ Education” *The Nation* (Islamabad).

<sup>2</sup> International Covenant on Economic Social and Cultural Rights (ICESCR), Art. 13. Pakistan signed the treaty on 3 November 2004 and ratified on 17 April 2008.

<sup>3</sup> Convention on the Rights of the Child (CRC), Art. 28. Pakistan signed the treaty on 20 September 1990 and ratified on 12 November 1990.

female student drop-out rates and the organization of programs for girls who have left school prematurely.<sup>4</sup>

Furthermore, Girls’ Right Education Program (“GREP”) is an agreement Pakistan has entered with UNESCO for the protection of the right to education of young girls. In February 2014, the Government of Pakistan and UNESCO signed the Funds-in-Trust agreement for establishing the overarching program to realize right to education of young girls in Pakistan from low – income households. The purpose of the program is to support the government’s efforts in increasing accessibility and improving the quality of primary education of young girls through capacity building and targeted interventions at both institutional and community level.<sup>5</sup>

### - **Legal Obligations under Constitutional Law**

Article 25-A of the Constitution of Pakistan recognizes the right to education as a fundamental right for both male and female children. Article 37-B and Article 38-D of the Constitution of Pakistan 1973 further affirms the policy of removing illiteracy and providing education without any kind of discrimination. In the famous *Benazir Bhutto* case, the Supreme Court of Pakistan reasoned that the Constitution of Pakistan must be read purposively and highlighted that Articles 3, 37 and 38 of the Constitution juxtapose to advance the cause of socio-economic principles and these provisions become in an indirect sense enforceable by law. The Supreme Court further highlighted that purposively defining rights will serve to guarantee genuine freedom which includes freedom from ignorance and illiteracy.<sup>6</sup> The courts further realized that depriving education from someone is a way of removing a person from his or her right to dignified living.<sup>7</sup>

Consciousness is increasingly observed in Superior Courts’ judgments with some judgments now making a clear reference on this pertinent topic. The Supreme Court has specifically affirmed specific measures for the right to education of students from under - privileged areas and their entitlement to receive education under Pakistani Constitution.<sup>8</sup> Thus, in *Shirin Munir* case, the Supreme Court of Pakistan reasoned that no discrimination on the basis of sex could be permitted except on the ground of reasonable and intelligible classification which include

<sup>4</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art. 10. Pakistan ratified the treaty on 12 March 1996.

<sup>5</sup> ‘Girls’ Right to Education Program in Pakistan’ (UNESCO, 2018) <<https://unesdoc.unesco.org/ark:/48223/pf0000265885>> accessed 24 February 2023

<sup>6</sup> *Benazir Bhutto v. Federation of Pakistan* [1988] PLD 416 (SC).

<sup>7</sup> *Sidra Yasin vs Mrs. Ishrat Ishaq* [2014] PLD 408 (LHC).

<sup>8</sup> *Fiaqat Hussain v Federation of Pakistan* [2012] PLD 224 (SC).



protection of children.<sup>9</sup> In *Raja Khurram Ali*, the Islamabad High Court noted that domestic work of a girl provided an environment where right to education was deprived from that girl of low – income household and made her a subject to many violations of her fundamental rights.<sup>10</sup> Similarly, in *Subay Khan*, the absence of the right to education was considered directly related to the fact that overwhelmingly girls belonging to low – income households are working as domestic workers and are not provided the right to education.<sup>11</sup>

#### - **Legal Obligations under Domestic Laws**

The state of Pakistan is defined under Article 7 of the Constitution of Pakistan, and includes both the provincial and federal legislatures as well as their governments. Therefore, the positive duty of the state requires that legislations be passed by the respective legislatures to secure educational needs of young girls while the government also fulfills the financial and logistical needs necessary for securing girls’ education belonging to low – income households. After the inclusion of Article 25-A in the Constitution of Pakistan, Right to Free and Compulsory Education Acts (“RTE”) were passed by all the legislatures of the country. RTE Acts specifically include female child’s education within their ambit. Islamabad RTE provides positive duties for the state which the state should carry out without any discrimination based on sex. These duties include providing finances for schools; providing medical and dental check-ups; conducting training of teachers and providing all necessary equipment including laboratories and playgrounds.<sup>12</sup> Islamabad RTE also provides a negative duty with no discrimination for girls. These duties include not to use screening and capitation fee in schools; not to expel a child before the end of the compulsory education and not to corporally punish a child.<sup>13</sup>

Due to the recent nature of RTE Acts, much case-law elaborating RTE provisions is not present which clearly elucidate the application of RTEs on young female children belonging to low – income households. However, several Superior Courts’ judgments do elaborate the general positive obligations of state for securing right to education of children of low – income households. Many Superior Courts’ judgments affirm that government must provide all

<sup>9</sup> *Shirin Munir and others v. Government of Punjab and another* [1990] PLD 295 (SC).

<sup>10</sup> *Raja Khurram Ali v Tayyaba Bibi* [2019] YLR 98.

<sup>11</sup> *Subay Khan v Secretary Labor* [2019] LHC 302 [17], [20].

<sup>12</sup> Right to Free and Compulsory Education Act 2012, Section 3, 6, and 7.

<sup>13</sup> Right to Free and Compulsory Education Act 2012, Section 11 and 13.

budgetary allocations to the schools of both genders and recover land, if necessary, for the schools.<sup>14</sup> The state simply cannot escape liability to provide a justiciable right on the basis of budgetary constraints.<sup>15</sup> Similarly, it has also been affirmed in the courts that provision of education should be in the best possible environment, including no discrimination in relation to sports facilities; adequate training of teachers and all necessary infrastructure including textbooks and reasonable buildings.<sup>16</sup>

### - **Critical Analysis of Domestic Legal System**

Unfortunately, despite all of these elaborate legislative measures, none of the RTEs explicitly provided specific provisions for securing the right to education of girls from low – income households.<sup>17</sup> In this way, it attempts to treat unequal groups under equal terms without realizing the specific experience of the weaker group i.e., poor female children. Perusal of RTE Acts, however, does provide some implicit special provisions for low – income girls. For instance, section 2 (d) of Islamabad RTE defines a disadvantaged child as someone who belongs to a socially and economically disadvantaged class or group and section 3(f) of Islamabad RTE provides that non-payment of any fees shall not result in the discrimination of disadvantaged child. Therefore, it can be considered that Islamabad RTE provides some space for poor female children who can be easily classified as a disadvantaged group. However, no special provision is present in the Islamabad RTE for girls in relation to their medical needs and social problems like family burdens imposed upon them at a young age which may prevent them from adhering to normal school procedures.

If Islamabad RTE is compared to other provincial RTEs, those RTEs even fail to provide the safeguards for girls which Islamabad RTE provides for securing the right to education of girls of low – income households. Sindh RTE seems to be similar to Islamabad RTE in regard to both positive and negative aspects. However, it is even more restricted in terms of special provisions as it includes special provisions for girls belonging to disadvantaged class only if they are not enrolled in school before 5 years.<sup>18</sup> Punjab and KPK RTEs fails to address any of the problems mentioned in the Sindh RTE and Islamabad RTE. KPK RTE does not even provide any special provision for disadvantaged groups while both Punjab RTE and KPK RTE

<sup>14</sup> [2014] SCMR 396; *Government Girls College Kuchlak vs. Government of Balochistan* [2012] C 168 Const. Petition 577 of 2011.

<sup>15</sup> *Ghulam Mustafa v Province of Sindh* [2010] CLC 1383 (Karachi).

<sup>16</sup> *Akhtar Hussain Langove vs IGP* [2015] YLR 58 (Balochistan); *Syed Nazeer Agha vs Government of Balochistan* [2014] PLD 86 (Balochistan); Human Rights Case No. 19360-P OF 2012, [2013] SCMR 54; [2014] SCMR 396 Const. Petition 37 of 2012.

<sup>17</sup> Right to Free and Compulsory Education Act 2012, Section 2(c).

<sup>18</sup> Sindh Right of Children to Free and Compulsory Education Act 2013, Section 4.



do not contain holistic educational measures such as training of teachers and provision of laboratories and playgrounds for low – income children.<sup>19</sup>

Baluchistan RTE lacks the most in the country in terms of securing right to education for girls belonging to low – income backgrounds as it disregards the positive provisions of Punjab, Sindh, and Islamabad RTEs. An interesting provision in this legislation is the presence of a legal section which establishes a localized elected management committee.<sup>20</sup> This is a double – edged sword as it might further serve to preserve those elements of the province which may be averse to girls' education. However, the 'consensus spirit' and 'cultural deference' of this provision is also recognizable which can serve as a source of sustainable inclusive better system for young girls.

## **Conclusion**

Policy makers must increasingly realize that, as opposed to the outward approach focusing mainly on working with private sector organizations to enhance the capacity of the education department for girls, a second approach is recommended that focuses inwards on improving state capacity through effective monitoring mechanisms within the education department.<sup>21</sup> These monitoring mechanisms shall be complemented with availability of transport or building schools within close proximity. This approach, therefore, calls for a more decentralized locally integrated system of education in terms of logistics with national digital oversight in relation to financing as it shall speed-up the decision-making process; leave less room for corruption since there shall be less direct transparent connection between the populace, local officials, and the higher officials. Such an approach shall also help the officials to cater to the unique needs of that particular area resulting in lesser use of funds. This way of execution is particularly important as 60 percent of girls are not going to school because of long distances, particularly in the middle and high schools; similar problems are also reported by female teachers.<sup>22</sup> Thus, close monitoring of institutions shall also reduce the phenomenon of 'ghost schools'.<sup>23</sup>

<sup>19</sup> The KPK Free Compulsory Primary and Secondary Education Act, 2017; The Punjab Free and Compulsory Education Act 2014.

<sup>20</sup> The Balochistan Free and Compulsory Education Act 2014, Section 4.

<sup>21</sup> Alford, J., & O'Flynn, J. (2012). Rethinking public service delivery (1st ed.). Houndmills, Basingstoke, Hampshire: Palgrave Macmillan.; Farrulsaqlain, M. 'Improving Girl Education in Pakistan'.

<sup>22</sup> Naveed, S (2018). Echidna Global Scholars Program Policy Paper: '*The importance of educating girls in the Newly Merged Districts of KP, Pakistan*'.

<sup>23</sup> Stuteville, S (2009). GlobalPost, *The ghost schools of Pakistan*.

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