

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI  
[CONSTITUTIONAL JURISDICTION]

Constitution Petition No.4044 of 2011

1. Pakistan Institute of Labour  
Education & Research,  
a company incorporated under  
the Voluntary Social Welfare Agencies.  
(Registration & Control) Ordinance, 1961,  
registered office at PILER Centre,  
ST-001, Sector X, Sub-Sector V,  
Gulshan-e-Maymar,  
Karachi-75340
2. Aurat Publication & Information Service  
Foundation, a non-profit Society registered  
under the Societies Registration Act XXI of 1860,  
having its registered office at  
F-56/1/I, Block-7, K.D.A. Scheme No.5,  
Clifton, Karachi ✓
3. Pakistan Fisher Folk Forum,  
a Society registered under the  
Societies Registration Act XXI of 1860,  
having its Head Office at Sachal Hall,  
Ibrahim Hyderi, Bin Qasim Town,  
Karachi
4. South Asia Partnership Pakistan,  
a Society registered under the  
Societies Registration Act XXI of 1860,  
having its office at Haseeb Memorial  
Trust Building, Nasirabad, 2 k.m.  
Raiwind Road, P.O. Thokar Niaz Beg,  
Lahore 53700-Pakistan ✓
5. The Institute of Social Movements Pakistan,  
a Society registered under the  
Societies Registration Act XXI of 1860,  
having its offices at B 9, Naseem Nigar,  
Phase-IV, Qasimabad,  
Hyderabad-71000, Sindh ✓
6. Bonded Labour Liberation Front Pakistan,  
a Welfare Agency registered under the  
Voluntary Social Welfare Agencies  
(Registration and Control) Ordinance, 1961  
Having its office at Freedom Campus,  
4-A, Lawrence Road, Lahore,  
Pakistan

7. Bright Educational Society,  
a Society registered under the  
Societies, Registration Act, XXI of 1860,  
Having its office at ST.1114/1115,  
Qasba Islamia Colony No.01, U.C-9,  
SITE Town, Karachi ✓
8. National Trade Union Federation Pakistan (REGD)  
a Trade Union registered under  
the Labour Laws of Pakistan  
having its office at 628 Mushriq Centre,  
Gulshan-e-Iqbal, Block No.14,  
National Stadium Road,  
Karachi
9. Karamat Ali  
Son of Amanat Ali,  
Muslim, Adult,  
Resident/office at Piler Centre: ST-001,  
Sector X, Sub-Sector V, Gulshan-e-Maymar,  
Karachi-75340
10. Network for Women's Rights,  
A non-profit Society registered  
under the Societies Registration Act, XXI of 1860,  
having its offices at Flat No.12, 1<sup>st</sup> Floor,  
Al-Mubashir Apartment, SD36, Block-13-C,  
Gulshan-e-Iqbal, Karachi ✓
11. Idara-e-Taleem-o-Aagahi,  
a Public Trust registered under  
the Societies Registration Act, XXI of 1860,  
having its offices at 1<sup>st</sup> Floor, E22 Commercial  
Lane # 5, D.H.A. Phase V,  
Zamzama, Karachi.....Petitioners ✓

Versus

Province of Sindh,  
through the Secretary for Education,  
Ministry for Education,  
Government of Sindh,  
Sindh Secretariat,  
Karachi.....Respondent

CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

Advocate for the Petitioners

Karachi

Dated: May 25<sup>th</sup>, 2012

Education

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI  
[CONSTITUTIONAL JURISDICTION]

Constitution Petition No. 4096 of 2011

1. Pakistan Institute of Labour Education & Research, a company registered under the Voluntary Social Welfare Agencies, (Registration & Control) Ordinance, 1961, registered office at PILER Centre, ST-001, Sector X, Sub-Sector V, Gulshan-e-Maymar, Karachi-75340 ✓
2. Aurat Publication & Information Service Foundation, a non-profit Society registered under the Societies Registration Act XXI of 1860, having its registered office at F-56/1/I, Block-7, K.D.A. Scheme No.5, Clifton, Karachi
3. Pakistan Fisher Folk Forum, a Society registered under the Societies Registration Act XXI of 1860, having its Head Office at Sachal Hall, Ibrahim Hyderi, Bin Qasim Town, Karachi ✓
4. South Asia Partnership Pakistan, a Society registered under the Societies Registration Act XXI of 1860, having its office at Haseeb Memorial Trust Building, Nasirabad, 2 k.m. Raiwind Road, P.O. Thokar Niaz Beg, Lahore 53700-Pakistan
5. The Institute of Social Movements Pakistan, a Society registered under the Societies Registration Act XXI of 1860, having its offices at B 9, Naseem Nigar, Phase-IV, Qasimabad, Hyderabad-71000, Sindh ✓
6. Bonded Labour Liberation Front Pakistan, a Welfare Agency registered under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 having its office at Freedom Campus, 4-A, Lawrence Road, Lahore, Pakistan ✓
7. Bright Educational Society, a Society registered under the Societies Registration Act, XXI of 1860, having its office at ST. 1114/1115, Qasba Islamia Colony No. 01, U.C-9, SITE Town, Karachi

8. National Trade Union Federation Pakistan (REGD) ✓  
a Trade Union registered under  
the Labour Laws of Pakistan  
having its office at 628 Mushriq Centre,  
Gulshan-e-Iqbal, Block No.14,  
National Stadium Road,  
Karachi

9. Karamat Ali  
Son of Amanat Ali,  
Muslim, Adult,  
Resident/office at Piler Centre: ST-001,  
Sector X, Sub-Sector V, Gulshan-e-Maymar,  
Karachi-75340.....Petitioners

Versus

Province of Sindh,  
through the Secretary for Education,  
Ministry for Education,  
Government of Sindh,  
Sindh Secretariat,  
Karachi.....Respondent

**CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

It is most respectfully and most humbly submitted on behalf of the abovenamed  
Petitioners as under:

1. That the Petitioners through this petition seek the enforcement of the fundamental  
Right to Compulsory Education, for all children of the age of five to sixteen years,  
as guaranteed under Article 25-A of the Constitution of Pakistan, 1973. It is  
submitted that for this purpose, the Petitioners submit the following necessary  
facts and grounds.
2. That the Petitioners No.1 to No.8 are organizations and/or Societies which  
undertake dedicated efforts towards the amelioration of various socio-economic  
and political problems prevalent in Pakistan on a voluntary basis. The Petitioners  
No.1 to No.8 also desire, and are working for, the transformation of Pakistan into  
a modern educated country for which primary education and secondary education  
is the key factor.

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*A copy of the various authorizations of the Petitioners No.1 to No.8 authorizing the institution of this present petition are annexed and marked as Annex 'A' to 'A-15' respectively.*

3. That the Petitioner No.9 is a prominent and highly esteemed individual who has undertaken dedicated efforts towards the amelioration of various socio-economic and political problems prevalent in Pakistan on a voluntary basis. The Petitioner No.9 also desires, and is working for, the transformation of Pakistan into a modern educated country for which primary education and secondary education is the key factor.
4. That the provision of free and compulsory education at the primary and secondary level is a dire need in Pakistan. One of every ten children not in school in the world lives in Pakistan. According to the UNESCO Institute of Statistics in EdStats, 2011, Pakistan Public Expenditure on education is only 2.7% of the total gross domestic product and the total dropout rate of the primary education is at least 39.8%. According to the said data, the number of out of school male children at the primary level is 3,108,413 while the number of female out of school children at the primary level is 4,191,384. The International Development Association established by the World Bank has observed the following in relation to Sindh, Pakistan:

*"Access, equity, and quality in primary and secondary education remain a challenge in Sindh. An estimated 11 million children, ages 5 to 14, were still out of school in 2007. Only 53 percent of individuals, ages 17 to 21, have completed secondary schooling. Assessment data shows that average learning levels in key subjects such as mathematics and language are significantly below official curriculum standards. These shortfalls are greater for girls, rural children, and, in particular, poor children."*

*Copies of the International Development Association, World Bank's data on education in Sindh, Pakistan, and recent newspaper articles on the state of education in Pakistan published in the Express Tribune dated: 18<sup>th</sup> April, 2011, and The Guardian, UK dated: 6<sup>th</sup> April, 2011, are annexed and marked as Annex 'B' to 'B-2' respectively.*

5. That according to the Pakistan Living Standard Measurement Survey, 2007-2008, the literacy rate [age 10 plus] for Pakistan is 56%, of which in Sindh it is 56% and in Rural Sindh, it is 44%. It is submitted that according to the aforementioned Survey, the primary enrolment in private school is 35% in Pakistan, of which in Sindh, it is 27% and in Rural Sindh, it is 5%.

*A copy of the relevant pages of the abovementioned Pakistan Living Standards Measurement Survey is annexed and marked as Annex 'C'.*

6. That in light of the abovementioned abysmal and continuing declining rate of literacy in Pakistan, the immediacy of action is required on the part of the Respondent Provincial Government. It is submitted that the right to education is a right enshrined under Article 9, of the Constitution, 1973, because a right to life includes a right to a decent education. It is further submitted that one of the principles of policies for governance of the State of Pakistan as enshrined under Article 37(b), of the Constitution, 1973, is to remove illiteracy and provide free and compulsory secondary education within a minimum possible period. Therefore, it is obvious and apparent from the aforementioned that the Government of Pakistan, including the Respondent Provincial Government, has failed in its duties and obligations under the Constitution, 1973.

7. That after the passage of the 18<sup>th</sup> Amendment Act, 2010, two fundamental changes have happened. Firstly, the responsibility for education has devolved to the Respondent Provincial Government. Secondly, in addition to Articles 9 and Article 37, of the Constitution, 1973, Article 25-A grants a fundamental right to free education to all Pakistani Children of the age of five to sixteen years and imposes a fundamental right constitutional obligation on the Respondent Provincial Government to provide free and compulsory education to all children of the age of five to sixteen.

8. That to the shock and surprise of the Petitioners, the Respondent Provincial Government has enacted no legislation and taken no executive actions, or taken

any steps at all, to implement the abovementioned fundamental right constitutional obligation of Article 25-A, of the Constitution, 1973. It is submitted that the Respondent Provincial Government has completely failed in their constitutional obligation to provide free and compulsory education to the children of Sindh between the ages of five to sixteen.

9. That it is most respectfully and most humbly submitted that being aggrieved by the abovementioned actions and inactions of the Respondent as being unconstitutional and illegal, the Petitioners have no alternative or efficacious remedy except to invoke the Constitutional jurisdiction of this Court on the, inter alia, facts and grounds stated herein.

#### GROUNDS

- A. That the right to education is a constitutional right recognized under Article 9, of the Constitution, 1973. This right to education is also recognized under Article 37(b), of the Principles of Policies as enumerated in the Constitution, 1973. It is submitted that after the enactment of the 18<sup>th</sup> Amendment Act, 2010, the right to education is now recognized as a fundamental right of all children between the ages of five to sixteen years. It is further submitted that after the enactment of the 18<sup>th</sup> Amendment Act, 2010, the right to education is now a fundamental right constitutional obligation on the Respondent. Therefore, it is obvious and apparent that the failure of the Respondent to provide free and compulsory education to all children in Sindh of the age of five to sixteen years is unconstitutional and a fundamental failure of the Respondent.
- B. That Article 25-A, of the Constitution, 1973, grants the fundamental right to every child in Sindh of the ages of five to sixteen years to demand the right to free

education from the Respondent. It is submitted that it is a fundamental right, and not a discretionary right, which the government can refuse to provide. Therefore, it is obvious and apparent that the failure of the Respondent to provide free and compulsory education to all children in Sindh of the age of five to sixteen years is unconstitutional and a fundamental failure of the Respondent.

- C. That under Article 25-A, of the Constitution, 1973, the right to education is to free education and this is a right which applies to all children in Sindh of the age of five to sixteen years. It is submitted that since this right is a right to free education which applies to all children of Sindh of the age of five to sixteen years, it imposes a constitutional obligation on the Respondent to take legislative, financial and administrative measures, for the implementation of the right to free education for all children of the ages of five to sixteen years in Sindh. Therefore, it is obvious and apparent that the failure of the Respondent to provide free and compulsory education to all children in Sindh of the age of five to sixteen years is unconstitutional and a fundamental failure of the Respondent.
- D. That Article 25-A, of the Constitution, 1973, imposes an obligation on the state not only to provide free education to any child who demands it but it imposes a fundamental right constitutional obligation to provide free and compulsory education. It means that the Respondent is under a fundamental right constitutional compulsory obligation to take pro-active measures and to make structural changes through legislative, financial and administrative measures, in order to ensure that every child in Sindh of the age of five to sixteen years compulsorily has free education. Therefore, it is obvious and apparent that the failure of the Respondent to provide free and compulsory education to all children in Sindh of the age of five to sixteen years is unconstitutional and a fundamental failure of the Respondent.
- E. That it is obvious and apparent that the Respondent has failed to perform its fundamental right constitutional obligation to provide free and compulsory



education to all children in Sindh of the ages of five to sixteen years. Therefore, it is imperative to establish a commission, composed of well reputed members of civil society and government officials, to monitor the implementation of the constitutional obligation of the Respondent under Article 25-A, of the Constitution, 1973.

F. That it is obvious and apparent that the Respondent has failed to perform its fundamental right constitutional obligation to provide free and compulsory education to all children in Sindh of the ages of five to sixteen years. Therefore, it is imperative to direct the Respondent to publish a detail program of measures to be taken by them to implement their constitutional obligation under 25-A, of the Constitution, 1973.

G. That Article 25-A, of the Constitution, 1973, confers a fundamental right on all children of Sindh of the ages of five to sixteen years to free education. It is submitted that the charging of exorbitant fees by private school from the children of Sindh of the ages of five to sixteen years is a violation of the fundamental right of the children of Sindh. Therefore, the government is under a constitutional obligation to check and monitor the charging of exorbitant fees by private schools from the children of Sindh of the ages of five to sixteen years.

H. That it is most respectfully and most humbly submitted that the Petitioner seeks the indulgence of this Honourable Court to raise further grounds at the time of the hearing of this Petition.

#### PRAYER

It is, therefore, most respectfully and most humbly prayed that this Honourable Court may graciously pass judgment and orders in the following terms:

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- (a) Declare that the Respondent ['Government of Sindh'] is under a constitutional obligation to provide free and compulsory mandatory education to all children in Sindh of the age of five to sixteen years;
- (b) Direct the Respondent ['Government of Sindh'] to provide free and compulsory mandatory education to all children in Sindh of the age of five to sixteen years within a time period fixed by this Honourable Court;
- (c) Direct the Respondent ['Government of Sindh'] to establish a commission, composed of well reputed members of civil society and government officials, to monitor the implementation of the constitutional obligation of the Respondent ['Government of Sindh'] to provide free and compulsory mandatory education to all children in Sindh of the age of five to sixteen years;
- (d) Direct the Respondent ['Government of Sindh'] to publish a detailed program of measures to be taken by them to implement the constitutional obligation of the Respondent ['Government of Sindh'] to provide free and compulsory mandatory education to all children in Sindh of the age of five to sixteen years;
- (e) Direct the Respondent ['Government of Sindh'] to check and monitor the charging of exorbitant fees by private schools from the children of Sindh of the age of five to sixteen years;
- (f) Grant such further, additional or alternative relief, as this Honourable Court may deem fit and proper;

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PETITIONER NO.2

PETITIONER NO.3

PETITIONER NO.4

PETITIONER NO.5

PETITIONER NO.6

PETITIONER NO.7

PETITIONER NO.8

PETITIONER NO.9

ADVOCATE FOR THE PETITIONERS

Karachi

Dated: December \_\_\_\_, 2011

DOCUMENTS FILED:

As shown in the petition

DOCUMENTS RELIED UPON:

The abovementioned documents e.t.c.

ADDRESS OF PETITIONER:

As per in title of the petition

ADDRESS OF PETITIONER COUNSEL:

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Advocate  
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Karachi.

DRAWN BY ME

ADVOCATE