

Right to Education (RTE) 25-A cases settled by the High Courts and Supreme Court from 2011-2015

There is precedence for judicial verdicts that protect the Right to Education in Pakistan. Knowledge of these cases enlightens one to the breadth and depth of the applicability of their Right to Education. This section outlines the key features of many legal cases related to Education as a Human Right in Pakistan.

Table 1: Key cases in the domain of Right to Education in Pakistan

Case No/Date of decision/Court	Violation	Verdict
2011 C L C 1375 – 27/04/11 Islamabad High Court	Higher	For
2012 C L C 168 -12/09/11 Balochistan High Court	Secondary	For
2013 S C M R 764 – 11/02/13 2014 S C M R 396 – 22/11/13 Supreme Court	Primary/Secondary	For
P L D 2013 S C 188 – 25/09/12 Supreme Court	ALL	For
2013 S C MR 54 – 03/10/12 Supreme Court	Professional	For
P L D 2014 Balochistan 86 - 23/10/13 – Balochistan High Court	Primary/Secondary	For
P L D 2014 Lahore 408 – 04/11/13 – Lahore High Court	Higher	For
2014 C L C 1810 – 07/07/14 Balochistan High Court	Primary/Secondary	For
2014 M L D 353 – 20/09/13 Lahore High Court	Secondary	For
2015 Y L R 58 – 18/08/14 Balochistan High Court	Professional	For
P L D 2015 Sindh 118 – 12/11/13 Sindh High Court	Secondary	For
2015 P L C (C.S.) 1503 - 19/03/15 - Lahore High Court	Secondary	Against
2015 Y L R 1262 - 24/04/14 Lahore High Court	Higher	Against
2015 P L C (C.S.) 1026 - 13/01/15 – Lahore High Court	Professional	For
P L D 2016 Peshawar 266 - 1/12/15 - Peshawar High Court	Higher	Against
2016 P L C (C.S.) 1267 - 09/11/15 – Balochistan High Court	Professional	Against
P L D 2018 Lahore 509 –	Professional	Mixed verdict

05/04/18 Lahore High Court		
2016 M L D 20 - 27/03/15 Peshawar High Court	Higher	Against
P L D 2012 Supreme Court 224 - 25/11/11	Professional	For
P L D 2015 Supreme Court 1210 - 08/09/15	ALL	For

1. Kiran Shahzadi vs. Quaid-e-Azam University

2011 C L C 1375
Writ Petition 213 of 2011
Kiran Shahzadi vs. Quaid-e-Azam University
Islamabad High Court
Date of hearing: 1 April 2011. Decided on 27 April 2011

The petitioner was alleged to have been using unfair means in her MBA Marketing Research Examination. She was exonerated of the charge. She was subsequently not allowed by the same teacher to appear for the Comprehension Paper. Per the petition, due to maladministration of the University, the petitioner suffered great loss to her studies, and therefore her fundamental right to pursue studies under Article 25-A had been violated.

Court intervention was sought. Islamabad High Court ruled in favour of the petitioner.

2. Students of Government Girls College Kuchlak vs. Government of Balochistan

2012 C 168
Const. Petition 577 of 2011
Students of Government Girls College Kuchlak vs. Government of Balochistan
Balochistan High Court
Date of hearing and decision: 12 September 2011

This case was brought to the Balochistan High Court as a matter of public importance. A sizable portion of state land that had been earmarked for construction of Government Girls College had been encroached by influential persons through the construction of a metaled road through the center of the land. Per the petition, people could not be deprived of their fundamental rights just because they are unaware or do not have wherewithal to approach the High Court. Inaction of the High Court would result in the public college being deprived of valuable property and girl students robbed of the benefit thereof, which would violate their fundamental rights under 25A.

Additional Advocate-General referred to Surah Alaq and Articles 25A, 25(2), 34, 37 and 38, to emphasize that both men and women have a right and duty to acquire education, and that discrimination on the basis of sex is prohibited. The Balochistan High Court directed the Executive Engineer and any other officer of the Government of Balochistan who is executing the project, to ensure the construction of a boundary wall around the parameters of the College land and directed the police to provide necessary assistance.

3. Petition Regarding Miserable Condition of the Schools

2013 S C M R 764
Const. Petition 37 of 2012
Petition Regarding Miserable Condition of the Schools
Supreme Court
Date of hearing and decision: 11 February 2013

Per the petition, the condition of schools in all Provinces was poor for several reasons, including the illegal occupation of school buildings by police or other government departments, school staffs being paid salaries despite providing no services, and the existence of ghost schools. There was a lack of progress on fulfilling requirements under Article 25-A.

The Supreme Court directed Provincial Governments through Chief Secretaries or Secretary Education(s) to implement order of the court in letter and spirit. The Court ordered carrying out of surveys of schools to determine how many are fully functioning, the number of ghost schools, the allocation of educational funds, the ratio of students studying in those areas, reasons for encroachments of school buildings, and in case of litigation between education department(s) and private person(s), why those cases were not being expedited by the Courts.

4. Const. Petition 37 of 2012

2014 S C M R 396
Const. Petition 37 of 2012
Supreme Court
Decided on 22 November 2013

The District and Sessions Judges and District Education Officers conducted surveys and submitted reports to the Supreme Court (following Court order of Feb, 2013 - 2013 S C M R 764) regarding the condition and functioning of schools in their respective districts.

Their findings included: untrained teachers, under-staffed/over-staffed schools, teacher absenteeism, recruitment and posting of teachers on political and monetary basis, illegal occupation/encroachment on school properties, lack of basic amenities, existence of ghost schools, and financial mismanagement and lack of audit in the Education Departments.

The Supreme Court directed that Accreditation Boards be established in all provinces and ICT to improve miserable conditions of institutions, ordered the removal of ghost schools with penal action taken against persons shirking their duties, and ordered the implementation of recommendations to make improvement of schools visible.

Provincial Governments were directed to enforce Fundamental Rights enshrined in Articles 9 and 25A. Provincial Governments and ICT were directed to enhance budgetary allocations for improvement of the education system and to provide a mechanism to ensure presence of students at primary, middle and high school levels. Provincial Governments were directed to ensure recovery of possession of school buildings illegally occupied by influential persons. In case of pending litigation, registrars of High Courts were directed to ensure expeditious disposal of cases.

5. Dr. Muhammad Aslam Khaki vs. S.S.P (Operations) Rawalpindi

P L D 2013 Supreme Court 188
Const. Petition 43 of 2009
Dr. Muhammad Aslam Khaki vs. S.S.P (Operations) Rawalpindi
Date of hearing and decision: 25 September 2012

The petition sought the restoration of fundamental rights of transgender persons, which includes the right to get education under Article 25(A) for all genders (including transgender persons). Supreme Court Chief Justice Iftikhar Chaudhry directed all relevant authorities to ensure equal treatment of transgender persons under the Constitution of Pakistan, and to ensure their participation in all walks of life, including in equal access to education.

6. Regarding grant of increment and increase in salaries of teachers in District Public School Sargodha

2013 S C MR 54
Human Rights Case 19360-P of 2012
Regarding grant of increment and increase in salaries of teachers in District Public School
Sargodha
Supreme Court
Date of hearing and decision: 3 October 2012

The Supreme Court observed that Federal and Provincial Governments were required to ensure implementation of Article 25(A). The Chairman of the Board of Governors of the school in question submitted that in compliance with Supreme Court directions: 1) the salaries of school staff increased by more than 100%, 2) the Provincial Government granted Rs. 15 million as grant-in-aid for infrastructure development of the school, and 3) other administrative problems of the school were addressed.

7. Syed Nazeer Agha vs Government of Balochistan

P L D 2014 Balochistan 86
Const. Petitions 194 and 216 of 2013
Syed Nazeer Agha vs Government of Balochistan
Balochistan High Court
Date of hearing: 12 September 2013. Decided 23 October 2013

Per the petition, the Provincial Government was not providing books to students of government schools. Per Article 25 A, the State must ensure all children go to school. Merely constructing a school and providing free textbooks would not be enough to get children to school, creation of right environment was needed.

The Balochistan High Court directed the Provincial Government to carry out physical audits of schools, prevent the encroachment and illegal transfer of school properties, ensure the disclosure of teachers employed at each school, inform the Board about the number of books and subjects required for the next academic year well in advance, ensure that principals or teachers of each school maintain

attendance records, devise a comprehensive format for inspection of schools, and to ensure that school buildings are designed and constructed in accordance with the prevailing physical environment, look welcoming, are environmentally friendly and do not require frequent maintenance.

8. Sidra Yasin vs Mrs. Ishrat Ishaq and others

P L D 2014 Lahore 408
Writ Petition 23186 of 2013
Sidra Yasin vs Mrs. Ishrat Ishaq and others
Lahore High Court
Date of hearing and decision: 4 November 2013

For admission to a Lady Health Visitor course, the petitioner was asked to submit a bond that after successful completion of the course, she would serve the government health department for 2 years. After completion of the course and a lapse of 7 months, she was not offered a job due to a lack of vacancies. The Petitioner was refused a No Objection Certificate (NOC) to get admission for further studies on the grounds that she was required to serve the health department. This violated her fundamental right to education (25A), profession, lawful trade or business.

Lahore High Court directed the department to issue NOC to the petitioner for getting admission in nursing school for further studies.

9. Maher Gul vs Government of Balochistan Education Department

2014 C L C 1810
Const. Petition 440 of 2011
Maher Gul vs Government of Balochistan Education Department
Balochistan High Court
Date of hearing and decision: 7 July 2014

Under Article 25A, children have a right to free and compulsory education in Balochistan. Per the petition, a number of issues were prevalent in the province including the presence of Ghost Schools, contracts for repair/renovation of schools being awarded without publication, and collusion of education dept officials. Inaction on these issues demonstrated the Government's lack of desire to stem pilferage and fraud. Therefore, a substantial number of children in the province were being deprived of their Fundamental Right to free and compulsory education.

The Balochistan High Court directed that each school be photographed and its GPS coordinates determined, the particulars of all schools in the revenue record be recorded by the Provincial Government, the names of all teachers at all schools be inscribed at a conspicuous place in the school, disciplinary action be taken in case the District Education Officer or revenue officer did not fulfill their required duties, a website be launched containing the aforementioned information, and that the Provincial Government provide requisite resources for the storage and display of such data.

10. Muhammad Nadeem Nasir vs Chairman Board of Intermediate and Secondary Education, Lahore

2014 M L D 353
Writ Petition 19664 of 2013
Muhammad Nadeem Nasir vs Chairman Board of Intermediate and Secondary Education,
Lahore
Lahore High Court
Decided on 20 September 2013

The Petitioner was a student of F.Sc. that appeared in the Intermediate examination and was issued a date sheet for the practical examination. Due to illness, the petitioner failed to appear in the practical examination; despite submitting a medical certificate, he was denied permission to appear in the second batch. The right to education and to appear in examinations under the rules and regulations was a fundamental right of the student (Article 25A).

The Lahore High Court ruled in favour of the petitioner and directed Board authorities to administer his practical examination.

11. Akhtar Hussain Langove vs IGP, Balochistan

2015 Y L R 58
Const. Petitions 242 and 250 of 2014
Akhtar Hussain Langove vs IGP, Balochistan
Balochistan High Court
Decided on 18 August 2014

Per the petition, the Lands of Sports Complex were not being utilized to realize their full potential. They were being encroached upon and misused. The Sports Complex is meant to provide access to sport facilities, and training to sportsmen and sportswomen to enable them to compete. The Right to Education (25A) is not limited to academic knowledge. It includes the provision of sports facilities, and therefore the Government is bound to provide students with sporting facilities.

Balochistan High Court issued directions to ensure that Sports Complex is efficiently run and properly used.

12. Zubair Ahmed Khaskheli vs Federation of Pakistan

P L D 2015 Sindh 118
Const. Petition 3210 Of 2011
Zubair Ahmed Khaskheli vs Federation of Pakistan
Sindh High Court
Date of hearing: 12 November 2013

The petition sought the inclusion of Fundamental Rights in school syllabi so that children would have awareness of the same. Articles 25A, 37(a)(b)(c), 38, when read in conjunction, promote social and economic well-being of the people. If the future generation were grown with knowledge of their Fundamental Rights, it would remove illiteracy, raise awareness and improve basic quality of life. Pakistan is a signatory to the Universal Declaration on Bioethics and Human Rights, which makes it obligatory upon ratifying States to disseminate information as to the human rights of its citizens.

The Sindh High Court directed the Sindh provincial Government to introduce fundamental rights/human rights as a compulsory subject in higher secondary education from academic year 2015 and onwards.

13. Muhammad Iqbal vs Government of Punjab

2015 P L C (C.S.) 1503
Writ Petition 15320 of 2014
Muhammad Iqbal vs Government of Punjab
Lahore High Court
Decided on 19 March 2015

Per Article 25A, the State is bound to provide free and compulsory education to all children from age 5 to 16. The Punjab Government School Education Department directed action against heads of school whose 9th Class Secondary School Certificate Examination 2013 results were below 25% to maintain the standard of education and remove illiteracy, in the spirit of Article 25A. The petitioner sought to challenge the show cause notice and have it squashed by the Court.

Lahore High Court declined to entertain the petition, as it would amount to a stifling of disciplinary proceedings.

14. Awais Iqbal vs VC, Baha-ud-din Zakriya University, Multan

2015 Y L R 1262
Writ Petition 6634 of 2013
Awais Iqbal vs VC, Baha-ud-din Zakriya University, Multan
Lahore High Court
Decided on 24 April, 2014

The petitioners were students who had been rusticated, fined and barred from getting admission in the University by the Disciplinary Committee. A period of more than a year had elapsed, no complaints had been noticed about the petitioners, and they had mended their behavior.

The High Court declined to interfere in the disciplinary matter of the University, stating that the Office of the VC was able to exercise power to maintain discipline. The punishment was for reforming irresponsible attitude, not to destroy the education career of the students (their right under 25A). The petitioners expressed repentance and gave an undertaking to not indulge in wrong activities in future, therefore their punishment was set aside.

15. Amanullah vs Federation of Pakistan

2015 P L C (C.S.) 1026
Writ Petitions 20304 & 28577 of 2013
Amanullah vs Federation of Pakistan
Lahore High Court
Decided on 13 January 2015

Per the petition, Feeder Teachers contributed to providing the fundamental right of compulsory education to all children between ages 5 and 16 (Article 25A). There was a responsibility to safeguard constitutional guarantees to minor citizens of the country. Services of Feeder Teachers were being dispensed with without the backing of a decision of the competent authority.

Lahore High Court set the impugned orders aside and ordered that the petitioners be restored to their jobs of Feeder Teachers.

16. Fakheryar Khan vs Agriculture University, Peshawar

P L D 2016 Peshawar 266
Writ Petition 1085-P of 2015
Fakheryar Khan vs Agriculture University, Peshawar
Peshawar High Court
Date of hearing and decision: 1 December 2015

The petitioner was granted provisional admission to the respondent University. Admission was rescinded when the petitioner placed on record his date of birth, which per the prospectus did not entitle him for admission as he was over the age of 25. Article 25A provides the right to free and compulsory education to children between ages 5 and 16.

Peshawar High Court found that on the basis of principles of “reasonability”, setting an age threshold was the right of the University. The Court exercised judicial restraint based on precedent, did not provide relief to the petitioner, and dismissed the petition.

17. Mujeebullah Gharsheen vs Government of Balochistan

2016 P L C (C.S.) 1267
Const. Petition 512 of 2012
Mujeebullah Gharsheen vs Government of Balochistan
Balochistan High Court
Date of hearing: 7 October 2015. Decided on 9 November 2015

Under the Balochistan Civil Servants Act, holding demonstrations, and observing strikes and/or sit-ins (dharnas) are acts of “misconduct” (except in the case of workmen). The petitioners had been charged with a misconduct claim and sought relief from Balochistan High Court.

Among its various findings, the Court found that strikes in educational institutions were an infringement of the rights of citizens under Article 25-A. The petition was disposed of.

18. City School Private Limited vs Government of the Punjab

P L D 2018 Lahore 509
Writ Petition 29724 of 2015
City School Private Limited vs Government of the Punjab
Lahore High Court
Date of final hearing: 15 March 2018. Decided on 5 April 2018

The petitioner questioned whether the Government could regulate the fee structure of unaided private schools, and whether it could lay down a specific cap on increase in fees for any academic year. Arguments on both sides included the following: 1) The State has a responsibility to see that private educational institutions set up with Government permission were not involved in profiteering, capitation or exploitation of parents. 2) Private institutions being businesses were covered under the definition of “trade” and could thus be regulated by a licensing system. 3) The fee structure could be regulated under Article 18; however, any restrictions/regulations must be reasonable and should not impinge on the fundamental rights of the institutions.

Lahore Court found that private schools could fix the fees and charges payable by students, as long as the increase in fees was not exploitive and did not ravel into the arena of commercialization. The High Court directed that the Provincial Government notify The Punjab Free and Compulsory Act (2014) to ensure enforcement of the Fundamental Right of Education under Article 25A, and that the Government frame a uniform regulatory regime through rules to determine the increase claimed by schools in fees by considering certain factors.

19. Rahimuddin vs Sabahuddin

2016 M L D 20
Writ Petition 3441 of 2014
Rahimuddin vs Sabahuddin
Peshawar High Court
Date of hearing and decision: 27 March 2015

The petitioners were B.Sc. Forestry students on a self-finance basis in the Pakistan Forest Institute, University of Peshawar. They claimed the right to admissions in M.Sc. Forestry classes on the basis of Article 25A. The competent authority had abolished self-finance admission in M.Sc. and B.Sc. Forestry classes from the 2014-2015 session in the public interest.

Per the judgment, the new policy framed by the institute, as well as the Environmental Department of the Khyber Pakhtunkhwa Provincial Government, could not be struck down by the Peshawar High Court. The petitioners could not claim their admissions in the MSc Forestry classes as of right. The petition was dismissed.

20. Fiaqat Hussain vs Federation of Pakistan

P L D 2012 Supreme Court 224
Const. Petitions 50 and 69 of 2011
Fiaqat Hussain vs Federation of Pakistan
Date of hearing: 21 October 2011. Decided on 25 November 2011

Informal education is the general term for education outside of a standard school setup. There are various forms of alternative education, such as non-schooling or home schooling. Non-formal Basic Education Centres and Schools were part of a plan to increase literacy level in the country.

The Supreme Court found that the proposed action on the part of the respondents of closing down

“Establishment and Operation of Basic Education Community Schools” is without lawful authority, of no legal effect and in violation of Article 25-A. The judgment also stated that the proposed act of winding up of the National Commission of Human Resources is unconstitutional and of no legal effect and the Commission is allowed to continue to perform the positive duty of providing basic human rights to the citizens of Pakistan

21. Muhammad Kowkab Iqbal vs Government of Pakistan

P L D 2015 Supreme Court 1210
Const. Petition 56 of 2003 and 112 of 2012
Muhammad Kowkab Iqbal vs Government of Pakistan
Date of hearing: 26 August 2015. Decided on: 8 September 2015

The petitioner sought implementation of Article 251 regarding adoption, promotion and use of the national language, Urdu, as the official language of the country. It was argued that Article 251 was not a standalone provision but linked to the realization of various Fundamental Rights protected by the Constitution, including the right to education (25A).

The judgment found that the right to education has a direct link with language. Empirical studies throughout the world (including those by UNESCO) advocate the use of a child’s native language in instruction. The court ordered that the Federal and Provincial Governments implement provisions of Article 251 with full force and without unnecessary delay.

We now highlight the role of other important public offices that have participated in the judicial activism of ensuring the Right to Education.