

**EUROPEAN MASTERS DEGREE ON HUMAN RIGHTS AND  
DEMOCRATISATION**

## **The right to education**

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**For marginalized and ostracized group of persons**

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**Åbo Akademi University – Academic year 2012-2013**

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AND DEMOCRATISATION**

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#### **Abstract**

A huge corpus of human rights law has evolved since 1948 at both international and national levels, which recognizes the rights of every individual without discrimination of any kind based on race, color, descent, sex, language, religion, and national or ethnic origin. Human rights are regarded as worth of respect and protection but there are plenty of gaps in translating internationally recognized human rights into entitlement for people in countries' national legislation. Although worries about such gaps have been expressed by the U.N., still less substantial efforts have been made by national governments. This paper focuses attention on Caste System, which is highly prevalent among the Osu of Nigeria and the Dalit of India. It provides examples of violations against marginalized persons of both the countries and relevance of economic, social and cultural rights for them. It also looks at the efforts made by governments to fulfill their commitment and examines their enforcement policies for the implementation of the right to education for the marginalized persons. Finally, it discusses various recommendations made by human rights organizations and scholars for realizing the right to education for marginalized persons universally.

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## **Abbreviations**

ACHPR	African Charter on Human and Peoples Rights
ACHR	African Convention on Human Rights
AU	African Union
CDE	Convention against Discrimination in Education
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CESR	Centre for Economic and Social Rights
CRC	Convention on the Rights of the Child
EFA	Education For All
IDF	Integrated Development Foundation
ECHR	European Convention on Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IMF	International Monetary Found
MMS	Mid-Day Meal Scheme
NGO	Non-governmental Organization
UN	United Nations
WB	World Bank

## **1. INTRODUCTION**

### **1.1 The importance of education**

There is an old saying in Indian mythology that “knowledge gives discipline, from discipline comes worthiness, from worthiness one gets wealth, from wealth one does good deeds, from that comes joy”.<sup>1</sup> Education is an indispensable condition to free individual development and makes man fit for the tasks of citizenship. In the words of Gomez Del Prado, education and culture are so interlinked that it is hard to separate the right to one from the right to other. Education is necessary in order to have access to the cultural models, history and to participate in the cultural life of that society and to recognize the benefits of scientific progress. Manfred Nowak has said that education is the most prominent cultural right and it is the only right that falls under all three generations of rights.<sup>2</sup> C. Raj Kumar has pointed out that education is the most important value by which human beings connect and interact with society, and with the help of it the human mind develops. There is no freedom without choice, and there is no choice without knowledge.<sup>3</sup> In any contemporary society, there should be freedom and liberty to acquire knowledge and education since it leads to human development. In the opinion of Amartya Sen, development helps in removing various unfreedoms like lack of political participation, economic crunch or social exclusion that leave people with very little choice and opportunity for their survival.<sup>4</sup>

Seemingly, illiteracy is one of the unfreedoms or barriers that have affected millions of people of the developing world. Here to quote Nelson Mandela is pertinent since he has seen the regime of Apartheid and experienced that in absence of education, life can be different and tough. He has said

“Education is the great engine of personal development. It is through education that the daughter of a peasant can become a doctor, that a son of a mineworker can become the head of the mine that a child of farm workers can become the

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<sup>1</sup> Scribd, <http://www.scribd.com/doc/100380167/Sanskrit-Shlokas>, accessed on 04/05/2013.

<sup>2</sup> Beiter, 2005, p. 41.

<sup>3</sup> Kumar, 2004, p. 239.

<sup>4</sup> Sen, 1999, p.xii.

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president of a great nation. It is what we make out of what we have, not what we are given, that separates one person from another.”<sup>5</sup>

The right to education is a precondition for the exercise of human rights. To promote social progress and better standards of life for larger freedom, the realisation of the right to education is necessary and it requires action, oversight and commitment. It is like a gateway from poverty to prosperity, from exclusion to inclusion and from exploitation to emancipation.<sup>6</sup> It is an empowerment tool by which “economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities”.<sup>7</sup>

Worldwide, 260 million persons are cursed by caste-based discrimination and have been ostracized from the mainstream of the society.<sup>8</sup> The major chunk of these groups of persons stay in South Asian countries but it has stretched from Japan to Africa.<sup>9</sup> These persons are called with different names in different countries; Japanese call them Burakhu, Nigerians call them Osu, and the infamous word Dalit symbolizes India. These persons are considered untouchables, impure and a lamb for sacrifice.

Although untouchability has been prohibited in India’s Constitution, it is hard to get rid of it from the rural society. Dalits lives are completely segregated from mainstream and most of them continue to live in extreme poverty, without land or opportunities for better employment or education. Dalits’ are relegated to the most menial of tasks, as manual scavengers, removers of human waste and dead animals, leather workers, street sweepers, and cobblers.<sup>10</sup>

Dalit children make up the majority of those sold into bondage to pay off debts to upper-caste creditors.<sup>11</sup> The reflection of discrimination can be seen in primary

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<sup>5</sup> Nelson Mandela quoted in a, Beiter, 2005, p.1.

<sup>6</sup> Smith & Anker, 2005, p. 105.

<sup>7</sup> Artis, Doobay and Lyons, 2003, p. 8.

<sup>8</sup>International Dalit Solidarity Network, <http://idsn.org/caste-discrimination/caste-exists-where/>, accessed on 03/28/2013.

<sup>9</sup>Ibidim.

<sup>10</sup> National Campaign on Dalit Human Rights, <http://ncdhr.org.in/dalit-rights-situation>, accessed on 07/11/2013.

<sup>11</sup> Dalit Christians, <http://www.dalitchristians.com/Html/condition.htm>, accessed on 07/11/2013.

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education enrolment and the attendance of poor children. The UNICEF report about India of 2005, says that the access of 8 years of schooling for Dalits is very low and dropout rate is 62.9 % compare to the national average of 48.8 % leaving school before completing Grade 8.<sup>12</sup> In 1993 only 16.2 % of primary school age Dalit children were enrolled in school as compared to 83.8 % of primary school age children from non-scheduled castes.<sup>13</sup> The story is similar in other parts of the world, too, wherever the treatment of a marginalized persons similar and even more degrading. The Osu of Nigeria are buried in a different cemetery after the death, which is the height of cruel discrimination that even chases after demise.<sup>14</sup>

In the second half of the twentieth century we see that right to education has been endorsed in the Universal Declaration of Human Rights (1948), the European Convention on Human Rights and Fundamental Freedoms (1953), the International Covenant on Economic, Social, Cultural Rights (1966) and the Convention on the Rights of the Child (1989). In addition to all these conventions for the realisation of the right to education more universally, the Committee on Elimination of Racial Discrimination also helps in achieving the goal of the right to education without any discrimination based on race, religion or caste. Taking into account that the right to education has been recognized as a human right by international agreements and by national constitutions, it is believed that this right will help to uplift the status of marginalized persons.

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<sup>12</sup> United Nations International Children Fund, UNICEF/India/EDU/196.htm, accessed on 03/28/2013.

<sup>13</sup> Kethineni & Humiston, 2010, p. 104.

<sup>14</sup> Dike, 2002, p.14.



#### 1.2 The aim of this research

The practice of “untouchability” is like an imposition of social disabilities on persons by reason of their birth in a certain caste. It discriminates against more than one-sixth of India’s and Nigeria’s population. Dalits are denied access to land, routinely abused at the hands of the police and of higher-caste groups and denied education in public schools. It can be called “hidden apartheid”, where entire villages in many states remain completely segregated by caste.<sup>15</sup> In focusing on caste discrimination in India and Nigeria, this thesis does not explore the other pervasive practices of discrimination in these two countries, including those that target religious minorities. Although the caste-based discrimination has been outlawed in both countries, their *de jure* prohibition does not reflect in the society. Justice Anand, the Chairman of the Indian national Human Rights Commission has rightly highlighted the pain of the Dalits:

“Despite elaborate provisions in the constitution and other laws, it is an unfortunate reality that social injustice and exploitation of Scheduled Castes and Scheduled Tribes and other weaker sections persist. There are reports in the press about atrocities against persons belonging to these groups and the frequency with which they occur is a cause for disquiet. The humiliation which persons belonging to the Scheduled Castes in general and the Dalits in particular suffer even today is a matter of shame.”<sup>16</sup>

This discrimination defies the sole motto of the Universal Declaration of Human Rights where in the preamble it speaks about inherent dignity and of equal and inalienable rights at the same time the right not to be discriminated against in the enjoyment of educational rights may be held to be part of customary international law. Article 28 (1) of the Convention on the Rights of the Child (1989) says that the right to education should be achieved on the basis of equal opportunities. Article 4 of the Convention against Discrimination in Education (1960) obligates states to make a national policy for promoting education with equal opportunities. It is also protected in the Universal Declaration of Human Rights in article 2 and 26 and the article 13 and article 2 (2) of

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<sup>15</sup> Human Rights Watch, 2007, p.19.

<sup>16</sup> International Dalit Solidarity Network, <http://www.dalits.nl/pdf/CastAnEye.pdf>, accessed on 03/28/2013.

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International Covenant on Economic, Social and Cultural Rights.<sup>17</sup> This discrimination is practiced in such a large magnitude that it cannot be overlooked in any circumstances. An interpretation of Article 13 of the International Covenant of Economic, Social and Cultural Rights clearly says that:

“Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth.”<sup>18</sup>

The aim of education is to strengthen the human rights and to empower society so that the marginalized groups of persons can be brought back to the mainstream. This dream will remain a dream if the caste-based discrimination and untouchability is not prohibited and prevented in a *de facto* way. Because of discrimination, the right to education is not accessible for millions of persons of this globe. Although there are some interesting pieces of literature on the right to education in India and Nigeria, there has not been any rigorous empirical work on forces affecting the implementation and execution of the right to education, like the caste system. Hence it is significant to study policies and detect *lacunas* for the realisation of the right.

The International Covenant on Economic, Social and Cultural Rights has acknowledged in Article 13 that the State is the primary duty bearer for making primary education free. However there are several slips between the cup and lips for an effective implementation of the right to education. Hence with the help of the human rights based approach that makes the state clearly the duty bearer of rights, it is hoped this research

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<sup>17</sup> Beiter, 2005, p.45.

<sup>18</sup> Implementation of the International Covenant on Economic, Social and Cultural Rights Twenty-first session, <http://www.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument> accessed on 03/28/2013.

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will contribute to explore my research question: how can the right to education be more universally realized for marginalized groups of persons in India and Nigeria? How did the notion of education evolve as a right and what was the social and cultural background for this evolution?

#### **1.3 Research methodology and structure**

Although the right to education has been accepted as a human right and endorsed by the United Nations, UNESCO, ICESCR and CRC, it is still a distant dream in developing countries rather than a reality. Legal documents for my research will be used for reference to prove my argument I will be dependent on secondary data like academic literature and reports published by UN, World Bank, civil society and policy papers of the Indian and Nigerian governments. Also state reports and opinions given to the CESCR committee on education will be accounted for.

For education to be a meaningful right it must be available, accessible, acceptable and adaptable. The concept of these “4As” was developed by the former UN Special Rapporteur on the Right to Education, Katarina Tomasevski, and it is one of the best ways to assess and act upon the situation. These “4As” are to be respected, protected and fulfilled by the government as the prime duty-bearer. Hence I will study the implementation of these “4As” in India and Nigeria. Furthermore I will examine the outcome of UNESCO’s “Education for all” agenda, too.

This research has been divided into five chapters. First two chapters have been devoted to the historical development of the right to education, the third talks about relevance of economic, social and cultural rights and the inception of education as a human right. Chapters 4 talks about the human right-based approach and chapter 5 deals with conclusion.

Chapter 2 accounted for the development of the right to education and role of the UDHR. It also highlights the tension between the two covenants during the Cold War. Later it will analyze the landmark World Education Forum in 2000 at Dakar and its outcome. The caste-based discrimination is like an apartheid moment and acts as a barrier for realisation of the right to education. Chapter 3 delves into the development of

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the ESCR and its relevance for the marginalised persons. It also shows how it is important for the achievement of the progressive realisation of the right to education. In conjunction with rights, it also talks about the realisation of right to education with the help of international standards of '4As', that is, availability, accessibility, affordability and adaptability. Chapter 4 talks about the rights based approach and show how rights are inalienable and interdependent while making policies how the factors of equality, non discrimination and participation of local peoples should be well taken care of. Chapter 5 is the conclusion of this research. It comes out with several recommendations and suggestions for the realisation of the right to education in the future.

## **2. Historical Overview**

### **2.1 Universal declaration and development of the right to education**

In 1948, Eleanor Roosevelt predicted that human rights would creep like a “curious grapevine” into public consciousness around the globe.<sup>19</sup> At that time, it was completely dismissed as a utopian illusion, but in barely 50 years, international human rights have evolved into a specialized discipline of international law of increasing importance in global politics.<sup>20</sup> After the fall of the iron curtain, the human rights issues were acknowledged worldwide more emphatically. In practice, the doctrine of human rights has become the only universal moral discourse in international politics. The cultural relativists, who used to criticize human rights and their universality, have also accepted it and are stressing their distinct “local” priorities for human rights. The subject human rights were not only limited to activists; rather the regimes of North Korea, Myanmar and Malaysia have also started responding to and showing respect for human rights. Louis Henkin has rightly mentioned that the Universal Declaration of Human Rights is “the holy writ to which all pay homage, even if sometimes the homage of hypocrisy”.<sup>21</sup>

After the inception of the UDHR in 1948, the path was not so easy for its universal implementation. During the Cold War, the world was divided between the two superpowers, the USA and the USSR, and their doctrine used to dominate the UDHR. It was also an era of regimes during which the world witnessed endless atrocities by Pol Pot in Cambodia, genocide in Rwanda, bloody war and rapes in Bosnia and the fight for freedom between Serbia and Kosovo. Thus this period was not so peaceful and known for less respect for human rights. As a result, lack of prosperity and peace universally widened the inequalities between the rich and the poor.

More than 1 billion persons stay with an income of under \$1 a day and two billion persons stay with an income of under \$2 a day. This story is not at all in tune with the

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<sup>19</sup> William Korey, *Ngos and the Universal Declaration of Human Rights: The curious Grapevine* (New York: St. Martin’s Press, 1998).

<sup>20</sup> Smith & Anker, 2005, p.xi.

<sup>21</sup> Human Rights: Not Merely an Internal Affair, <http://www.global-changemakers.net/education/human-rights-not-merely-an-internal-affair>, accessed on 03/29/2013.

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vision of the Universal Declaration of Human Rights, which was conceived for the betterment of society and its upbringing.

“There is virtually no aspect of our work that does not have a human rights dimension. Whether we are talking about peace and security, development, humanitarian action, the struggle against terrorism, climate change, none of these challenges can be addressed in isolation from human rights.”<sup>22</sup>

But putting these concepts into action in an international development context requires a clear distinction between “rights” and “needs.” As stated by the South Asian development practitioners, “a right is something to which I am entitled solely by virtue of being a person. It is that which enables me to live with dignity. Moreover, a right entails an obligation on the part of the government. A need, on the other hand, is an aspiration that can be quite legitimate, but it is not necessarily associated with an obligation on the part of the government...satisfaction of a need cannot be enforced. Rights are associated with ‘being’, whereas needs are associated with ‘having’.”<sup>23</sup> The most important objective of human right is to recognize human dignity and education helps in achieving this objective. Hence Article 26 of the Universal Declaration has been accepted as customary international law and two of the educational principles, the free and compulsory primary education and the right not to be discriminated against in the enjoyment of educational rights have been incorporated as a customary law.<sup>24</sup> The right to free and compulsory primary education has been enumerated in the following international instruments: article 26(1) of the Universal Declaration of Human Rights (1948), article 13(2) of the International Covenant on Economic, Social and Cultural Rights (1966), Article 28 (1)(a) of the Convention on the Rights of the Child and article 4(a) of the Convention against Discrimination in Education(1960).

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<sup>22</sup> Ban Ki-moon, Secretary-General of the United Nations quoted in <http://hrbaportal.org/the-un-and-hrba>, accessed on 04/03/2013.

<sup>23</sup> International Human Rights Internship Program and Asia Forum for Human Rights and Development. 2000. Circle of Rights: Economic, Social and Cultural Rights Activism. A Training Resource. Washington, DC: IHRIP.

<sup>24</sup> Beiter, 2005, p.45.

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Before the nineteenth century or prior to the era of Enlightenment, education was considered to be the obligation of parents and the church. However the hegemony of church over education was dismantled after the French and American Revolutions. The State was considered the active player for making education accessible for all. Public education was seen as mode of realizing egalitarian principles on which these struggles were fought.<sup>25</sup> As can be seen, none of the human rights instruments of classical time such as the English Bill of Rights of 1689, the American Declaration of Independence of 1776 and the French Declaration of the Rights of Man 1789, have protected the right to education. It was primarily an instrument for respecting civil political rights.<sup>26</sup>

In the subsequent constitutional development during the 19<sup>th</sup> century the right to vote, equality or liberty were preserved, but it was never realized that these rights cannot be enjoyed completely in the absence of education. At that point, two concepts concomitant to education came on the horizon, a liberal and a socialist concept. The liberal concept fostered the view of education where parents were responsible for the education of their children within the stipulated guidelines of law and had limited freedom for the selection of education. The State's duty was to observe and regulate that all children are attending school and getting adequate education. The socialist concept of education was completely opposite to the liberal. It determined that the state for the education of citizens from primary to higher levels with the help of good schools and scholarships, laid down, e.g., in Article 121 of the Constitution of the Soviet Union 1936.<sup>27</sup> Remarkably, the German Empire in 1849 made a Constitution and in its articles 152 to 158 were devoted to education. In fact education was kept free for the poor people and it was the function of state to ensure it.<sup>28</sup>

Many states protect their right to education through fundamental rights or, some of them, through directive principles of the state. At the international level the right to education was recognized also by several minority treaties. In 1924, the League of

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<sup>25</sup> Beiter, 2005, p.21.

<sup>26</sup> Ibidim. p.22.

<sup>27</sup> Eide , Krause, Rosas,2001, p.248.

<sup>28</sup> Beiter, 2005, p.23.

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Nations adopted a declaration later known as the “Declaration of Geneva”.<sup>29</sup> In this declaration there was no clear mandate for child education but in a tacit way they acknowledged the development of children. Principle 1 affirmed that a child should be given the required means for his normal development. Principle II said that a backward child must be helped and principle IV said that a child should be in the position where he can earn his livelihood and stay well. This treaty was not legally binding but at least it was a beginning at which the international community started thinking about the development of children and the importance of education. The celebrated case of the United States of America in 1954 *Brown v. Board of Education of Topeka*<sup>30</sup> highlighted the importance of education in our society and also signified the importance of education as the foundation of good citizenship.<sup>31</sup>

There are several discourses and rhetoric about the nature of right to education, why it should be a fundamental right or how it is very important for the human dimension. Beiter has put forward some arguments for making education a fundamental right. First there is the social utilitarian argument. It throws light on the importance of education for the society. It says that only an educated citizen can enjoy all citizenship rights, such as the right to vote, contesting for the president or fighting for his own rights. The famous cases of *Brown v Board of Education* and *Player v Doe*,<sup>32</sup> have shown that education is very important for society and public schools are the most vital institutions for the preservation of a democratic system and a primary vehicle for transmitting the values on which a society rests.<sup>33</sup> The second logic is the argument that education is the precondition for individual development. Hence it has been recognized by the various instruments as the UDHR, the CRC or ICESCR, which have fully accepted that for realizing one’s ability, education is necessity.<sup>34</sup> The third and last justification is the individual welfare argument. The individual should have access to welfare rights since without the state’s intervention such a right cannot be realized. The argument is also

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<sup>29</sup> Beiter, 2005, p.25.

<sup>30</sup> 347 U.S. 483 (1954).

<sup>31</sup> Beiter, 2005, p.18.

<sup>32</sup> 457 U.S. 202 (1982).

<sup>33</sup> Beiter, 2005, p. 26.

<sup>34</sup> Ibidim. p. 26.



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supported by President Franklin Roosevelt in his address of 1944, where he pushed his view for the adoption of an “Economic Bill of Rights” and said

“‘Necessitous men are not free men.’ People who are hungry and not out of job are the stuff of which dictatorships are made.”<sup>35</sup>

The speech clearly implies the importance of welfare rights. On the 6<sup>th</sup> of January 1941, the famous speech of Franklin Roosevelt at the North American Congress took place, where the president of the United States outlined the fundamental freedoms which should be guaranteed for every human being. There are four fundamental freedoms: freedom of speech, freedom of worship, freedom from want and freedom from fear. Later on 14<sup>th</sup> of August 1941, the Atlantic Charter expressed the desire for freedom from fear and want for the citizens of nations within their own boundaries.<sup>36</sup> The four freedoms of humanity are as needful for man’s need as sunlight, bread or salt. Once he is deprived from these freedoms, he dies. Hence these freedoms should be given to man in abundant measure to cross the threshold of a new age, the greatest age of a man.<sup>37</sup> Fear is the inheritance of every animal, and man is no exception. When our children are afraid from the tangible darkness, we assure them protection so that their mind can grow and develop normally without any imaginary terrors.<sup>38</sup> This reassurance is the sense of protection and security is an important factor in their lives. Similarly as a citizen, fearful mind and wanting heart needs an assurance from government for their security and protection. Education is the key determinant that helps mankind in achieving freedom from want. Thus, state should take progressive measures for making this right available. So far the above illustration has put forward some arguments about the rationale of the right to education and its significance for the society. However, discrimination based on descent and birth is the biggest barrier for the effective implementation of the right to education.

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<sup>35</sup> Ibidim, p. 49.

<sup>36</sup> Gomez, 2006, p.25.

<sup>37</sup> The United Nations fight for the Four Freedoms, <http://www.udhr.org/history/4free.htm>, accessed on-06/23/2013.

<sup>38</sup> Ibidim.

## **2.2 Cast based discrimination as hidden apartheid**

Caste-discrimination is a heinous but unfortunately also a pervasive human rights problem which affects 260 million persons in all geographical locations, mostly in Asia and Africa. The nature of caste discrimination is distinctive since it is not based on a different race or colour but exists within the same skin colour and ethnicity. It is based upon religious belief and old customs. The high number of persons affected by caste based discrimination and its severity of violations warrants separate attention from the United Nations. Caste discrimination entails social and economic exclusion, segregation in housing, denial and restrictions of access to public and private services, and lack of equal access to education and employment. Discriminated communities are often forcibly assigned the most dirty, menial and hazardous jobs, such as cleaning human waste. This exclusion and segregation leads to high level of poverty and seclusion from participation in public and civil life. The virus of caste discrimination is not only limited to India. Rather, its reach is transnational and starting from India, reaches to Nepal, Pakistan, Bangladesh, Sri Lanka, Japan, Yemen, Senegal, Burkina Faso, Mali, Cameroon, Mauritania, Sierra Leone, Nigeria, Kenya, Ethiopia, Somalia, Yemen and Micronesia and possibly more countries.<sup>39</sup> Caste discrimination is a chronic human rights condition, which involves massive violations of civil, political, economic, social and cultural rights.

The study of the United Nations Sub-Commission on Discrimination, a number of human rights violations were found and a few of them are mentioned:<sup>40</sup>

- The right to equal access to public and social services
- The right to freedom of religion
- The right to marriage on free will
- The right to education and cultural identity

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<sup>39</sup> Husager Gitte Dyrhagen (2013) CASTE DISCRIMINATION AND UN HUMAN RIGHTS BODIES, The International Dalit Solidarity Network, 6<sup>th</sup> Edition, [http://www.idsn.org/fileadmin/user\\_folder/pdf/New\\_files/UN/UNcompilation.pdf](http://www.idsn.org/fileadmin/user_folder/pdf/New_files/UN/UNcompilation.pdf), accessed on 07/11/2013.

<sup>40</sup>The International Dalit Solidarity Network, [http://idsn.org/fileadmin/user\\_folder/pdf/New\\_files/IDSN/Caste\\_discrimination\\_and\\_human\\_rights\\_brief\\_final.pdf](http://idsn.org/fileadmin/user_folder/pdf/New_files/IDSN/Caste_discrimination_and_human_rights_brief_final.pdf), accessed on 07/11/2013.

## The right to education

### For marginalized and ostracized groups of persons

- The right to be free from forced or bonded labour
- The right to be free from cruel, inhumane or degrading treatment
- The right to equal political participation and access to justice

All these social and cultural violations of rights lead to non-implementation of the realisation of the right to education. The Prime Minister of India Mr. Manmohan Singh has expressed concern about the Dalit problem and said that:

“Dalits have faced a unique discrimination in our society that is fundamentally different from the problems of minority groups in general. The only parallel to the practice of ‘untouchability’ was Apartheid in South Africa. Untouchability is not just social discrimination. It is a blot on humanity.”<sup>41</sup>

It is really appreciable that the Prime Minister of India has acknowledged it as a problem and compared it with apartheid. When we speak about the realisation of the right to education for marginalized persons, this complex caste based discrimination offers the biggest hindrance for it. Where even a physical touch is prohibited for upper caste, how can we think the children of the depressed class will sit in the same class and get equal education?

Before embarking upon analyzing the problem of the right education, we should first understand the intricate caste systems of India and Nigeria which determines the social and cultural behaviour of these two countries. Going forward we will see the historical background of the caste based discrimination. Vijapur has briefly described the Dalits and says that untouchables are known with different names and these names have been coined by different social activists. Mr. Gandhi has given the name of Harijan, children of god, the first law minister of India Ambedkar called them “depressed classes”. However the word Dalit came into picture in 1970, when an activist (Mahatma Jotiba Phule) first used it. The word Dalit comes from a Marathi word, which means “broken people”.<sup>42</sup> The term “broken” has meant oppression for many radical Dalits who have used this term for their struggle for emancipation. The Indian government has officially

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<sup>41</sup> Human Rights Watch, 2007, p. 3.

<sup>42</sup> Vijapur, 2007, p.154.

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called them “Schedule Castes”.<sup>43</sup> The persons of India have never given an equal status to Dalits and this repression is a part of a very old tradition, in the Indian culture since antiquity.

To understand the Dalits’ position in Indian demography, it is pertinent here to understand the hierarchy of caste. The caste system is a stigma of Hindu religion and it is so intricate that it has dominated Indian society for 3000 years. It was developed by Brahmins (Hindu priests) to hold the superiority over less educated and poor persons. They divided the society into four castes (Varnas). It was like a pyramid, where at the top, Brahmins were placed and their job was to teach and impart education. The second ladder was for Kshatriyas, and their job was public administration and taking part in wars, while the third ladder was for Vaisyas, whose job was to do business and agriculture. The last ladder was reserved for the Shudras (Dalits) and their job was to do all the sub-standard work of society.<sup>44</sup> The philosophy of this division is considered holy because the notion of divine origination. It is considered that persons came from different parts of Brahma, the creator of the universe. Brahmins came from the mouth of Brahma; Kshatriyas came from his arms, Vaisyas from his thighs and Shudra from his feet.<sup>45</sup> Since their origin is from feet, they are considered impure and untouchable. This doctrine constructs the moral, social and legal foundations of the Hindu society.

Untouchability was abolished in 1950 in India and several laws were enacted in constitution to stop this heinous caste-based discrimination. Article 14 of India’s Constitution says that every person is equal in front of law and Article 15 advances it and says that none of the person can be discriminated on the ground of race, colour, caste, sex or place of birth. Article 17 says that untouchability is abolished and its practice in any form is forbidden.<sup>46</sup> India has also ratified all the major treaties like the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child,

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<sup>43</sup> Kethineni & Humiston, 2010, p. 102.

<sup>44</sup> Ibidim, p. 101.

<sup>45</sup> Ibidim, P.101.

<sup>46</sup> Vijapur, 2007, p. 154.

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etc to integrate human rights into practice. Although untouchability has been abolished in India at the Constitutional level, it is hard to get rid of it at the local level, where the traditional values and customs (such as the caste system) are still considered part of the social order and as a result, not seriously threatened by the emerging forces of globalisation and modernisation. The caste system is part and parcel of their life and that today, for example, Dalits are socially excluded from the mainstream society.

Dalit men, women, and children numbering in the tens of millions work as agricultural labourers for a few kilograms of rice or Rs. 15 to Rs. 35 (US\$0.38 to \$0.88) a day.<sup>47</sup> They have no agriculture lands and most of them are agrestic (rural) slaves or crop sharing tenants.<sup>48</sup> Dalit children are always at a disadvantaged position and face a lot of discrimination in schools as well. They are forced to sit at the back of the class or sometimes outside of the class so they do not touch the students from an upper caste. Although the Indian government has made primary education a fundamental right, the participation of Dalit children is very poor. A similar story is sung in Nigeria, too, where society is divided between various classes and groups. There are approximately 27 million Osus who are mostly Christians. Osus are named differently in different regions of Nigeria, like Ume, Ohu, Oru, Omoni, and they are mostly dwelling in South-eastern and South-Central Nigeria.<sup>49</sup> Segregation, stigmatization, subjugation, conflicts, wars, hatred, class division, exploitation and so forth, have been rampant and dominating the spectrum of the Osu Caste System in Igbo Land.<sup>50</sup> The report of the Australian Government says, the Osu caste system has been derived from traditional Igbo “religion, supernaturalism and theism”, under which the Osu’s dedication to the gods makes their status “a condition of permanent and irreversible disability and stigma”.<sup>51</sup> It is the name given to those humans who are sacrificed to the gods. Hence

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<sup>47</sup> Artis, Doobay and Lyons, 2003, p.9.

<sup>48</sup> Kethineni & Humiston, 2010, p. 103.

<sup>49</sup> Dike, 2002, p.1.

<sup>50</sup> Onwubuariri Francis, p. vi.

<http://www.frasouzu.com/Issues%20and%20Papers/Onwubuariri%20Francis.htm>, accessed on 07/03/2013.

<sup>51</sup> Australian Government Refugee Review Tribunal, 2010.

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Osus are also called in their native language 'ndi ejiri goro ihe' which means those who are sacrificial lamb to the gods'.<sup>52</sup>

Dike says that all human beings are created equal but their experiences are so heterogeneous in nature that some of the people have abundance of wealth and resources and some have been completely deprived of their dignity and birth rights. The Osu status is inherited by birth and marriage. They are considered so impure and untouchable that if a person from any other caste touched them he becomes Osu. Hence the face of their house cannot be towards the street, rather it should be towards bushes or forest. This class segregation is operated in such a manner that any person from the other side of the community who talks to or greets any person from Osu, pays a fine sometimes as high as to 1000 Naira<sup>53</sup> and this fine has been imposed by local community. Osu cannot do love marriage outside the Osu community and if it happens, what follows is divorce or social skirmishes. In fact they are buried in a different cemetery. So even after the death, discrimination paranooids an Osu. The Osu system was outlawed with the passage of the Osu System Law and the Laws of Eastern Nigeria in 1956 and 1963. However members of the Osu community are still shunned as pariahs and denied social equality because laws remain largely unenforced. Mostly landless, Osu can traditionally only marry within their caste.<sup>54</sup> The paucity of statistical data produces no result where we can determine the damage on society because of this caste system. The Osu system completely hinders the right to association, right to freedom of speech, freedom from slavery and discrimination. In a nutshell, it abridges the civil and political rights and economic, cultural and social rights of the Osu. It is disheartening and an epitome of internal apartheid.<sup>55</sup>

Both India and Nigeria have outlawed these caste systems in the 1950s, but is still part and parcel of the society because of the poor implementation of law. Jonsson suggests

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<sup>52</sup> Dike, 2002, p.7.

<sup>53</sup> Dike, 2002, p.7.

<sup>54</sup> Human Rights Watch, 2001, Caste Discrimination a global Concern, Vol. 13, No. 3(G), <http://www.hrw.org/reports/2001/globalcaste/caste0801.pdf> accessed on 07/11/2013.

<sup>55</sup> Dike, 2002, p.13.

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that this problem can be mitigated with the help of a human rights based approach, where participation, local ownership, empowerment, and sustainability are essential characteristics of a high-quality process.<sup>56</sup> Where the states as a duty bearer have an obligation to fulfil the rights of the rights holders, at the same time rights holders are enabled to demand their respective obligation to respect, protect and fulfill the rights.<sup>57</sup> If we do not stop this caste-based discrimination, the dream of the right to education will remain a dream in the presence of hidden apartheid. The Universal Declaration of Human Rights has supported the several steps taken to abolish the caste system with the help of conventions and treaty bodies. It is also secured through conventions that there should be equal opportunity for both genders for accessing education and that no part of the population is discriminated on the basis of their caste, race or religion.

### 2.3 Dakar Framework for action

There are international human rights law and constitutional national laws, which enforce the right to education globally. Besides these laws there are two important and most influential frameworks present in the field of education, namely 'Education for All' (EFA) and 'Millennium Development Goals' (MDGs). While their role in the arena of education is a bit vague because neither of them are a legally binding text, both of them constitute moral obligations and have been introduced in many countries as the basis for the priority for reducing poverty and enhancing education.<sup>58</sup>

Education for All is a global commitment to provide basic and quality education for all the children, youths and adults. At the World Education Forum (Dakar, 2000), 164 countries and assembled and made a road map to achieve six identified goals to be met by 2015. Corresponding to EFA, the MDGs were formulated in 2000 with the targets to be achieved by 2015. Two of the MDG goals are directly related to education. Goal two of the MDG calls for the achievement of universal primary education by 2015 and Goal

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<sup>56</sup> Jonsson quoted in, Jenkins and Barr, 2006, p.3.

<sup>57</sup>United Nations Children's Fund, 2006, Social Exclusion of Scheduled Caste Children from Primary Education in India, [http://www.unicef.org/files/Social\\_Exclusion\\_of\\_Scheduled\\_Caste\\_Children\\_from\\_Primary\\_Education\\_in\\_India.pdf](http://www.unicef.org/files/Social_Exclusion_of_Scheduled_Caste_Children_from_Primary_Education_in_India.pdf), accessed on 04/01/2013.

<sup>58</sup> Right to education, <http://www.right-to-education.org/node/1079>, accessed on 04/06/2013.

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3 of the MDG speaks about the eradication of gender disparities in education and the empowerment of women. The remaining goals are interlinked with education and those can be achieved with the progress of MDG 2 and 3.<sup>59</sup> At least 113 million children have no access to primary education and 880 million adults are illiterate, a majority of them are women. These figures are very deplorable for human dignity and constitute a denial of the right to education. This illiteracy is like a barrier for the elimination of poverty and attainment of sustainable development.<sup>60</sup> Hence the world community came forward and drew up six goals of the EFA as follows:

- Expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children. It is also very important for the depressed persons of the globe.
- Ensuring that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete free and compulsory primary education of good quality. It also emphasizes the children from minorities.
- Ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life skills programmes.
- Achieving a 50 per cent improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults.
- Eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015, with a focus on ensuring girls' full and equal access to and achievement in basic education of good quality;

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<sup>59</sup> UNESCO, 2010, The Central Role Of Education in the Millennium Development Goals, UNESCO. [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/ED\\_new/images/education\\_for\\_all\\_international\\_coordination\\_new/PDF/analyticalnote.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/ED_new/images/education_for_all_international_coordination_new/PDF/analyticalnote.pdf), accessed on 04/07/2013.

<sup>60</sup> UNESCO, 2000, World Education Forum, <http://unesdoc.unesco.org/images/0012/001211/121147e.pdf>, accessed on 04/07/2013.



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- Improving all aspects of the quality of education and ensuring excellence of all so that recognised and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.<sup>61</sup>

These goals are nicely drafted but their translation into reality is also needed. The United Nations Committee on Economic, Social and Cultural Rights has mentioned in its concluding remarks that for universalizing the right to education, special efforts need to be put behind the struggle against discrimination.<sup>62</sup> Hence the UNESCO Convention against Discrimination in Education (1960) needs to be well implemented. Article 4 of the Convention categorically lays down the obligations of the States to “undertake and to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education”.<sup>63</sup> Article 28 of the Convention on the Rights of the Child has also enshrined the right of every child to a right to access education on the basis of equal opportunity and that priority needs to be given to the child from marginalised and disadvantaged groups of children.

Other treaties have also recognized the prevalence of discrimination in education and made an effort to stop it. Article 5 of the Convention on the Elimination of All forms of Racial Discrimination protects the right to education for everyone without discrimination and specific concern has been shown for the marginalised groups. Article 10 of the Convention on the Elimination of All Forms of Discrimination Against Women has mentioned that there should be equal opportunity in the field of education for men and women without any discrimination.<sup>64</sup> There are enough efforts made by the United Nations and its bodies for the universalization of the right education. Now it is the onus of the States to mobilise the resources for the effective implementation of the right to education for the marginalised persons.

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<sup>61</sup> Ibidim.

<sup>62</sup> Groof, Lauwers, Singh, 2006, p. 17.

<sup>63</sup> United Nations General Assembly, 2011, Report of the Special Rapporteur on the right to education, <http://www.right-to-education.org/sites/r2e.gn.apc.org/files/SR%20Education%20Report-Human%20Right%20to%20Sexual%20Education.pdf>, accessed on 04/07/2013.

<sup>64</sup> Ibidim.

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Education is the best investment a country can make for its citizens. It can be illustrated with the example of Japan. In the wake of two bombs on Hiroshima and Nagasaki in 1945, Japan was in turmoil but the Japanese government did not lose its hope and efforts for the reconstruction of the nation and heavily worked on their inexhaustible resource, the 'human capital'. Japan reconstructed its cultural identity and became the second world economic power in two decades.<sup>65</sup> It is very evident that work on human capital without the cancer of discrimination can change the fate of a nation. For realisation of the dream of the right to education or education for all needs some more attention and genuine efforts by the rich countries. That is missing, like in the budget of the United Nations which for the year of 2010 was \$30 billion or about \$4 for each of the world's inhabitants. On the contrary, the military budget for the world is \$1.63 trillion or about \$236 is the average expenditure of world's population on arms. America spends 41 % of world's total expenditure on arms, that is, \$1.63 trillion.<sup>66</sup> Wealthy countries actively market armament, which are imported by the third world governments for prestige or the reason for self-preservation. The expenditure of death should be turned into the expenditure of life which could solve many of the problems and also bring huge impact on the right to education and its realisation.<sup>67</sup>

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<sup>65</sup> Groof, Lauwers, Singh, (2006), p.19.

<sup>66</sup>UN Financial Crisis, Global Policy Forum, <http://www.globalissues.org/article/75/world-military-spending#Spendingforpeacevsspendingforwar>, accessed on 07/11/2013.

<sup>67</sup> Eide, 2001, p. 36.

### **3. INTERNATIONAL HUMAN RIGHTS FRAMEWORK AND THE RIGHT TO EDUCATION**

#### **3.1 Relevance of economic and social rights for marginalised groups**

It has been more than 60 years' since the nations of the world asserted with the help of the Universal Declaration of Human Rights that "everyone has right to education". Despite notable efforts under taken by countries around the globe to ensure the right to education for all, still the world faces daunting problems, notably: mounting debt burdens, economic stagnation, rapid population growth, caste discrimination and deaths of millions of children from preventable disease. These problems constrain efforts to meet basic learning needs, while the lack of basic education among a significant proportion of the population prevents societies from addressing such problems with strength and purpose.<sup>68</sup> It hampers the mobilisation of resources and slows down the progressive realisation of the right to education.

Amartya Sen says that we live in the world of abundance and opulence of a kind that would have never been imagined a century ago.<sup>69</sup> There have been remarkable changes beyond the economic sphere and it has been facilitated by democratic and participatory governance as the model of political organization. Concepts of democracy and human rights have become part of life and other determinants of development as life expectancy, literacy or maternity health, all of them have witnessed improvement. The world has become more connected and come closer not only in terms of trade, communication, and commerce, but also in sharing ideas and ideals. While this is one side of the coin, we also live in a world that is full of deprivation, discrimination, destitution and oppression.<sup>70</sup> Overcoming these problems is a central goal of the economic, social and cultural rights. To counter these problems we need to work on individual freedom as a social commitment. There is strong evidence that economic and political freedoms help to reinforce each other, rather than being hostile to one another. The social opportunities of education and health care requires public action and

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<sup>68</sup>World Declaration on Education for A ll, 1990, [http://www.unesco.org/education/pdf/JOMTIE\\_E.PDF](http://www.unesco.org/education/pdf/JOMTIE_E.PDF), accessed on, 05/09/2013.

<sup>69</sup> Sen, 1999, p.xi.

<sup>70</sup> Ibidim, p.xi.

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government's intervention to complement individual opportunities of economic and political participation and also help to foster the rhetoric of individual freedom.<sup>71</sup>

After the formation of the UDHR and until recently, there was more emphasis on civil political rights than on economic, social and cultural rights. Shedrack C. Agbakwa has cited the view of Rolf Kunnemann, that economic, social and cultural rights are the only means of self defence for millions of marginalised and impoverished groups all over the world. Even though there is an international rhetoric that there should be of equal relevance for civil political and economic, social and cultural rights, states have nevertheless paid less attention to economic, social and cultural rights.<sup>72</sup> The concentration on civil and political rights was born during the period of the Cold War and economic, social and cultural rights were perceived as the concept of communism. Philip Alston has argued that this skewed thinking resulted in the negligence of economic, social and cultural rights which lead to poor policies for education, health, large scale unemployment and other maladies of third world countries.<sup>73</sup>

Agbakwa has pointed out that African states are still living with the nightmares of colonial exploitation and the nightmares of slavery; they should take lead in the enforcement of ESCR to cure the deplorable conditions of African citizens.<sup>74</sup> Agbakwa further says that the international community has not helped in developing the economic, social and cultural rights but has rather actively hindered the development of economic, social and cultural rights.<sup>75</sup> The non-enforcement of economic, social and cultural rights makes a mockery of the so called individual autonomy. Research has shown that the presence of social and economic rights is the precondition of personal autonomy. Hence it can be argued that the lack of education leads to lack of autonomy, as education not only imparts knowledge, which is a must for autonomous existence but it also empowers human beings to take correct decisions that deals with their lives. Lack of education deprives person from the understanding of the impact of their decisions on

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<sup>71</sup> Sen, 1999, p.xii.

<sup>72</sup> Agbakwa, 2002, p. 178.

<sup>73</sup> Philip Aston, quoted in Kumar, 2004, p. 247.

<sup>74</sup> Agbakwa, 2002, p. 178.

<sup>75</sup> Agbakwa, 2002, p. 204.

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their lives. The planning commission of India has published a report on the statewide distribution of population of Scheduled caste, their literacy rate and per capita income. It shows that the states that have a higher literacy rate have higher per capita income, too. The report of two states, Bihar and Kerala, can be compared. The data shows the impact of literacy rate on per capita income and the number of persons staying below poverty line. It is quite clear that with 91% literacy rate, the per capita income of Kerela is very high and the persons living under poverty line is also lower than in Bihar.

State	Per Capita In come	% Schedule Caste Below Poverty Line	% Literacy Rate
Bihar	354.64	64	47
Kerela	430.122	22	91

Source: Planning Commission, New Delhi.<sup>76</sup>

The aspect of illiteracy also hinders the access of justice in developing countries such as India and Nigeria, where the poor are not even aware of their rights, enshrined in the constitution for them.<sup>77</sup>

The African Commission on Human and Peoples' Rights has not developed any comprehensive ESC rights jurisprudence under the African Charter. Nonetheless in two important cases, *Purohit and Moore v The Gambia* and *the Social and Economic Rights Action Centre and the Centre for Economic and Social Rights V Nigeria*, the African Commission has demonstrated that the ESC rights were justifiable and also held that economic, social and cultural rights are essential elements of human rights in Africa.<sup>78</sup> The African Commission has also held that states parties have to take concrete and targeted steps while taking full advantage of their available resources to ensure that rights are fully realized in all aspects without any discrimination.<sup>79</sup>

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<sup>76</sup> Ministry of Social Justice and Empowerment, <http://socialjustice.nic.in/statistics.php>, accessed on 05/24/2013.

<sup>77</sup> Kumar, 2004, p.249.

<sup>78</sup> Baderin & Ssenyonjo, 2010, p.53.

<sup>79</sup> Ibidim, p.53.

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Agbakwa says that most African rulers are richer than their states and continue to squander available resources. Thus, it is not scarcity of resources which is the first problem for the realisation of ESC rights, but maldistribution or inequitable allocation of resources. Richard Falk also argues that the third World countries possess the resources to eliminate poverty and satisfy basic human needs if their policy makers were so inclined and determined to eradicate their basic problems like hunger, illiteracy or poor health condition.<sup>80</sup> Hence it cannot be said that economic, social and cultural rights are not absolute and needs resources thus cannot be realized in totality rather it needs a conviction of states and commitment for the effective implementation of ESC rights.

At the national level, the supreme courts of some of the countries have shown that ESC rights can be enforced through the courts. The jurisprudence of the Indian<sup>81</sup> and South African courts has been particularly instrumental, and the celebrated judgments in the *Grootboom*<sup>82</sup> and *Mazibuko*<sup>83</sup> cases by the South African court has shown that the ESC rights are justiciable and can be progressively realized, too.<sup>84</sup> Consequently there is a discourse going on indicating that that all internationally recognized human rights – economic, social and cultural rights, as well as civil political rights should be the subject of the same individual complaints procedures. It will provide the adjudication of individual and group complaints against states under the covenant (ICESCR). The heart of this argument is that the states will act more responsibly for the realisation of economic, social and cultural rights rather not terming it as elusive ideas.<sup>85</sup> The immediate challenge for all the support of economic, social and cultural rights is how to improve the lives of half the human race. According to the UN Development

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<sup>80</sup> Agbakwa, 2002, p. 189.

<sup>81</sup> Supreme court of India in the following cases: Francis Coralie V The Union Territory of Delhi (1981) 1 SCC 608, Olga Tellis v Bombay Municipal Corp.(1985) 3 SCC 545; Shanti Star Builders v Narayan K. Totame (1990) 1 SCC 520; Consumer Education and Research Center v Union of India(1995) 3 SCC 42.

<sup>82</sup> Republic of South Africa v. Grootboom. Case No. CCT 11/00. 2000 (11) BCLR 1169 and Minister of Health v. Treatment Action Campaign. Case No. CCT 8/02, <http://www.saflii.org/za/cases/ZACC/2000/19.pdf>, accessed on 05/22/2013.

<sup>83</sup> Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC) (8 October 2009), <http://www.saflii.org/za/cases/ZACC/2009/28.pdf>, accessed on 05/22/2013.

<sup>84</sup> Baderin & Ssenyonjo, 2010, p.54.

<sup>85</sup> Dennis & Stewart, 2004, p.462.

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Programme, 3 billion persons live on less than two dollars a day, and that is 20 % of the world's population.<sup>86</sup> Many go to bed without food, health care, housing or education in absence of economic, social and cultural rights.

According to the report of the Planning Commission of 2010, 323 million persons live below poverty line in India, that is, 37.2 % of the Indian population. The huge part of this population is Dalits who suffer not only economic disparity but also the stigma of social discrimination. Although the government is running several schemes and programs to improve the socioeconomic conditions of the poor and marginalized, the plight of the Dalits still remains largely unchanged. It is reported that 80 % of Dalits live in rural areas, 86 % are landless, 60 % are dependent on occasional employment and only 30 % are literate. No other ethnic group or group of persons in the world have ever suffered like the Dalits who continue live through the stigma of untouchability under the pretext of religion.<sup>87</sup>

Higher levels of poverty among marginalised groups lead to poor levels of development in terms of both education and health. In India, the percentage of children who were underweight, 54 to 56 % were Dalits and maternal mortality rates are highest in tribal areas, where 65 % of Dalit women are anaemic compared 48 % of the general population.<sup>88</sup> It is true that a necessitous man is not a free man. According to data of Nigeria's National Bureau of Statistics (2010), the prevailing relative poverty in Nigeria is 69 % and absolute is 60.9 %. The 67 % of south-Easterners are poor and this is the geographical location where most Osu stay in Nigeria.<sup>89</sup> Similarly, the traumas of Indian Dalits are identical to Osus, 66 % of Dalits are poor in India.<sup>90</sup> Hence the realisation of economic, social and cultural rights are an urgent need for the Dalits or marginalised groups because these groups of persons are so poor that they cannot even

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<sup>86</sup> Dennis & Stewart, 2004, p.462.

<sup>87</sup> Dalit Solidarity, <http://www.dalitsolidarity.org/>, accessed on 04/05/2013.

<sup>88</sup> Kabeer, 2006, p.6.

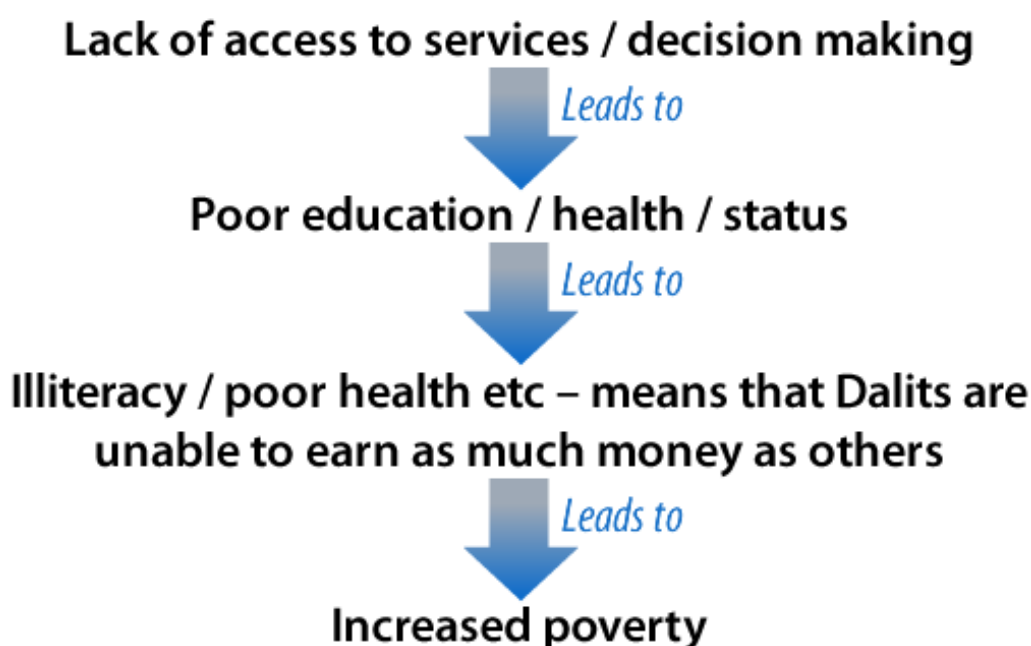
<sup>89</sup> Business Day, 2012, [Johnnie Carson, the US and Boko Haram](http://www.businessdayonline.com/NG/index.php/analysis/columnists/36138-johnnie-carson-the-us-and-boko-haram) <http://www.businessdayonline.com/NG/index.php/analysis/columnists/36138-johnnie-carson-the-us-and-boko-haram>, Accessed on 04/06/2013.

<sup>90</sup> International Dalits Solidarity network, <http://idsn.org/news-resources/idsn-news/read/article/two-thirds-of-indias-dalits-are-poor/128>, accessed on 04/06/2013.

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afford to have bread two times on a daily basis. Agbakwa has reinforced his thoughts with the report of the UNESCO which says that national development hinges on the abilities of the working population and their innovative skills and adaptable qualities and it can be achieved by good education to the citizens.<sup>91</sup> Accordingly the right to education is the prerequisite for the wealth creation and precondition of development. Thus the enforcement of economic, social and cultural rights can provide the precious space and numerous opportunities that would make a platform for the enjoyment of civil and political rights more meaningful and politically significant.<sup>92</sup>



Source - World Development book case study: the Dalit minority in India<sup>93</sup>

This chart shows how all the rights are interconnected and inalienable to each other. Lack of access to the services leads to poor education and health because there is no participation of Dalits and minorities in decision making. Poor education and poor

<sup>91</sup> Agbakwa, 2002, p. 188.

<sup>92</sup> Kumar, 2004, p.249.

<sup>93</sup>World Development book case study: the dalit minority in India, <http://newint.org/books/reference/world-development/case-studies/inequality-dalits-in-india/>, accessed on 04/05/2013.



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health means less earnings for Dalits compared to the skilled ones. Ultimately, this bias enhances poverty overall and defeats the purpose of larger freedom. The realisation of economic, social and cultural rights is very important for the marginalised group of persons. We cannot leave them in misery by saying that the rights will be implemented according to the means of state.

### **3.2 Progressive realisation of the right to education**

Article 26 of the Universal Declaration of Human Rights is the first international provision after the Second World War which has explicitly recognized that everyone has a right to education. Articles 13 and 14 of the ICESCR are like an extension of Article 26 that have reinforced the right to education. Articles 13 and 14 can be viewed as a codification of the right to education in international law.<sup>94</sup>

Article 2(1) of the CESCR, Article (1) of the CRC and Article 1 of the Protocol of San Salvador has acknowledged state obligations to fulfil the right to education and defined it as a 'progressive obligation'.<sup>95</sup> The CESCR Committee says in its general comment 13 on the right to education that states parties have immediate obligations in regard with the right to education, namely (a) to guarantee that the right to education will be exercised without any discrimination of any kind and states has the obligations to take steps towards the full realisation of article 13,<sup>96</sup> (b) the ability of guardians to choose schooling that provides religious and moral education in conformity with the convictions of those guardians.<sup>97</sup> Over the years, numbers of studies have been done for the implementation of the right to education. However, there is relatively little international case law available on this right as a human right. It is because the economic, social and cultural rights have been seen as secondary rights compared to civil and political rights. The vague wording, programmatic nature and difficult justiciability have given a second rank status to CESCR among courts and

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<sup>94</sup> Baderin & Ssenyonjo, 2010, p.86.

<sup>95</sup> Nowak, 1995, p 255.

<sup>96</sup> UN DOC,E/C.12/1999/10, Para 43.

<sup>97</sup> Ibidim, Para 28.

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governments.<sup>98</sup> There is no doubt that the standard of implementation mentioned in the International Covenant on Economic, Social and Cultural Rights, “progressive realisation”, has affected the “conceptualisation of the rights and the process of monitoring them”.<sup>99</sup> The rights in ICESCR are subject to the concept of progressive realisation enshrined in article 2(1).<sup>100</sup> The four key human rights obligations that arise from a Article 2(1) of CDESCR are (1) the obligation to ‘take steps’ by all appropriate means, (2) the obligation of achieving progressively the full realisation of ESC rights, (3) the obligation to utilize the maximum of available resources and (4) the obligation to seek international assistance and cooperation.<sup>101</sup>

The first obligation to take steps is an immediate obligation of the state, which can be done through legislative or non-legislative steps. There is no doubt that legislative steps are a more favourable and effective tool to enforce the ESC rights, since a sound legislation provides a solid foundation to protect rights like education, housing or food.<sup>102</sup> Legislation is helpful in enforcing the right at the time of violation, and more importantly, it can be instrumental for combating the formal and substantive discrimination faced by the most disadvantaged and marginalised groups.<sup>103</sup> Article 2(2) and 3 of CDESCR obligates states parties to ensure all rights including the right to education without discrimination and confirms the obligation of non-discrimination as an immediate right.<sup>104</sup> Thus state parties should immediately work for guaranteeing non-discrimination and equal treatment in fulfilling the obligation of education.

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<sup>98</sup>Donders, Volodin and Unesco, 2007, p. 184.

<sup>99</sup> Audrey & Sage, quoted in Kumar, 2004, p. 250.

<sup>100</sup>International Covenant on Economic, Social and Cultural Rights, Part 11, Article 2(1), UN Documents Gathering a body of global agreements, <http://www.un-documents.net/icescr.htm>, accessed on 05/02/2013.

Article2 (1) - Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

<sup>101</sup> Baderin & Ssenyonjo, 2010, p.56.

<sup>102</sup>Ibidim, p.56.

<sup>103</sup> UN doc. E/C. 12/1/add.17(12 December 1997), para. 13-14.

<sup>104</sup> Ibidim, 268.

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“The progressive realisation component of the Covenant is often mistakenly taken to imply that economic, social and cultural rights can be realized only when a country reaches a certain level of economic development. This is neither the intent nor the legal interpretation of this provision. Rather, this duty obliges all States parties, notwithstanding the level of national wealth, to move as quickly as possible towards the realisation of economic, social and cultural rights. The Covenant requires the effective and equitable use of resources immediately.”<sup>105</sup>

The progressive realisation and the “available resources” standard are often used to justify the non-enjoyment or violation of economic, social and cultural rights. However, as recognized in the Limburg Principles, this requirement obliges a State to ensure minimum subsistence rights for everyone, regardless of the level of states economic development, and in no circumstances can it be accepted as a method for non-compliance for poor States.<sup>106</sup> However states parties have an obligation to improve continuously the condition of ESC rights and abstaining from taking the retrogressive measures. Moreover the CESCR has imposed an obligation on states to take effective measures for the achievement of CESCR goals. Even though goals can be progressively realized, states need to take immediate steps for the full realisation of the rights.<sup>107</sup> A case of South African court can be well illustrated here –

In the case *Grootboom v Oostenberg Municipality and other*, Judge Yacoob has given a very clear mandate about the minimum core obligation of the state by saying that it is the floor beneath which the conduct of the state must not drop if there is to be compliance with the obligation. Each right has a “minimum essential level” that must be satisfied by the states parties.<sup>108</sup> Further, the court has said that “the state is required to

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<sup>105</sup> OHCHR, Economic, Social and Cultural Rights, 2005, p.10,

<sup>106</sup> Ibidim, p.10,

<sup>107</sup> Sital, Getgen & Steven, Human Rights Quarterly, Volume 32, Number 2, p.267.

<sup>108</sup> Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000), <http://www.saflii.org/za/cases/ZACC/2000/19.html> accessed on 05/10/2013, Court has said like this---We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services. These conditions already existed

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take reasonable legislative and other measures. Legislative measures by themselves are not likely to constitute constitutional compliance. Mere legislation is not enough. The state is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programmes implemented by the executive. These policies and programmes must be reasonable both in their conception and their implementation. The formulation of a programme is only the first stage in meeting the state's obligations. The programme must also be reasonably implemented.”<sup>109</sup>

This case is very important for the right to education, too, because, in relation to the non-provision of primary level education, it is arguable that a court should not consider budgetary limitations as a valid excuse. It is important to check what limitations, such as allowing for ‘progressive realisation’ of the right, are included in a section of law/constitution relating to the right to education. Since the Court did not feel compelled to undergo a limitations inquiry for a weak positive right in *Grootboom*, it follows that it would also not limit the right to basic education, a strong positive right, even if the costs incurred were high.<sup>110</sup> However the Committee on Economic, Social and Cultural Rights has established that there is “minimum core content” with regard to economic, social and cultural rights and that states have obligations to fulfil them.<sup>111</sup>

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when the Constitution was adopted and a commitment to address them, and to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order. For as long as these conditions continue to exist that aspiration will have a hollow ring.” In Para 30 and 31 Court said like this –The concept of minimum core obligation was developed by the committee to describe the minimum expected of a state in order to comply with its obligation under the Covenant. It is the floor beneath which the conduct of the state must not drop if there is to be compliance with the obligation. Each right has a “minimum essential level” that must be satisfied by the states parties. The committee developed this concept based on “extensive experience gained by [it] . . . over a period of more than a decade of examining States parties’ reports.”

(31)The general comment is based on reports furnished by the reporting states and the general comment is therefore largely descriptive of how the states have complied with their obligations under the Covenant. The committee has also used the general comment “as a means of developing a common understanding of the norms by establishing a prescriptive definition.” Minimum core obligation is determined generally by having regard to the needs of the most vulnerable group that is entitled to the protection of the right in question. It is in this context that the concept of minimum core obligation must be understood in international law.

<sup>109</sup> Ibidim, Para 41.

<sup>110</sup> Right To Education, <http://www.right-to-education.org/node/660>, accessed on 05/10/2013.

<sup>111</sup> Kumar, 2004, p. 250.

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Philip Alston says that each of the rights ICESCR must be given an absolute minimum entitlement, in the absence of which a state party is to be considered to be in violation of its obligations.<sup>112</sup> At the same time, the realisation of the rights has been made dependent on the availability of the maximum resources. It is a state discretion what the resources should be spent on and up to what extent. The disproportionate expenditure on other rights and ignorance of ESC rights can invite the attention of courts and the ESCR Committee. As an instance in 2009, the CESCR expressed concern on Democratic Republic of Congo's 30 % budgetary allocation on defence and public security. The Committee termed it as unbalanced budgetary allocation and ESC rights have been ignored. Rather states have an obligation under article 2.1 of the Covenant to spend money for the progressive realisation of the ESC rights.<sup>113</sup>

Thus to make progressive realisation more accountable, the violations approach and 1986 Limburg Principles on the implementation of the ICESCR can be helpful for the progressive realisation of economic, social and cultural rights. The Limburg Principles have defined the violation of the Covenant as a failure of the state to adhere with the obligation contained in the Covenant.<sup>114</sup> The violation approach of Limburg Principles has got further attention through the Maastricht Guidelines, which have established three types of obligations for the state: the obligation to respect, to protect and to fulfil enshrined rights. Hence the Maastricht Guidelines stressed that a failure to perform these obligations leads to violation of economic, social and cultural rights.<sup>115</sup>

The Optional Protocol to the ICESCR has recently entered into force and it has provided a major breakthrough in exposing the abuses linked to poverty and discrimination. In Article 2 of the Optional Protocol enables victims under the jurisdiction of the states parties to seek justice or remedy from their violated economic, social and cultural rights.<sup>116</sup>

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<sup>112</sup> Kalantry, Getgen & Steven, Human Rights Quarterly, Volume 32, Number 2, p.271.

<sup>113</sup> Baderin & Ssenyonjo, 2010, p.64.

<sup>114</sup> Kumar, 2004, p. 251.

<sup>115</sup> U.N. Doc. E/CN.4/1987/17, and Human Rights Quarterly, Vol. 9 (1987), p. 122–135.

<sup>116</sup> Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, A/RES/63/117.

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The UN has adopted a number of instruments which provide protection against discrimination. Many of these instruments also address discrimination in the context of the enjoyment of the right to education. These instruments are quite pertinent for the realisation of the right to education, especially for marginalised and Dalits of the globe.

The first instrument to be discussed is the Convention against Discrimination in Education adopted by UNESCO in 1960. The aim of the convention is to eliminate discrimination in education and to promote quality of opportunity and treatment for all without any distinction based on race, colour or religion. Article 1 very clearly mentions the term discrimination and obligations of the state: the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and it is obligation of the state to prohibit any type of deprivation for person and group from access of the education and also ensuring quality education..<sup>117</sup> Article 3 of the convention says in 3(b) that there should be legislation to stop discrimination in admission of the pupils in educational institutions.<sup>118</sup> This convention is very important for marginalised groups of persons in accessing education because it protects their rights and enables them to get education without any distinction.

The other significant instrument is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) from 1979. Article 10 of the CEDAW states that States Parties shall take all appropriate measure to eliminate discrimination against women in order to ensure equal rights for men and women in the field of education.<sup>119</sup> It provisions for the equal access to career and vocational guidance and to education at all levels, access to the same curriculum and examinations and elimination of the stereotype roles of women.<sup>120</sup> This instrument is quite instrumental for women,

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<sup>117</sup> Donders, Volodin and Unesco, 2007, p. 191.

<sup>118</sup> Ibidim, p. 191.

<sup>119</sup> Beiter, 2005, p.111.

<sup>120</sup> Kumar, 2004, p. 254.

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especially from the class of marginalised and Dalits, since women from this section face double jeopardy, first of being women and second of being a Dalit. Thus this convention takes us one step closer to the realisation of the right to education.

The next instrument we can see is the Convention on the Rights of Child (CRC) 1989. It is a legally binding international instrument and it incorporates a full range of human rights. Article 2 of the CRC reinforces the prohibition of discrimination in any form and emphasises that no distinction can be made based on the child's family, religion, gender or his social status. No child should be treated unfairly on any ground. Articles 28 and 29 of the CRC deal with the right of the child to education. Article 28 says that all children have the right to a free primary education and that the school discipline should be administered in a manner consistent with a child's human dignity. It also talks about the obligations of wealthy nations, that they should help poor nations to achieve the right to education.<sup>121</sup> Article 29 stipulates that the education of the children should be based on the development of child's personality, talents and physical ability. Once a State party ratifies the Convention, it agrees to be bound by a series of obligations to ensure that all children are enjoying the rights mentioned in the Convention. Article 4 directs the State to undertake concrete steps for the realisation of the rights through legislation and administration.

There are some regional instruments also which have recognized education as a right. The African Charter on Human and Peoples Rights (Article 17); the African Charter on the Rights and Welfare of the Child (Article 11);<sup>122</sup> the American Declaration of the Rights and Duties of Man (Article 12) and the additional protocol to American Convention on Human Rights in the area of economic, social, and cultural rights (Protocol of Salvador) (Article 13);<sup>123</sup> the European Convention on the Legal status of

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<sup>121</sup> UNICEF, Fact Sheet A summary of the rights under the Convention on the Rights of the Child, [http://www.unicef.org/crc/files/Rights\\_overview.pdf](http://www.unicef.org/crc/files/Rights_overview.pdf), accessed on 05/05/13.

<sup>122</sup> Felix Morka, Module 16, The Right to Education, in Circle of Rights: Economic, Social & Cultural Rights Activism: A training Resource 5, <http://www1.umn.edu/humanrts/edumat/THRIP/circle/modules/module16.htm>, accessed on 05/05/13.

<sup>123</sup> Ibidim.

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Migrant Workers (Article 14 and 15); and the framework Convention for the Protection of National Minorities (Article 13 and 14).<sup>124</sup>

Apart from these international and regional instruments, the Indian and Nigerian constitutions have also been instrumental for making the right to education a reality in their countries. Article 21A of Indian Constitution says that the State shall provide free and compulsory education to all children of the age of six to fourteen years. In Article 14, the Indian Constitution says that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.<sup>125</sup> It clearly sets forward that there should be no discrimination in accessing any right by any citizens of India. The Nigerian Constitution says in its Chapter II, Article 18(1) that Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels and there should be free compulsory and universal primary education.<sup>126</sup>

### 3.3 Legal Standards and their enforcement

Felix Morka harbors the view that legal standards on the right to education constitute primarily two components: enhancement of the access to education on the basis of equality and nondiscrimination and freedom to choose public or private school and content of the education, religious or moral.<sup>127</sup> Both aspects reflect the essence of the right to education. Tomasevski says that there could be no right to education without corresponding obligations for governments.<sup>128</sup> Hence the demanding nature of the obligations dealing with the right to education is outlined through a series of explicit guarantees of the right to education in international human rights treaties, national constitutions, and domestic laws. However, at least four components of the right to

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<sup>124</sup> Ibidim.

<sup>125</sup> Right To Education Project, <http://www.right-to-education.org/country-node/353/country-constitutional>, accessed on 05/05/13.

<sup>126</sup> Ibidim.

<sup>127</sup> Morka Felix, Module 16, the Right to Education, in Circle of rights: economic, social and cultural rights activism: A training Resource 5, <http://www1.umn.edu/humanrts/edumat/THRIP/circle/modules/module16.htm>, accessed on 05/12/2013.

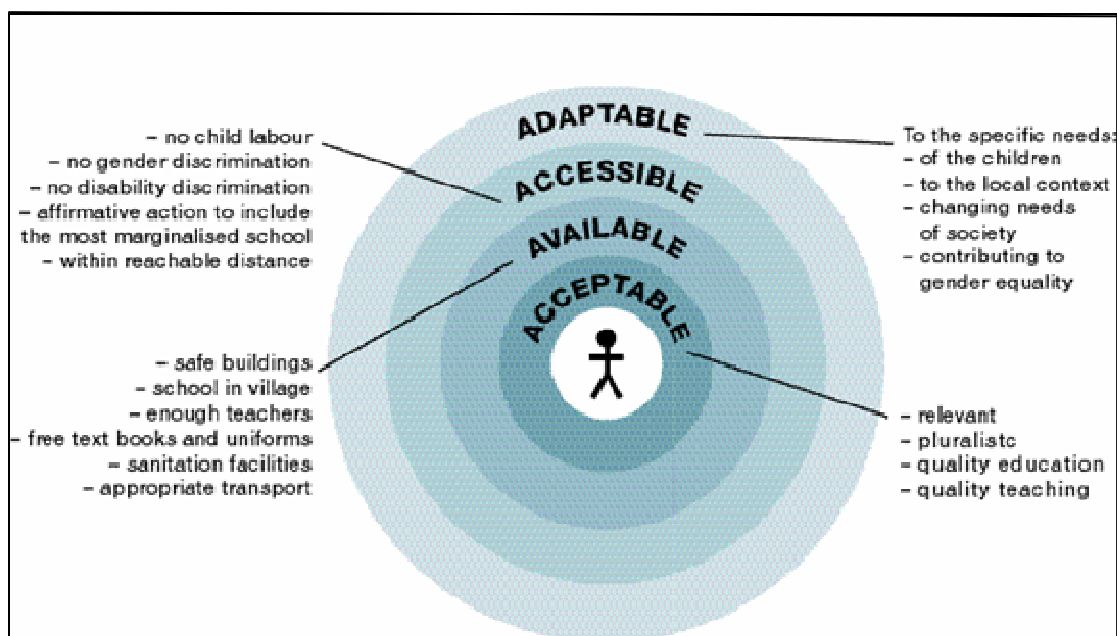
<sup>128</sup> Tomaševski, 2001, p. 13.



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education can be extracted from various legal provisions on the right to education: (a) equal enjoyment and equal access to educational opportunities and facilities (b) compulsory and free primary education (c) generally available and accessible secondary education, and equally accessible higher education (d) freedom of choice in education, and freedom to establish private institutions.<sup>129</sup> The CESCR, in its General Comment 13 identifies four elements of the state's obligations with respect to the right to education and these obligations can be easily structured into the 4-A scheme where governments have to make education available, accessible, acceptable and adaptable. The 4-As are to be respected, protected and fulfilled by the government, as the prime duty-bearer<sup>130</sup> and by using a participator



Source--- 4 As diagram © Action Aid<sup>131</sup>

process this 4 A framework can become a tool to enable people to think through what the right to education means to them, and compare their current reality to this ideal context.<sup>132</sup>

<sup>129</sup> Morka Felix, Module 16, the Right to Education, in Circle of rights: economic, social and cultural rights activism: A training Resource 5, <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module16.htm>, accessed on 05/12/2013.

<sup>130</sup> Tomaševski, 2001, p. 13.

<sup>131</sup> Right To Education Project, <http://www.right-to-education.org/node/231>, accessed on 05/10/2013.

<sup>132</sup> Right to Education Project, <http://www.right-to-education.org/node/226> accessed on 05/10/2013.

#### 3.3.1 Availability

The availability of the education entails two obligations for the government: the right to education as a civil political right, where government has to give permission for the establishment of educational institutions and as an economic, social and cultural right requires the government to set up funds for the free and compulsory education for the school-age children.<sup>133</sup> When we speak about the facilities available for the right to education, primarily it stands for adequate structures, sanitation facilities, safe drinking water, trained teachers, teaching materials, and library. The Committee on the Economic, Social and Cultural Rights observed that in Kenya 1999 to 2002, the primary schools have increased by 27 % and in Uganda, the children in formal education increased from 3 to 5.3 million. This growth has been witnessed after the introduction of universal primary education in Uganda and Kenya. It can be seen that the inclusion of many students has put enormous pressure on school infrastructure and needs more quality teaching staff.<sup>134</sup> The case of Nigeria is highlighted by the UNICEF, which has concluded that the increased enrollment has also created a challenge for the quality of the education. It is not rare in Nigeria to see cases of 100 pupils per teacher, sitting under a tree in the absence of classrooms, and on average, there is only one toilet for 600 pupils in the primary school system.<sup>135</sup> Despite the political commitment of Nigeria to reverse the years of negligence for the educational sector and a significant increase of the federal funding, investment in basic education is still low compared to other Sub-Saharan countries.<sup>136</sup>

There is an interesting case of *R v Inner London Education Authority, ex parte Ali*,<sup>137</sup> where court examined the duty of local education authority to secure sufficient places at school for all children within the compulsory school age where children were deprived of primary education because of a shortage of teachers.<sup>138</sup> It is an obligation of the state

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<sup>133</sup> Tomaševski, 2001, p.13.

<sup>134</sup> UN DOC.E/CN.4/2005/50, Para 30.

<sup>135</sup> UNICEF, [http://www.unicef.org/nigeria/children\\_1937.html](http://www.unicef.org/nigeria/children_1937.html), accessed on 05/10/2013.

<sup>136</sup> Ibidim.

<sup>137</sup> Parliament, UK, <http://www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd031023/barnet-1.htm>, accessed on 07/11/2013.

<sup>138</sup> Right to Education, <http://www.right-to-education.org/node/677>, accessed on 05/10/2013.

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to make necessary infrastructure available for the realisation of the right to education. Education is a way to break the vicious cycle of poverty and misery, but Dalits are not allowed to access school. These children face substandard conditions and sometimes inhumane treatment. Ninety-nine percent of the Dalit children come from government schools that lack all the basic infrastructure facilities. Dalit children cannot afford private tuition or a private school that is considered good; hence the quality of learning is very poor for these children.<sup>139</sup>

There are several legislative measures and affirmative action measures taken by the Indian Government like reservation policies and quotas for Dalits which have benefited the marginalized. Government has initiated several schemes to boost the enrollment of the children from the marginalized class of society, such as free distribution of textbooks and uniforms and mid-day meal scheme (MDM)<sup>140</sup>. It has improved the school attendance since these things are major components of school costs.<sup>141</sup> But many studies have shown that these schemes are not equally distributed all across and most of the time delayed.<sup>142</sup> However the implementation of these policies and schemes is very poor and there are some barriers for their effective implementation, such as reservations and quotas that are only applicable in public school, not in private. The Dalit Muslims and Christians do not fall in the category of beneficiary for the Government's scheme.<sup>143</sup> The Committee on the Rights of the Child is quite worried about the

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<sup>139</sup> National Conference of Dalit Organisations, 2006, Millennium Development goals and Dalits, <http://www.wadanatodo.net/download/MDGs%20across%20India/MDG%20Dalit%20Report/Reports/MDGs%20and%20Dalits%20English.pdf>, accessed on 05/10/2013.

<sup>140</sup> Mid-Day Meal Scheme, <http://mdm.nic.in/>, accessed on 05/12/2013, The Mid Day Meal is the world's largest school feeding programme reaching out to about **12 million children** in over 12.65 lakh schools/EGS centres across the country. Mid Day Meal in schools has had a long history in India. In 1925, a Mid Day Meal Programme was introduced for disadvantaged children in Madras Municipal Corporation. By the mid 1980s three States viz. Gujarat, Kerala and Tamil Nadu and the UT of Pondicherry had universalized a cooked Mid Day Meal Programme with their own resources for children studying at the primary stage By 1990-91 the number of States implementing the mid day meal programme with their own resources on a universal or a large scale had increased to twelve states.

<sup>141</sup> Vijapur, 2007, p.162.

<sup>142</sup> Vijapur, 2007, p.162.

<sup>143</sup> International Dalit Solidarity Network: Education, Dalits Access to Education, [http://idsn.org/fileadmin/user\\_folder/pdf/New\\_files/Key\\_Issues/Education/DALIT\\_EDUCATION\\_IDS\\_N\\_briefingpaper.pdf](http://idsn.org/fileadmin/user_folder/pdf/New_files/Key_Issues/Education/DALIT_EDUCATION_IDS_N_briefingpaper.pdf), accessed on 05/12/2013.

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widespread discrimination in school and has shown concern over the non-appointment of special courts for dealing with wrongdoings against Dalits.<sup>144</sup>

The Special Rapporteur on the right to education Mr. Kishore Singh has pointed out in his report (A/HRC/17/29) that even if the primary education has become free, it cannot be universalized effectively in the absence of financial support and cash transfers to the families who fall under extreme poverty because poverty and social exclusion remain the major barriers for achieving the Education For All.<sup>145</sup> The entire educational system indicates that more efforts to be done by the government to ensure smooth and effective implementation of the policies run for the marginalized to realize their right to education. The responsibility to provide free education in the presence of the required infrastructure is the prerequisite for the realisation of the right to education. Finally, the Committee on Economic Social and Cultural Rights has stated that a state party cannot escape the unequivocal obligation to adopt a plan of action on the grounds that the necessary resources are not available.<sup>146</sup>

### 3.3.2 Accessibility

In the 4-A framework, accessibility is the second obligation of the state. Being a prime duty bearer, state has an obligation to ensure the enjoyment of the right to education through guaranteeing access to existing educational institutions by all on the basis of equality and nondiscrimination.<sup>147</sup> It means that governments must take efforts for the eradication of the racial or caste discrimination and to ensure parity in access of education for all groups of persons. The CESCR considers in its General Comment 13 that accessibility has three overlapping dimensions:<sup>148</sup>

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<sup>144</sup> UN Doc- CRC/C/15/Add.228, Para 27.

<sup>145</sup> UN DOC: A/HRC/17/29, Para 60.

<sup>146</sup> UN Doc: E/C.12/1999/10, Para 6. and see also Morka Felix, Module 16, the Right to Education, in Circle of rights: economic, social and cultural rights activism: A training Resource 5, <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module16.htm>, accessed on -05/12/2013.

<sup>147</sup> UN Doc: E/C.12/1999/10, Para 6, (b).

<sup>148</sup> UN Doc: E/C.12/1999/10. Para 6, (b).

### **3.3.2.1 Non-discrimination**

Education has to be accessible to all, especially the most vulnerable groups, without discrimination or on any prohibited grounds. Tomaševski has also said that the access to the schools should be guided by the principle of non-discrimination and by the principle of international human rights law that is applicable for civil and political, and economic, social and cultural rights, as well as to the rights of the child. Non-discrimination is not the matter of progressive realisation but has to be secured immediately and fully.<sup>149</sup> There is an interesting case on discrimination and it says that government should take care of both direct and indirect discrimination. The case of *Autism Europe V. France*<sup>150</sup> was an opportunity to highlight the positive obligations of the States and their impact on the right to education. The plaintiffs claimed that France has failed in taking the required necessary steps to ensure the right to education of children and adults with autism and this has led to the violation of the right to education of persons with disabilities and in their being discriminated against. The Committee has recalled that the Revised European Social Charter not only prohibits direct discrimination but also all forms of indirect discrimination.<sup>151</sup> The case of *Manish & Ors vs Guru Gobind Singh Indraprastha*<sup>152</sup> is very pertinent and a case of direct discrimination, where it was found that 35 students of scheduled caste repeatedly failed in one subject but authorities of that college never bothered to meet those students to know their problem. This apathy resulted into loss of year for students and later it was found that those students were victims of discrimination. They were intentionally failed by the administration because of their caste.<sup>153</sup> After intervention of the Delhi High Court those students were passed and compensated too by the administration.

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<sup>149</sup> Tomaševski, (2001), p.27.

<sup>150</sup> Complaint No. 13/2002, European Committee of Social Rights, [http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC13Merits\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC13Merits_en.pdf), accessed on 06/30/2013.

<sup>151</sup> UN Doc.E/CN.4/2005/50, Para 57.

<sup>152</sup> W.P.(C)No.8340/2010, <http://delhicourts.nic.in/Aug11/Manish%20Vs%20GURU%20GOBIND%20IN%20DRAPRASTHA.pdf>, accessed on 06/29/2013.

<sup>153</sup> Infochange Human Rights, (2012), <http://infochangeindia.org/human-rights/analysis/dronacharyas-all-caste-discrimination-in-higher-education.html>, accessed on 06/29/2013.

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Although discrimination should be immediately prohibited, it is still very much practiced and hinders the right to education for marginalized persons. The Dalit children's right to education free from discrimination is constantly undermined by the treatment they receive in school. They are made to sit at the back of the room, face segregation from the upper caste children, and they systematically get low grades in their exams.<sup>154</sup> Teachers in India are predominantly from upper caste and bring their own understandings of the legitimacy of caste relations into the classroom when they think that education to Dalits is like waste of time and a threat for the society. Hence they are assigned menial tasks such as sweeping and cleaning the classrooms.<sup>155</sup> Discrimination among Dalits by teachers is so rampant that, as the study of B.K. Anitha has shown, Karnataka, a state of India, called Dalit as 'Kadu-jana'(Forest people) and meant that these persons cannot be taught without being beaten.<sup>156</sup> This corporal punishment is also one of the reasons for low enrollment and attendance. These factors are so inhuman that it leads to high dropout and gives a sense of inferiority and erode the sense of dignity of the Dalit children. Such treatment has particularly negative effects for children who are likely to be first generation learners<sup>157</sup>

Although the Indian Government has initiated several schemes to make education more accessible (and the mid day meal scheme is one of them), their poor implementation has not yielded any positive outcome for the realisation of the right to education for the marginalized. The study of Indian Institute of Dalits Study, the most of the places where the MMS scheme has been working are organized near the upper caste habitations, where the entry of Dalits is prohibited or banned. In the State of Tamil Nadu, this activity is performed in a temple, where Dalits cannot enter.<sup>158</sup> It raises the immediate question of exclusion of Dalit children from mainstream and defeats the purpose of the government for the realisation of the right to education with the help of such schemes.

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<sup>154</sup> Vijapur, 2007, p.159.

<sup>155</sup> Kabeer, 2006, p.11.

<sup>156</sup> Vijapur, 2007, p.159.

<sup>157</sup> Kabeer, 2006, p.11.

<sup>158</sup> Vijapur, 2007, p.162.

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#### 3.3.2.2 Physical Accessibility

The CESCR says in its para 6(b) of General Comment 13 that education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location or via modern technology as “distance learning” programme.<sup>159</sup>

Vijapur has mentioned that poor accessibility is also one of the reasons for the low literacy rate among Dalits. He says that the easy access to schooling has always been a problem for Dalits especially in rural areas. In many places schools are situated in locations inhabited by upper caste who are hostile to the children of lower caste, and sometimes they do not even allow them to enter in that vicinity.<sup>160</sup> The report of UNICEF based on Nigeria says, the distance to the nearest school is a major hindrance for accessibility of education. This is one of the causes of low enrolment, especially in the North of Nigeria. Most parents do not send their children, especially girls, to school and prefer to send them to Qur’anic schools rather than to formal schools.<sup>161</sup>

The Special Rapporteur has mentioned in his report (A/HRC/17/29) that inadequate public transportation can also be a determinant factor in excluding students from the education system. Especially persons living in acute poverty cannot afford to send their children to remote areas without the public and free transportation. The threat of violence against girls and the remoteness of school is a key factor to exclude them from education.<sup>162</sup> Governments indeed have human rights obligations because primary education should not be treated as a commodity. There has been a growing acceptance of the necessity for governmental intervention concerning access to primary education for girls.<sup>163</sup>

#### 3.3.2.3 Economic accessibility

Education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available “free to all”, States parties are

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159 UN Doc: E/C.12/1999/10, Para. 6, (b).

160 Vijapur, 2007, p.158.

161 UNICEF, [http://www.unicef.org/nigeria/children\\_1937.html](http://www.unicef.org/nigeria/children_1937.html), accessed on 05/10/201.

162 UN DOC: A/HRC/17/29, Para 53.

163 Tomaševski, 2001, p.27.

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required to progressively introduce free secondary and higher education.<sup>164</sup> The report of UNICEF on Nigeria shows that many children do not attend school because their labour is needed to either help at home or to bring additional income into the family. Many families cannot afford the associated costs of sending their children to school such as uniforms and textbooks. Even if they enroll in schools, many do not complete the primary cycle. The data says that, 40 % of Nigerian children aged 6-11 do not attend any primary school and 30 % of pupils drop out of primary school and only 54 % transit to junior secondary schools.<sup>165</sup> In India, the government has initiated several schemes to wipe out the problem of economic constraint such as the free distribution of text books and uniforms and the mid-day meal scheme. It has improved the school attendance since these things are major components of school costs. Abdul Quadir says that the poor implementation of the schemes has deprived poor children from their rights and it has left very minimal impact on the right to education for marginalized communities.<sup>166</sup> There are some other determinants, too, that affect the accessibility is poverty and growing population of Nigeria that put a lot of pressure on both the government and parents. Poverty is so rampant in Nigeria that a guardian cannot afford education of their children and they send their children to Quranic School, and they apparently risk falling into child labor or begging.<sup>167</sup> The original idea was for these young children to be sent out from their homes to receive Qu'ranic education in the traditional way under the care of a *mallam*. However, the system has been diverted from its original objective and the children have become a means of financial gain by their substitute caregivers who send them to beg in the streets and to carry out other menial jobs. This makes them vulnerable to different kinds of hazards to health, physical and psychological. The projected number of children into Almajirai is 7 million,<sup>168</sup> which is a huge number and cannot be ignored.

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164 UN Doc: E/C.12/1999/10, Para 6 (b), iii

165 UNICEF, [http://www.unicef.org/nigeria/children\\_1937.html](http://www.unicef.org/nigeria/children_1937.html), accessed on 05/10/2013.

166 Vijapur, 2007, p.162.

167 UNICEF, [http://www.unicef.org/nigeria/children\\_1934.html](http://www.unicef.org/nigeria/children_1934.html), accessed on 05/10/2013.

168 AbdulQadir A. Idris, The Almajiri System of Education in Nigeria Today, <http://www.gamji.com/article5000/NEWS5956.htm>, accessed on 05/13/2013. see also- The Almajiri system of Education in Nigeria Today:History has shown that, this system started in the 11th century as a result of the involvement of Borno rulers in Qur'anic literacy. Over seven hundred



#### 3.3.3 Acceptability

Special Rapporteur has said that “the State is obliged to ensure that all schools conform to the minimum criteria which it has developed as well as ascertaining that education is acceptable both to parents and to children”. This element considers the right to choose the type of education received and the right to establish maintain and manage private educational institutions.<sup>169</sup> It is not necessary for the government to provide the free transport, free textbooks, or school meals services to private schools, too, which they provide in public school. The Committee on the Rights of the Child recommends that a State party should develop a program for the allocation of educational or any other benefits meant for children’s needs and rights that should not be based on sex, caste or any other discriminatory grounds because it leads to unjustifiable discrimination.<sup>170</sup> Students and their parents have a full right to be free from the indoctrination or the material that is incongruent with their religious beliefs. The famous case of Nigeria regarding private educational institutions has been compared with the freedom of expression. The case of *Archbishop Anthony O. Okogie et al. v. the Attorney General of Lagos*,<sup>171</sup> the Nigerian Court held that private institutions were abridging the freedom of expression and the right of parents to “bring up their children to educate them in the best institutions they can think of and in the best traditions and manners they think such children should be educated.”<sup>172</sup> Acceptability is one of the important determinants of 4-A principle regarding the right to education. Even if the education is available and accessible but the acceptability of education is poor or it holds a low quality, the purpose becomes defeated. The scheme of the SSA (Sarva Shiksha Abhiyan) initiated

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years later, the Sokoto Caliphate was founded principally through an Islamic revolution based on the teachings of the Holy Qur'an. These two empires run similar Qur'anic learning system which over time came to be known as the Almajiri system. Under the Almajiri system, during the pre-colonial days, the pupils lived with their parents for moral upbringing. All the schools were located within the immediate environment from where the pupils came from. The Dan-Fodio revolution brought with it some modifications; the establishment of an inspectorate of Qur'anic literacy. The inspectors reported directly to the Emir of the province, concerning all matters relating to the school. It was argued that, this period, was the height of Qur'anic education in the northern Nigeria.

<sup>169</sup> UN Doc: E/C.12/1999/10, Para 6 (c),

<sup>170</sup> UN Doc- CRC/C/15/Add.228,26, Para 27.

<sup>171</sup> 2 NCLR 337 (1981), <http://www.r2knigeria.org/PDF/OkogievAGLagosState.pdf>, accessed on 05/13/2013.

<sup>172</sup> Morka Felix, Module 16, the Right to Education, in Circle of rights: economic, social and cultural rights activism: A training Resource 5, <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module16.htm>, accessed on 05/12/2013.

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by Indian government is not very successful since it lacks budgetary resources and poor quality of teachers and their low skills. The objective of the SSA is to maximize the enrollment of Scheduled caste and Scheduled Tribes in schools but it lacks the quality part, since it talks enrollment not about completion, and even this cannot be achieved without fulfilling resource constraints and quality of teacher.<sup>173</sup> The similar story of resource constraint can be seen in Nigeria. The greatest challenge for Nigeria for implementing the Universal Basic Education (UBE) is the conflict between the federal government, state and local government over the funds.<sup>174</sup> The financing of basic education is the responsibility of states of the federation and local governments. However, the Federal Government has decided to intervene in the provision of basic education with two percent of its consolidated revenue fund. Still, the state and local governments show reluctance over the spending money on the program called UBE.<sup>175</sup> On acceptability, the Indian Supreme Court has given a verdict in the case of *State of Maharashtra v Vikas Sahebrao Roundale and Others*,<sup>176</sup> that it is the power and responsibility of government to ensure that educational institutions conform to minimum standards (safety, water, sanitation or qualifications of teachers.) Without meeting such standards, those schools would be unacceptable.<sup>177</sup> Hence it is the primary duty of the state to run and make the education available in an acceptable way without hampering the projects in the absence of necessary funds.

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<sup>173</sup> UNICEF 2006, A: Social exclusion of Scheduled cast Children from primary Education in India, UNICEF, India

<sup>174</sup> Madori Sarki Saleh Mahmoud, Education: Problems and challenges in Nigeria, what to be done? Published on Sunday, 31 March 2013 05:00, Sunday Trust, <http://sundaytrust.com.ng/index.php/comment-debate/12514-education-problems-and-challenges-in-nigeria-what-to-be-done>, accessed on 05/10/2013.

<sup>175</sup> Universal Basic Education Commission (UBEC), Nigeria, <http://ubeconline.com/#>, accessed on 05/10/2013.

<sup>176</sup>Supreme Court of India 11 August 1992, *State of Maharashtra v Vikas Sahebrao Roundale and Others*-- That this court has judicially noticed mushroom growth of ill equipped and under staffed unrecognised institutions in Andhra Pradesh, Bihar, Tamil Nadu and Maharashtra States in particular, though other states too are of no exception. Obviously the field of education is found to be fertile, perennial and profitable business venture with least capital outlay and the instant case is one such from the State of Maharashtra. <http://indiankanoon.org/doc/1439334/>, accessed on 05/27/2013.

<sup>177</sup> Right to Education Project, <http://www.right-to-education.org/node/658>, accessed on 05/13/2013.

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#### 3.3.4 Adaptability

Article 29(1) (d) of the CRC says that “the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all people...”<sup>178</sup> and Article 13 (1) of the ICESCR says that “education shall be directed to the full development of the human personality and the sense of its dignity.”<sup>179</sup> In fact Article 3 of the Convention of the Rights of the Child talks about the best interest of children and sets a guideline that policy makers should be adaptable enough when they make any policy that affects children and interests of the children should be given prominence during policy making.<sup>180</sup> Thus, the education system should remain adaptable, taking into account the best interests of the child.<sup>181</sup> The education should be in mother tongue and native language, else it excludes significant numbers of students from getting education. It is the estimate that 221 million children get education in a language different from their native language. It limits their development and weakens their foundation of learning.<sup>182</sup>

The report of the Human Rights Watch 2006, the Special Rapporteur on the right to education noted that “teachers have been known to declare that Dalit pupils cannot learn unless they are beaten”.<sup>183</sup> Discriminatory practices against Dalit children exercised by teachers may include corporal punishment, denial of access to school water supplies, segregation in class rooms, and forcing Dalit children to perform manual scavenging on

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178 OHCHR, Convention on the Rights of the Child, Article 29, <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>, accessed on 05/23/2013.

<sup>179</sup> OHCHR, International Covenant on Economic, Social and Cultural Rights, <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>, accessed on 05/23/2013.

180 OHCHR, Convention on the Rights of the Child, Article 3, <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>, accessed on 05/23/2013.

Article 3 (Best interests of the child): The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

181 Ibidim, Article 3.

182 UN DOC: A/HRC/17/29, Para 63.

183 Center For Human Rights & Global Justice, Human Rights Watch, <http://www.hrw.org/reports/2007/india0207/india0207sumandrecsweb.pdf>, accessed on 05/27/2013.

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and around school premises.<sup>184</sup> This system needs to be changed and teachers should be more adaptable to new traditions. The corporal punishment should be immediately banned and it is not in compliance with the rights of the child, either. It creates fear in their mind for attending the class that leads to drop out and absenteeism.

The textbooks of India barely acknowledge the problem of Dalits and the atrocities committed against them. The inclusion of caste discrimination in the textbooks constitutes an official endorsement of this system. There is another problem in the Indian educational system which is that the authority of the teacher is rarely challenged. Even if his lessons are not correct, pupils just memorize them without asking for the correct answer.<sup>185</sup> Hence school system should be more participatory where children can ask and understand well their lessons. However, none of the above aspects of the right to education can be achieved without the adaptability of the education to the best interest of each child.

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184 International Dalit Solidarity Network: Education, Dalits Access to Education, [http://idsn.org/fileadmin/user\\_folder/pdf/New\\_files/Key\\_Issues/Education/DALIT\\_EDUCATION\\_IDSN\\_briefingpaper.pdf](http://idsn.org/fileadmin/user_folder/pdf/New_files/Key_Issues/Education/DALIT_EDUCATION_IDSN_briefingpaper.pdf), accessed on 05/12/2013.

<sup>185</sup> Vijapur, 2007, p.163.

## 4. Universal and free primary education for marginalised persons

### 4.1 Obligations and State dedications

The Committee on Economic, Social and Cultural Rights has concluded in relation to Article 2 of the ICESCR that each party has to undertake the steps individually or through international assistance with maximum available resources to achieve the rights progressively mentioned in the Covenant by all appropriate means, including adoption of legislative measures. The States Parties have to also guarantee that the rights enunciated in the Covenant will be exercised without any discrimination based on race, religion or sex.<sup>186</sup> The “progressive obligation” of the Covenant is often mistaken and inferred that once a state reaches a certain level of economic progress then that state must realize the rights established under the Covenant. This is not the intention of this clause but it instead obliges all the states to move immediately and as quickly as possible to realize the economic, social and cultural rights without considering the national wealth of the country. Hence this clause should never be interpreted by states as a deferment mechanism in absence of resources.<sup>187</sup> The *raison d’être* of this clause is that every state, no matter how tough is its economic condition and how low is its present level of primary school infrastructure, must take immediate and careful planned action to ensure the availability of primary education, as a matter of right for all.<sup>188</sup>

It is the norm that everyone has the right to education without non-discrimination and with equal opportunity. On the contrary, in many countries the degree of realisation of these norms is influenced by the structural factors in a given society. The structural factors include socioeconomic and cultural development and the economic condition of the family, discrimination against marginalized groups and treatment of disadvantaged persons within society. These structural problems amount to, what may be called, forms of static discrimination. These structural factors should be taken into account when States intend to implement the right to education.<sup>189</sup>

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<sup>186</sup> Fact Sheet No.16 (Rev.1), A/conf.157/24, part 1, chap. Iii.

<sup>187</sup> Ibidim, part 1, chap. Iii.

<sup>188</sup> Coomans, 1994, p.128.

<sup>189</sup> Ibidim, p.127.

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The realisation of the right to education needs an effort from the government to make education available and accessible. It is a positive obligation of the state to make education universally available regardless of age, language, social or ethnic origin. It has been laid down in Article 13 of the ICESCR about the obligation of the state to make education available in a non-discriminatory way.<sup>190</sup> In order to realize the normative content of the right to education and the corresponding obligations of the state, Cooman has suggested to follow the Eide's approach of three level of state obligations, which consists in obligations of government and that is 'to respect', 'to protect' and 'to fulfill' under their jurisdiction.<sup>191</sup> Each of these legal responsibilities can take on more specific obligations of "conduct" (e.g. action or inaction) and obligations of "result" (e.g. ends). To ensure the realisation of the right to education especially for disadvantaged or marginalized persons, states should work on these obligations:

To **respect** the right to education by avoiding any action that prevents children in accessing the facilities of school and stopping the caste-discrimination by strict implementation of law.

To **protect** the right to education by adopting the necessary measures to eradicate the barriers to education imposed by individuals from the upper caste on the persons from marginalized communities, for example, cultural barriers to education or violence against marginalized.

To **fulfill** the right to education by ensuring that education is available and accessible for all, i.e.- not only for the rich and elite but rather equally available to the poor and Dalits too.<sup>192</sup> In General Comment 13, the Committee has pointed out that the states obligations to ensure that communities and families shall not be dependent on child labor and that education shall be promoted by states in order to stop child labor and, in particular, its worst type of manifestations. It is also a state obligation to remove all

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<sup>190</sup> Coomans,

<http://www.uu.nl/faculty/leg/nl/organisatie/departementen/departementrechtsgeleerdheid/organisatie/onderdelen/studieeninformatiecentrummensrechten/publicaties/simspecials/18/Documents/18-03.pdf>,

accessed on 06/23/2013.

<sup>191</sup> Ibidim.

<sup>192</sup> UNICEF, UNESCO, 2007, p.39.

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stereotype discrimination based on caste, sex or gender that impedes marginalized children from the prospect of accessing education.<sup>193</sup>

In order to make the right to education progressively realized, the state needs to make some strategic plans, which includes time frame for the introduction of accessibility to and availability of primary and secondary education for marginalized children, raise in the quality of education and necessary legislation for the protection of children's right in schools. Hence time frame is very important for setting any target and for monitoring its achievement. In General Comment 13, the Committee has also discussed about the international obligations for the realisation of the right to education. The role of the United Nations agencies is of special importance in relation to the realisation of article 13. The UNESCO, UNDP, UNICEF, ILO, the World Bank, the International Monetary Fund and other bodies of the United Nations system should enhance their cooperation for the implementation of the right to education at the national level. In particular, the World Bank and IMF should pay greater attention to the protection of the right to education in their lending policies, structural adjustment programmes and measures taken in response to the debt crisis.<sup>194</sup> Therefore it is the obligation of states to make the right to education a reality for all without ignoring the support of international stakeholders. One of the prerequisite in realizing the right to education is the presence of political will and commitment. In many countries, good policies have been formulated and exist on paper but their implementation is very weak.<sup>195</sup> Going forward, it will be shown for India and Nigeria that how the policies are poorly implemented and how the human rights based approach can facilitate in implementing the right to education for marginalized and Dalits in a better way.

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<sup>193</sup> U.N. Doc, E/C.12/1999/10, Para 55.

<sup>194</sup> Ibidim, Para 60.

<sup>195</sup> UNICEF, UNESCO, 2007, p.41.

#### 4.2 Political and economic environment

There is a question of how the right to education can be made possible in the context of fluid economic strategies and especially where these strategies offer different opportunities for different groups and persons. It is a tough question to find out that how to ensure the right to livelihood without compromising right to education of marginalized children and particularly the elimination of child labor without compromising the economic position of poor households.<sup>196</sup> The indivisibility of other rights is nowhere more apparent than in compare to education, where the value of education is impacted by different actors and depends so much on opportunities and freedoms available for the realisation of this right.

There is a variety of factors like economic vulnerability, insecure livelihoods, social discrimination and political marginalization that shapes the educational program in India and Nigeria. Poverty is the biggest determinant that produces other subhuman conditions for the poor and marginalized persons, that leads to the absolute human rights violation, like child labor, child marriage, migration, internal displaced persons etc. All of them are directly proportionate to the quality of education. The political and economic environment of the country should be conducive to the realisation of the right to education for the marginalized persons. Half hearted approach can take the country to some distance but the achievement of the goal is not possible. For the full realisation of the right to education needs more determined political will and economic courage.

The deprivation of economic, social and cultural rights should not be considered as the result of natural conditions ordained by God or fate. Also the poor persons should not be blamed for their plight, on the charge of being lazy or reckless rather governments should take affirmative action to plug the gaps for the effective realisation of all economic, social and cultural rights.<sup>197</sup> Children from the elite and rich persons have

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<sup>196</sup>Ramya, 2003, 'Right to Education': Opportunities and Challenges1, Published by: Sage Publication, <http://ced.sagepub.com/content/1/1/76.full.pdf+html>, accessed on 06/04/2013.

<sup>197</sup>Ravindran, Module 1, Developing a rights-based perspective, in Circle of rights: economic, social and cultural rights activism: A training Resource 5, <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module1.htm>, accessed on 05/12/2013.



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always access to education and a platform for their personal development. It was the marginalized and poor persons who were deprived from free and compulsory education. The Indian government has come up with the right to education as a fundamental right in continuation Nigerian government has also made the primary education compulsory for children in their country. The right to education carries lot of expectations on the part of marginalized persons; they see it as a tool to come out of the vicious cycle of poverty and social exclusion but before realizing the dreams of marginalized person's government needs to take care of other factors also; those act like a hindrance in the effective realisation of the right to education.

Some factors can be highlighted that cause biggest friction in implementing the right to education judiciously for the marginalized persons. The first and significant reason for marginalization is

#### **4.2.1 The lack of arable land**

Most of the Dalits are working in agriculture and that is the primary source of their income. They always work in arable areas as bondage or in temporary labor. Lack of agricultural land for the production of their own food is the major barrier for their progress. Dalits have become economically vulnerable and their weak position is exploited by the upper castes. Their political exclusion is exploited by the police and politicians too. The report of National Campaign on Dalit Human Rights (NCDHR), from 1948 to the 1970, 34.9 million acres of land was distributed among farmers and only 0.5 % was given to Dalits.<sup>198</sup> The NCDHR has further shown the political exploitation of Dalits, as an estimated 30 million hectares of plough-able surplus land was available to Indian government while out of that, only 7.5 million acres have been declared surplus by government and a small chunk of this surplus lands only was given

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<sup>198</sup> National Campaign on Dalit Human Rights,(2006) Alternate Report to the Joint 2nd to 5th Periodic Report of the State Party (Republic of India) to the Committee on Economic, Social and Cultural Rights On the Implementation of International Covenant on Economic, Social and Cultural Rights (A Periodic Report Submitted by the State Parties under Articles 16 and 17 of the Covenant), <http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/NCDHRFinal.pdf>, accessed on 06/10/2013.

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to Dalits. A large portion of lands were sold to multinational companies for a very cheap price. Later, the construction by multinationals on those lands created vast number of internally displaced Dalits.<sup>199</sup> In 2004-2005, there were only 20 % Dalits, who had cultivating lands and the rest of them were agricultural labourers or migratory workers.<sup>200</sup> Inadequate access to fixed capital asset, lead to exceptionally high dependence of the Dalit households on manual wage labour. In 2000 the wage labour households account for 61.40 % Dalit households in rural areas and 26 % in urban areas, compared to 25.50 % and 7.45 % other households.<sup>201</sup> The limited access of land and paucity of capital because of the discriminatory policy of government has resulted in larger poverty rather than in the dream of the UN of larger freedom. Government should ensure the social security and food security for the landless Dalits so they can think about sending their children school for education. This ideology is also supported by Abraham Maslow, who says hat the most basic needs are the need for water, air, food, and sleep because they are vital to survival. As these needs are the most basic and instinctive needs in the hierarchy, because all needs become secondary until these physiological needs are met.<sup>202</sup> Therefore, the focus of government should be on the equitable distribution of land to Dalits so they can grow their own crops and freely send their children for education, too.

#### 4.2.2 Migration

Migration is a problem concurrent with the problem of land. Marginalized persons without their own lands like Dalits are not able to cultivate their own crop and they cannot sell it to the market. This is combined with the limited employment they get in smaller villages. Hence they have to migrate to bigger cities for continuous source of income.

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<sup>199</sup> Ibidim.

<sup>200</sup> Kethineni & Humiston, (2010), p. 115.

<sup>201</sup> Sukhadeo, Economic Exclusion And Poverty: Indian Experience Of Remedies Against Exclusion, [http://conferences.ifpri.org/2020Chinaconference/pdf/manilac\\_Thorat.pdf](http://conferences.ifpri.org/2020Chinaconference/pdf/manilac_Thorat.pdf), accessed on-06/11/2013.

<sup>202</sup> Maslow, 1943, A Theory of Human Motivation, Classics in the History of Psychology An internet resource developed by Christopher D. Green York University, Toronto, Ontario, <http://psychclassics.yorku.ca/Maslow/motivation.htm>, accessed on 06/11/2013.

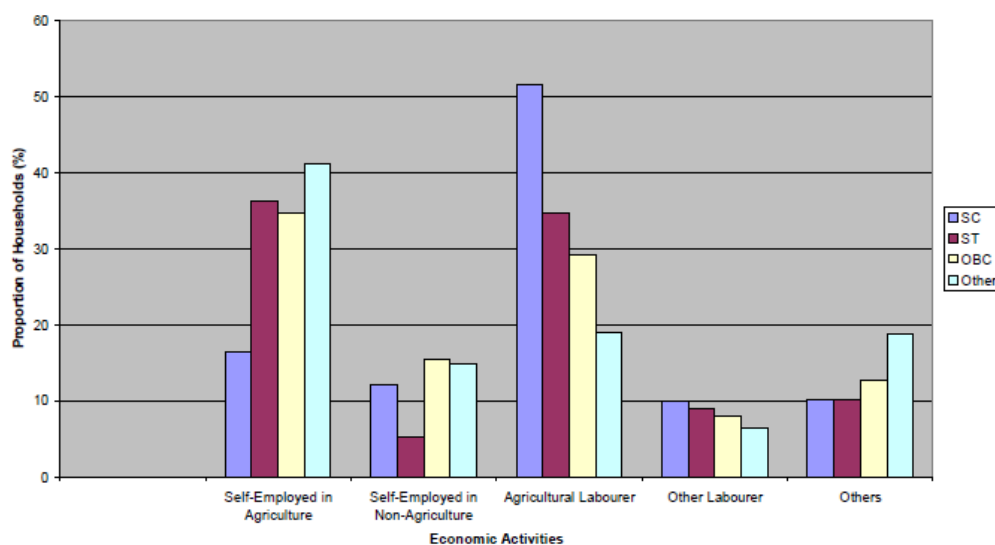
The Theory-- This theory highlights the importance of understanding how people behave and function in order to motivate them. Maslow discovered five levels of needs that people experience: Basic biological (Psychological) needs, Safety needs, Social needs, Ego (Esteem) needs, Self-actualization needs. In order to climb up the scale of needs, it is necessary that people complete level one first. People's ultimate goal is to reach the level of self-actualization.

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Marginalized persons also get much less support from financial institutions, since they do not provide easy loans to this section of persons. In the absence of loans, Dalits cannot start their own enterprises. Hence the circumstances force them to migrate from one place to another.

#### Occupational pattern across social groups



**Source---** Indian Institute of Dalit Studies<sup>203</sup>

The graph shows that most of the marginalized persons of India are involved in agricultural labor and it is not a promising paradise for them that can offer an employment whole year. Economic vulnerability leads many families to adopt migration as a strategy. Sometime parents also include their children in migration, so they can work alongside them and contribute to the livelihood of the family. Migration is never a scheduled phenomenon, but it can take place any month of the year, while schools work as per their fixed calendar. Hence the children who migrate with their family most of the time do not get access to schools in other areas. Even if children get access to the school, they are often discriminated against among class fellows, and due to weak economic conditions their parents cannot fight for the equal treatment of their

<sup>203</sup> Sadana, 2009, Dalit Children in Rural India: Issues Related to Exclusion and Deprivation, Indian Institute of Dalit Studies, <http://www.dalitstudies.org.in/wp/0905.pdf>, accessed on 06/03/2013.

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children.<sup>204</sup> The Government has initiated a scheme National Rural Employment Guarantee Act (NREGA), to stop the influx of migration towards bigger cities. The Gazette of India has defined this act as follows:

“An Act to provide for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto.”<sup>205</sup>

However, after the launch of the scheme, a nationwide survey was conducted across the nation after six months and it was found that only 30 % of persons registered to this scheme have got their job card, in few states only 7 % persons were aware about this scheme. Another report of the Indian government indicates that in 2006-2007, only three states were able to spend half of the money given by the central government for the scheme.<sup>206</sup> Although the nature and the intent of the program is quite appreciable since it ensures the right to work and provides for a social safety net for poor and marginalized it needs more homework for the successful implementation of the project. It is certain, once this scheme it will be effectively worked out, will be quite instrumental in stopping migration and helping marginalized in earning their livelihood.

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<sup>204</sup> Subrahmanian, 2003, 'Right to Education': Opportunities and Challenges1, Published by: Sage Publication, <http://ced.sagepub.com/content/1/1/76.full.pdf+html>, accessed on 06/04/2013.

<sup>205</sup> The Gazette of India, REGIS~RED NO.D L-(N)O4/000/72 003~5, <http://nrega.nic.in/rajaswa.pdf>, accessed on 06/11/2013) see also- Under this law any person who is above the age of 18 and resides in rural areas is entitled to apply for work. Any applicant is entitled to work within 15 days, for as many days as he/she has applied, subject to a limit of 100 days per household per year. Work is to be provided within a radius of 5 kilometers of the applicant's residence, if it is beyond 5 kilometers, travel allowance has to be paid. Workers are entitled to the statutory minimum wage applicable to agricultural laborers in the state, unless and until the Central Government notifies a different wage rate. There are provisions for timely payment of wages within a weeks' time; unemployment allowance; worksite facilities as clean drinking water, emergency health care etc.; participation of women to ensure one third of beneficiaries to be women; penalties for contravening with the provisions of this Act; implementation of this Act to be monitored by a State Employment Guarantee Council.

<sup>206</sup> National Campaign on Dalit Human Rights,(2006) Alternate Report to the Joint 2nd to 5th Periodic Report of the State Party (Republic of India) to the Committee on Economic, Social and Cultural Rights On the Implementation of International Covenant on Economic, Social and Cultural Rights (A Periodic Report Submitted by the State Parties under Articles 16 and 17 of the Covenant), <http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/NCDHRFinal.pdf>, accessed on 06/10/2013.

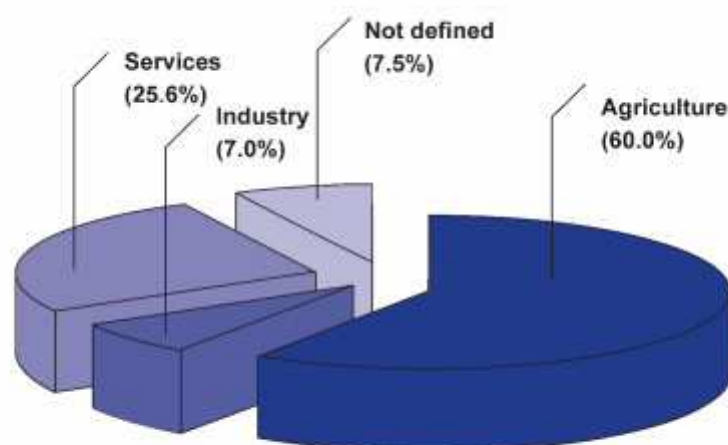
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#### 4.2.3 Child labour and Trafficking

Poverty is the root of child labour. Nigeria's poverty has spread and deepened after the end of the oil boom and it has resulted increased child labor. The poverty rate has gone up from 27.2 % to 65.6 % from the year 1980 to 1996. The approximately 150 % of increase in poverty, coupled with Nigeria's explosive growth in population caused a rapid growth in urban migration. Children's wages can contribute up to one-third of household income; child labor is therefore an important way out of poverty for some families.<sup>207</sup> According to the figure of 2000-2001 there are 15 million working children in Nigeria who are often forced into long hours and dangerous situations that are not developmentally appropriate.<sup>208</sup>

#### Child labor distribution by branch of economic activity, 5-17 years old



Source-ILO<sup>209</sup>

<sup>207</sup> Jones, Marshall, Cooke and Akinrimisi, Promoting synergies between child protection and social protection in Nigeria, Overseas Development Institute, <http://www.npc.gov.ng/vault/Social%20Development/Promoting%20synergies%20between%20child%20protection%20and%20social%20protection%20in%20Nigeria.pdf>, accessed on 06/09/2013.

<sup>208</sup> Ibidim.

<sup>209</sup> ILO, <http://www.ilo.org/ipecc/facts/lang--en/index.htm>, accessed on 06/11/2013.

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According to the National Sample Survey Organization report of 1999-2000, there are approximately 10 million child laborers in India and according to unofficial sources there are more than 100 million child laborers in India, most of whom are employed in the agricultural sector. This data also shows that worldwide agriculture is the biggest employer of child laborers. Child labor laws, wages and safety standards are in place in both countries, but it is not monitored by the state employees because employers bribe them.<sup>210</sup>

There is another problem of child trafficking in India and Nigeria that plagues the prospect of education of children. Girls' unique reproductive capacities make them even more valuable to traffickers. In early June 2011, over 30 adolescent girls were rescued from a Nigerian baby factory where they had been held hostage. The girls, aged 15-17, were imprisoned and forced to sell their babies. Their babies are sold in up to \$ 6,400, and they are mostly illegally adopted and ironically, male babies are prized and fetch higher prices.<sup>211</sup> The data of ILO estimates that in 2005 there were 980,000 to 1,225,000 children involved in forced labor as a result of trafficking.<sup>212</sup> It is pertinent to mention that both India and Nigeria have not ratified the ILO convention No.182 (1999) on the Worst Forms of Child Labor.<sup>213</sup> It shows the seriousness of the states about the elimination of the worst type of child labor. Since these are the barriers for the effective implementation of the right to education for the marginalized persons. As the poor and marginalized are more prone for child labor and being trafficked, the governments should take stringent actions to stop child labor so that the dream of education can be fulfilled.

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<sup>210</sup> National Campaign on Dalit Human Rights,(2006) Alternate Report to the Joint 2nd to 5th Periodic Report of the State Party (Republic of India) to the Committee on Economic, Social and Cultural Rights On the Implementation of International Covenant on Economic, Social and Cultural Rights (A Periodic Report Submitted by the State Parties under Articles 16 and 17 of the Covenant), <http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/NCDHRFinal.pdf>, accessed on 06/10/2013.

<sup>211</sup> Jones, Marshall, Cooke and Akinrimisi, Promoting synergies between child protection and social protection in Nigeria, Overseas Development Institute, <http://www.npc.gov.ng/vault/Social%20Development/Promoting%20synergies%20between%20child%20protection%20and%20social%20protection%20in%20Nigeria.pdf>, accessed on 06/09/2013.

<sup>212</sup> ILO, Trafficking in children, <http://www.ilo.org/ipec/areas/Traffickingofchildren/lang--en/index.htm>, accessed on 06/11/2013.

<sup>213</sup> Ibidim.

#### 4.2.4 Quality of Education

Primary enrolment and gender parity have improved in both countries but it is not the real indicator of success as it only provides a picture of the number of children registered in the school. It does not say anything about school attendance and quality of education. Studies have shown that at least half of the children finishing primary education are not able to read and write or do simple mathematics.<sup>214</sup> Program for International Student Assessment (PISA) has also shown concern over the quality of education in India.<sup>215</sup> The quality of education and learning outcomes are a serious problem for both India and Nigeria. Armed conflicts and natural disasters also constitute problems for the poor quality of education, which has seriously and in particular impacted marginalized children of the region.<sup>216</sup> It has been witnessed in Nigeria that the content of the education is not relevant for the competitive job market and, hence it does not yield skilled man power. Various studies conducted in Nigeria have shown clearly that there are low academic achievements among pupils in such basic skills as literacy, numeracy and life skills. There is neither good governance mechanism in the schools nor equitable resource allocation. Even the resources allocated are not properly utilized and the infrastructure required for delivery of quality education in Nigeria especially in public schools and in the rural areas is lamentably poor.<sup>217</sup>

The quality of education varies from state to state and from district to district in India. The poor quality of education can be attributed to many reasons, such as the poor physical infrastructure of schools, untrained teachers and their absenteeism, the children and pupil ratio is very high and old and traditional way of teaching that lacks participation.<sup>218</sup> Sometimes teachers feel that their working conditions are not conducive to better teaching methods and most of the time they are compelled to teach

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<sup>214</sup> Save the Children, 2008, The Convention on the Rights of the Child and Quality Education, <http://www.crin.org/docs/qualityeducation.pdf>, accessed on 06/12/2013.

<sup>215</sup> Program for International Student Assessment (PISA), <http://www.oecd.org/pisa/>, accessed on 06/13/2013.

<sup>216</sup> Save the Children, 2008, The Convention on the Rights of the Child and Quality Education, <http://www.crin.org/docs/qualityeducation.pdf>, accessed on 06/12/2013.

<sup>217</sup> Igbuzor, 2006, FINANCING QUALITY BASIC EDUCATION IN NIGERIA, ActionAid International Nigeria, <http://www.dawodu.com/igbuzor17.htm>, accessed on 06/13/2013.

<sup>218</sup> Artis, Doobay and Lyons, 2003, p.12.

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more than one grade at a time. They are also supposed to discharge the duty of Mid-Day Meal and other schemes run for children by government.<sup>219</sup>

However the government of India has started many schemes to improve the access and quality of education and currently there are 130 schemes run by the government including Mid-days Meal, Sarv Shiksha Abhiyaan, Operation Blackboard etc. These schemes have been launched to encourage the enrollment of poor and marginalized children in schools. These programs have reduced the access cost to school for the children and their parent which has resulted into high net enrollment ratio for children. The report of UNICEF says that the intervention of government has yielded a positive result in Net enrollment in both the countries. The Net enrollment for boys and girls in Nigeria is 66 % and 60 %. On the contrary the secondary school Net enrollment ratio is only 29 % for boys and 22 % for girls.<sup>220</sup> India presents a similar story as the primary net enrollment ratio for boys is 97 % and for girls is 94 % but the secondary school net enrolment ratio is 59 % for boys and 49 % for girls.<sup>221</sup> This data shows the lucrative scheme of governments that has pulled the children back to primary school but in the absence of promising quality and lackluster infrastructure, it has resulted into less secondary enrollment ratio. 99 % of Dalit children come from public schools and in some states like Bihar only .04 % of children from Dalit community goes to private school and in Nagaland 0 % children from Dalit community goes to private school.<sup>222</sup> Public school lacks basic infrastructure, teachers and teaching aid. In contrast, it is common for non-Dalit children to go to private tutoring or to get private education. The motivation to do so comes from the fact that most primary government schools are considered low quality. Few Dalits are able to access such supplementation to their education; this enhances the education gap. Once enrolled, discrimination continues to hinder the access of Dalit children to schooling as well as to affect the quality of

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<sup>219</sup> Ibidim, p.13.

<sup>220</sup> UNICEF, Nigeria, [http://www.unicef.org/infobycountry/nigeria\\_statistics.html](http://www.unicef.org/infobycountry/nigeria_statistics.html), accessed on 05/24/2013.

<sup>221</sup> UNICEF, India, [http://www.unicef.org/infobycountry/india\\_statistics.html](http://www.unicef.org/infobycountry/india_statistics.html), accessed on 05/24/2013.

<sup>222</sup> National University of Educational Planning and Administration, Elementary Education in Rural India, <http://www.dise.in/Downloads/Publications/Publications%20201112/Elementary%20Education%20in%20Rural%20India.pdf> accessed on 05/23/2013.

<sup>222</sup> Ibidim.



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education they receive.<sup>223</sup> It shows the importance of quality education for Dalit children because most of them go to public school and with a low quality the right to education cannot be realized for marginalized. However, the question of quality remains a challenge for the Indian government and needs more political commitment to ensure better quality.

The perspective that makes quality education more vulnerable is high pupil, student ratio and the low quality of teachers. “Every Child Needs a Teacher” is the slogan of the 2013 Global Action Week on Education for All, which focuses on the vital role of teachers in reaching education goals. It can be said like that “Without teachers a school is just a building”.<sup>224</sup> The importance of a good teacher and correct pedagogy has been significantly highlighted in several cases in India by the courts, which have also acknowledged the importance of good teacher in making a just society and for building the nation. Teacher and their importance got prominence and have been highlighted in cases such as *Ahmedabad St. Xavier’s College Society v. State of Gujarat*, *Andhra Kesari Educational Society v. Director of School Education, State of Maharashtra v. Vikas Sahebrao Roundale*, *St. John’s Teachers Training Institute (for Women) v. State of T.N.* and *N.M. Nageshwaramma v. State of A.P.*, and recently reiterated in *Adarsh Shiksha Mahavidyalaya and others v. Subhash Rahangdale and others*.<sup>225</sup> To make the education more participative, there should be presence of more teachers from Dalit community. Currently there are only 15.10 % male and 0.01 % female Dalit teachers out of the total universe of teachers in India.<sup>226</sup> It has been shown in earlier chapters

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<sup>223</sup> Artis, Doobay and Lyons, 2003, p.14.

<sup>224</sup> UNESCO, Global Action Week, [http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/single-view/news/global\\_action\\_week\\_we\\_will\\_not\\_meet\\_our\\_education\\_goals\\_without\\_teachers/](http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/single-view/news/global_action_week_we_will_not_meet_our_education_goals_without_teachers/), accessed on 06/06/2013.

<sup>225</sup> LawNet.In, [http://www.lawnotes.in/National\\_Council\\_for\\_Teacher\\_Education\\_and\\_another\\_Vs\\_Venus\\_Public\\_Education\\_Society\\_and\\_Others#ixzz2VpBB4p8b](http://www.lawnotes.in/National_Council_for_Teacher_Education_and_another_Vs_Venus_Public_Education_Society_and_Others#ixzz2VpBB4p8b), accessed on 06/10/2013.

Acquisition of knowledge and obtaining of necessary training for imparting education have their immense significance. The secret of successful teaching is to teach accurately, thoroughly, and earnestly and one may fruitfully add that accuracy and thoroughness can be achieved by cultivated education, matured training and keen intellect. That is why teaching becomes a teacher’s passion and religion. A good teacher, in a way, represents country’s orderly civilization. A teacher is expected to kindle interest in the taught by method of investigation, incessant implantation of knowledge and demonstration of experience that is replete with intellectual pragmatism.

<sup>226</sup> Ibidim.

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that the teachers from upper caste do not treat the children from marginalized group with equal dignity, in that case government should adopt a policy where they teachers of marginalized communities are getting preference in recruitment.

#### 4.2.5 Reservation- boon or bane

The government of India has implemented the policy of “reservation<sup>227</sup>” for the Scheduled caste and Scheduled tribes. They are the Dalits of India and actually need reservation as a tool for their social protection. However, this reservation system has not left much of impact on the marginalized persons of India. This is partly because the system is applicable only by the government sectors and it needs skillful manpower. Hence several jobs are left out and go vacant in absence of qualified worker.<sup>228</sup> Low commitment of political will is also a reason for not filling all the posts because there is a parallel pressure from the upper castes on government for not filling all the posts meant for Dalits. The 54 % of Central jobs remain vacant and ironically 88 % public sector jobs go vacant in absence of skilled and educated Scheduled caste candidate.<sup>229</sup> This policy is very good and in the interest of marginalized persons. However, it raises a question from the policy makers and the caretakers of this policy that this reservation is for whom? When there is no proper primary education available for the marginalized children and the infrastructure and the quality do not support the lower strata of society, how can we expect that there will be enough qualified candidates to avail the stipulated seats and reservation for Dalits?

Therefore the Government should do more and more efforts on the bottom up approach where maximum efforts are put on primary and secondary education for the children so that they can easily avail the benefits provided by the constitution for them. Additionally, the significance of this reservation is minimal in present scenario and in

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<sup>227</sup> Article 16 in the Constitution of India 1949 has legitimized the state and passed a decree that “Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State” available at <http://www.indiankanoon.org/doc/68038/>, accessed on 06/17/2013.

<sup>228</sup> Kethineni & Humiston, (2010), p.116.

<sup>229</sup> Ibidim, p.116.

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the era of globalization. That has further marginalized the weaker sections of the society by reducing their public sector jobs by Structural Adjustment Programs (SAP) that encouraged the governments to do disinvestments from public sectors. The curse of globalization on Dalits is that, it does not give them any preferences or reservations at the time of recruitment. Therefore the participation of Dalits is quite minimal in private sectors jobs, because the marginalized person's education is not fit enough for getting a job in private sectors. This has directly and definitively given a death blow to the Adivasis and Dalits in terms of job opportunities.<sup>230</sup> Hence, so far this constitutional benefit of reservation is closer to bane; however, if the government works on it with a high commitment, it will turn out into boon for Dalits.

Thanks to judicial activism, in India the Supreme Court has given a verdict, where there will also be 25 % reservation in private schools for the marginalized children. It has great implications for the marginalized persons. Now they can also access the best school for the quality education and it will be funded by the government. Section 12 of the Right of Children to Free and Compulsory Education Act 2009 has made it compulsory for every private unaided school to admit at least 25% of its entry level class from children belonging to economically weaker and disadvantaged groups.<sup>231</sup> This initiative has been appreciated by the Special Rapporteur on the right to education, Kishore Singh, and he said "Exclusion and poverty remain the most important obstacles to the realisation of the right to education in all regions of the world," hence this decision is an important step towards ensuring better education opportunities for all, in line with India's constitutional and international obligations.<sup>232</sup>

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<sup>230</sup> National Campaign on Dalit Human Rights,(2006) Alternate Report to the Joint 2nd to 5th Periodic Report of the State Party (Republic of India) to the Committee on Economic, Social and Cultural Rights On the Implementation of International Covenant on Economic, Social and Cultural Rights (A Periodic Report Submitted by the State Parties under Articles 16 and 17 of the Covenant), <http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/NCDHRFinal.pdf>, accessed on 06/10/2013.

<sup>231</sup>Mittal and Shah, Reservation in Private Schools: Model for Implementation, <http://www.ccs.in/ccsindia/pdf/viewpoint101.pdf>, accessed on 06/08/2013.

<sup>232</sup> UN News Centre, [http://www.un.org/apps/news/story.asp?NewsID=41774&Cr=education&Cr1=#.UbDL\\_p2Zjct](http://www.un.org/apps/news/story.asp?NewsID=41774&Cr=education&Cr1=#.UbDL_p2Zjct), accessed on 06/06/2013.

#### 4.2.6 Expenditure on education

Expenditure on education helps in fostering economic growth, it enhances the productivity, contribute to people's personal and social development, and help in reducing social inequalities. The proportion of total financial resources devoted to education is one of the key choices made by governments to make their population educated and competitive. The highest public spending on education relative to GDP in the EU, it was observed in Denmark (8.7 % of GDP), while Cyprus (8.0 %), Sweden (7.3 %), Finland (6.8 %), Belgium (6.6 %) and Ireland (6.5 %) also recorded relatively high proportions. The expenditure of U.S is 5.47 % on education but compare to India's expenditure is very low.<sup>233</sup> It is only 4.1 % for the year of 2009 all though the quality of education is very poor in India and the data for Nigeria has not been revealed by the government. The graph shows that the average expenditure on education by Indian government was always below than 4 % and it never crossed this barrier. The Kothari commission<sup>234</sup> has suggested in his report to the Indian government that there should be allocation of 6 % budget on education for the effective implementation of the educational policies.

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<sup>233</sup> Eurostat, Educational expenditure statistics, [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Educational\\_expenditure\\_statistics](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Educational_expenditure_statistics), accessed on 06/14/2013.

<sup>234</sup> Kothari Commission --- Allocation to Education: Six Per Cent of GNP

The most important recommendation made by the commission on financing of education refers to allocation of 6 per cent of national income to education. The commission made a detailed analysis of the past trends in financing education in the post-independence period, estimated the financial requirements of the educational system in India up to 1985-86, and recommended that "if education is to develop adequately, the proportion of GNP allocated to education will rise to 6.0 % in 1985-86". Of the several recommendations made by the commission, this 6 per cent of GNP is one that was accepted and resolved by the government of India (1968) in the National Policy on Education (NPE) 1968 "to increase the investment in education so as to reach a level of expenditure of 6 per cent of the national income as early as possible".

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# Expenditure in Education



2001-02 was Rs. 84,179 Crores (at 4.02% of GDP)

Never above 4.3% of GDP, despite the target of 6% by the Kothari Commission

19<sup>th</sup> June 2006

MIT India Reading Group

Source--- MIT India Reading Group<sup>235</sup>

However this amount was never allocated by the Indian government for education. Education is beneficial for both the developing economies and developed ones. It plays a critical role in sustained economic growth and improves livelihood security. Through this data we can see how the mean years of schooling has impacted the other indicators of development.

India's HDI indicators for 2012 relative to countries from the BRICS and IBSA groups

	HDI value	HDI rank	Life expectancy at birth (years)	Expected years of schooling (years)	Mean years of schooling (years)	GNI per capita (2005 PPP \$)
Brazil	0.730	85	73.8	14.2	7.2	10,152
China	0.699	101	73.7	11.7	7.5	7,945
India	0.554	136	65.8	10.7	4.4	3,285
Russian Federation	0.788	55	69.1	14.3	11.7	14,461
South Africa	0.629	121	53.4	13.1	8.5	9,594
BRICS	0.655	-	69.8	11.5	6.6	6,476
IBSA	0.588	-	66.4	11.2	5.0	4,401

Source- UNDP, International Human Development Indicators.

<sup>235</sup>MIT India Reading Group,  
<http://www.dise.in/Downloads/Use%20of%20Dise%20Data/Ajay%20Deshpande,Sayan%20Mitra.pdf>  
 accessed on 05/23/2013.

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The data concerning of Brazil, Russia, India, China, South Africa (BRICS) and shows that Russian Federation is doing exceptionally well on per capita income since it has focused on the mean years of schooling and expected years of schooling. Both the parameters are very high among all the BRICS nations.<sup>236</sup> Compared to Russia, the per capita income and mean years of schooling of India are very low and it results into a very low per capita income for Indian citizens. Hence the data prescribes that if we have to eradicate poverty and bring back Dalits from the misery of poverty, it needs to be done more expenditure on education. Education is directly related to the economic condition of a man. Because higher the educated better the reward in labor market. It is the simple formula of job market. It should be acknowledged that all human rights necessitate developed infrastructure and continuous investment for their effective protection. Obstacles like lack of infrastructure and paucity of resources cannot be eliminated without the political will and international support. However financial resources necessary to put an effective system in place for the protection of human rights are rarely discussed in the human rights discourse.<sup>237</sup> Hence, to meet out the MDG goal, completion of EFA and dream for the realisation of the right to education needs strong political will and unfatigued international support. Then, only this right can be realized fully for the betterment of marginalized persons. In the next section of the chapter it is discussed how to implement the right to education with the help of the rights-based approach.

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<sup>236</sup> UNDP, International Human Development Indicators, <http://hdrstats.undp.org/images/explanations/IND.pdf>, accessed on 05/24/2013.

Mean years of Schooling - mean years of schooling for the adult population, which is the average number of years of education received in a life time by people aged 25 years and older; and ii) expected years of schooling for children of school entrance age, which is the total number of years of schooling a child of school entrance age can expect to receive if prevailing patterns of age specific enrolment rates stay the same throughout the child's life.

<sup>237</sup> Tomasevski, Chapter-29, P.537 cited in Eide Asbjorn, Krause Catrina, Rosas Allan, 2001, Economic, Social and Cultural Rights, The Hague, Kluwer Law International.

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#### 4.3 Rights based education policy for marginalised

The dignity of human being can not be compromised in two spheres that of civil political rights and economic, social and cultural rights. The individual must be in the position to enjoy his freedom from want and freedom from fear. The effect of deprivation of economic, social and cultural rights cannot be ignored. An individual can never be asked to wait for the economic development to happen for respecting the dignity. The dignity and respect for humanity is the foundation on which the human rights-based approach is built.<sup>238</sup>

The intent of the incorporation of HRBA<sup>239</sup> is simple since it aims that everyone, including the poorest people, knows their rights and are able to act to enforce them. It is equally important that the government officials also know their human rights obligations and are capable of implementing them. The utmost significance of HRBA is that it clearly identifies right holders and



Source—Children's Rights in Wales<sup>240</sup>

duty bearers and make duty bearer accountable for their obligations. As Matthew Parish and Greta L. Rios say, without the effective remedy, the responsibility does not come and actually it comes through accountability.<sup>241</sup> Hence HRBA is a really good tool to implement any projects. It does not add any new commitments or any new tool; it just

<sup>238</sup> Ravindran, Module 1, Developing a rights-based perspective, in Circle of rights: economic, social and cultural rights activism: A training Resource 5,

<http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module1.htm>, accessed on 05/12/2013.

<sup>239</sup> Human rights-based approach- A human rights-based approach (HRBA) to development incorporates the standards, principles and approaches of human rights. It also accounts for social activism and of development to handle the power issues that lie at the root of poverty and exploitation, in order to promote justice, equality and freedom.

<sup>240</sup> Children's Rights in Wales, <http://www.childrensrightswales.org.uk/what-are-human-rights.aspx>, accessed on 07/03/2013.

<sup>241</sup> Parish and Rios, [http://ila-americanbranch.org/reports/2012-12-18\\_ABILA\\_Parish\\_Rios.pdf](http://ila-americanbranch.org/reports/2012-12-18_ABILA_Parish_Rios.pdf), accessed on 05/16/2013.

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makes the authorities more responsible for promoting human rights. The goal of human rights based approach to education is simple: to assure every child a quality education that respects and promotes his or her right to dignity and development.<sup>242</sup> Achieving this goal is, however, enormously more complex. It promotes three main principles: the accountability of duty bearers, the participation of right holders, and equity / non-discrimination. It supports sustainable development outcomes by analyzing and addressing the inequalities, discriminatory practices (*de jure* and *de facto*) and unjust power relations which are often at the heart of development problems.<sup>243</sup> The beauty of the rights-based approach is that it acknowledges non-discrimination during designing the project road maps. Hence the adoption of rights based education is necessary for India and Nigeria, where the caste discrimination has been a barrier and impeding children' accesses to schools. There has been a failure to acknowledge the problem of caste discrimination by both the governments and it is still pervasive. Although the incorporation of the rights-based approach is not a panacea for the realisation of the right to education for marginalized persons, it will help in administering the projects in a righteous way. It helps in making a strategy to reach all the marginalized children and ostracized communities to empower them so they can claim their rights and seek their enforcement in national courts.

The right to education can be achieved more effectively for the marginalized persons and their children if measures have been taken to address their rights to freedom from discrimination, protection from exploitative labor, adequate standard of living and prohibition of physical violence and sexual abuse.<sup>244</sup> The right to education is like an empowerment right and it is quite instrumental in realizing other rights too. A rights-based approach adds significant value during the implementation of the projects through ideologies mentioned below:

**Promotion of social cohesion-** right-based approach promotes the integration and social cohesion among all the children in school. It discourages any type of

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<sup>242</sup> UNICEF, UNESCO, 2007, p. 1.

<sup>243</sup> OHCHR, [http://www.ohchr.org/Documents/Issues/ESCR/Health/HRBA\\_HealthInformationSheet.pdf](http://www.ohchr.org/Documents/Issues/ESCR/Health/HRBA_HealthInformationSheet.pdf), accessed on 06/04/2013.

<sup>244</sup> UNICEF, UNESCO, 2007, p. 12.



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discrimination in schools. Although the access of schools is available for all the children but quality of school and education is so low that it does not produce any promising future for the children. Hence the rights-based approach encourages the development of the school environment, where all the children know that their views are heard and respected at the same time as their culture, linguistic diversity and the right to participate is encouraged through intercultural dialogue. These efforts lead to enhanced social cohesion among the society. That is missing at present in the area, where the practice of caste discrimination happens.<sup>245</sup>

In the early chapter, it has been depicted that Dalit children are prone to corporal punishment and were severe punishment in their schools and their teachers believe that Dalits cannot be taught without a punishment. Such punishment apparently leads to high drop out from the schools. The rights-based approach denounces such actions and promotes learning environments that eliminate all forms of physical, sexual or humiliating punishments by the teachers. It creates a conducive atmosphere for the marginalized children and they attend the classes without any paranoia.<sup>246</sup>

Treating children with dignity and respect helps in constructing an inclusive, participatory and accountable education system that helps in yielding better and improved outcome of the education. Schools those are still clinging with old patterns and non-participatory ways of teaching have registered high dropout, repeated grades and poor quality of education. In India, questioning is seriously discouraged. This is partly the result of cultural conditioning (asking questions of elders is considered disrespectful) and partly because of the extraordinarily large number of students in classes, and largely because the teachers don't know the answers!<sup>247</sup> The recent report of Programme for International Student Assessment (PISA)<sup>248</sup> has shown India ranked 71

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<sup>245</sup> Ibidim p.12.

<sup>246</sup> Ibidim, p.13.

<sup>247</sup> Times Of India,

[http://articles.timesofindia.indiatimes.com/2012-10-09/edit-page/34324055\\_1\\_progressive-schools-india-environment](http://articles.timesofindia.indiatimes.com/2012-10-09/edit-page/34324055_1_progressive-schools-india-environment), accessed on 06/05/2013.

<sup>248</sup> Programme for international student assessment, <http://www.oecd.org/pisa/>, accessed on 06/05/2013 see- Pisa- is an international study that was launched by the OECD in 1997. It aims to evaluate education systems worldwide every three years by assessing 15-year-olds' competencies in the key subjects: reading, mathematics and science. To date over 70 countries and economies have participated in PISA.

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out of 73 participating countries<sup>249</sup>. It shows poor quality of Indian educational system. The Indian Government is spending money on education but the outcome is very poor. It shows the pedagogy needs to be checked and made more participatory. It will create a more sustainable and cost effective environment for all the stakeholders in education.<sup>250</sup> The rights-based approach helps in building capacities of the marginalized persons so that they can claim their rights from government and makes also the government sensitive for honoring their obligations.

The application of the rights-based approach for the realisation of the right to education needs some policy and programming. There are some specific and unique elements that can be used for the project development and its analysis. These elements are as follows:<sup>251</sup>

- Situation assessment and analysis.
- Assessing capacity for implementation.
- Programme planning, design and implementation.
- Monitoring and evaluation.

#### **4.3.1 Situation assessment and analysis**

The caste discrimination has been abolished in India and Nigeria by the court and there are several pieces of law that have been made for the betterment of the lives of marginalized persons but still the lives of marginalized are in peril. Here awareness is the biggest problem, the right holders are not aware about their rights and remedies available to them under the purview of the courts. Thus this approach helps in analyzing the legislation and helps in creating awareness of the available legislation. In education, the government is the prime duty bearer. Hence it should keep three things in mind during designing of the program. The best interest of the child, non-discrimination and the right to life and development should be given priority. The focus of the project

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<sup>249</sup> Times Of India, [http://articles.timesofindia.indiatimes.com/2012-10-09/edit-page/34324055\\_1\\_progressive-schools-india-environment](http://articles.timesofindia.indiatimes.com/2012-10-09/edit-page/34324055_1_progressive-schools-india-environment), accessed on 06/05/2013.

<sup>250</sup> UNICEF, UNESCO, 2007, p.13.

<sup>251</sup> Ibidim, p.13.

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should be on the poorest and most vulnerable group because their rights are easily violated.<sup>252</sup> The training of teachers is also required for making them more sensible towards Dalit children and development of new curriculum is must. The culture and the history of marginalized persons should be given prominence so that children of that community start taking education seriously.<sup>253</sup> At last the participation of all the stakeholders like parents, teachers, religious leaders, community groups and children should be ensured for getting the feedback and for constructive changes in educational patterns.

#### **4.3.2 Assessing capacity for implementation**

A rights-based approach to education places a particular focus on assessing the capacity of both the right holders and duty bearers. In order to claim the right, persons need to know what their rights are and how they are being addressed in governments' policy. In case of any violations, what all remedies are available to them? Hence the development of capacity is necessary for the fair balance between government and the right holders and it requires a range of strategies, including information, parent networking, advocacy, peer support and technical assistance.<sup>254</sup>

#### **4.3.3 Capacity enhancement of government and public authority**

The assessment of the government and public authority is a key for the implementation of the right to education. There are certain obstacles in the implementation that need to be ironed out. The biggest problem is lack of authority and lack of responsibility. In 2006, a survey was conducted by the ISDN in 565 villages and 11 states and it revealed a sad picture of discrimination, still persisting among millions of Indians.<sup>255</sup> The data

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<sup>252</sup>Ibidim, p.16.

<sup>253</sup> Tauli & Victoria, (2005), Indigenous Peoples and the Millenium Development Goals, Tauli [http://www.tanzaniagateway.org/docs/Indigenous\\_peoples\\_and\\_the\\_MDGs.pdf](http://www.tanzaniagateway.org/docs/Indigenous_peoples_and_the_MDGs.pdf), accessed on 05/26/2013.

<sup>254</sup> UNICEF, UNESCO, 2007, p. 17.

<sup>255</sup> International Dalit Solidarity Network, <http://www.dalits.nl/pdf/CastAnEye.pdf>, accessed on 03/28/2013.

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says that 37.8 % of the Dalits are made to sit separately in government schools, 48.4 % of the Dalits are denied access to water sources, 35 % of the Dalits are barred from selling produce in local markets and almost 50 % Dalits are prevented from accessing cremation grounds. Apart from this the atrocities happening against them is not less. 27 atrocities against Dalits every day, 13 Dalits murdered every week, 3 Dalit women raped every day, 11 Dalits beaten every day, a crime committed against a Dalit every 18 minute.<sup>256</sup>

The condition of Osus is also similar. They are discouraged to have shops and once they have it, they are marginalized because no upper caste buys stuff from their shop. They are not physically being slaughtered for rituals, or insulted in public. Nevertheless, they always have on them the dehumanizing social stigma, which is a barrier to human relations. The voting behavior is also determined by the caste system. For example the persons of upper caste vote against any politician who condemns or advocates about eradication of the Osu caste system and some of the communities even refuse to elect an Osu politician although he is better than other opponent.<sup>257</sup> In the prevailing conditions, how can someone think about education when social security is quite missing? Hence first of all the governments needs to work on the filling the gap in their legislation and public authorities need to be more sensible and work for the rights of the marginalized. Hence for the realisation of the right to education for marginalized, the responsibility and ownership needs to be fixed.

#### **4.3.4 Programme planning, design and implementation**

The rights-based approach gives equal importance to the process of project development and its outcome because the process largely determines the outcome of the project.

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<sup>256</sup> Ibidim.

<sup>257</sup> Rencontre Africaine Pour la Défense des Droits de l'Homme (RADDHO), Alternative report to the eighteenth periodic report of the State Party Nigeria to the Committee on the Elimination of Racial Discrimination, [http://idsn.org/fileadmin/user\\_folder/pdf/Old\\_files/un/pdf/CERD\\_Nigeria\\_RADDHO.pdf](http://idsn.org/fileadmin/user_folder/pdf/Old_files/un/pdf/CERD_Nigeria_RADDHO.pdf), accessed on 06/07/2013.

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During the project development interest of marginalised and poor persons are given priority since they are not generally in a position to claim their rights. The rights-based approach will necessitate few actions as a constructive dialogue with government regarding their obligations, involvement of right holders in the decision making and assessment of the project, advocacy through effective legislation, policy change and sufficient resource allocation, civil society involvement in program designing and special attention for marginalised and poor group of persons.<sup>258</sup> For the right to education and especially for marginalised these points need to be kept in mind always during the project development.

#### **4.3.5 Monitoring and evaluation**

Monitoring and evaluation is very important for the project of education. It tells about the development of the project and where ever there is a gap it suggests a solution. It works on both the process and outcome of the project. In terms of outcomes, monitoring and evaluation it needs to account for these points: checking whether the right to education of marginalised children have been realized or not and it is no longer violated, the outcome analysis of the changed legislation and their impact in realisation of the right to education, checking equity and non-discrimination in access of the education and suggesting removal of the discriminatory remarks from the curriculum. Furthermore the aim of education is to promote personal development, strengthen respect for human rights and freedoms, and enable individuals to participate in a society. At the same time it has an obligation to eliminate discrimination at all levels so persons can enjoy their rights freely and they can have equal opportunity to improve their lives.<sup>259</sup> The rights-based approach is not a complete solution for achieving the right to education for marginalized persons, but the adoption of the rights-based approach takes the target audience very close to their rights

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<sup>258</sup> UNICEF, UNESCO, 2007, p.19.

<sup>259</sup> Ibidim,P.7

## **5. CONCLUSIONS**

One of the essential aim of this paper is to campaign for freedom and justice for every human being. This paper aims to change the mentality of those who supports Dalit and Osu caste system in India and Nigeria. Many of the persons from these groups have not seen true justice because of their social status.<sup>260</sup> Uneducated, severely poor and brutally exploited, Dalits struggle to fulfill even their most basic daily needs. The Dalits bear daily threats from both state and private actors. The violence by upper-caste against Dalits has majorly two causes: the untouchability and discrimination. The upper-caste practices discrimination on a daily basis in the desire to protect their own entrenched status by preventing Dalit development and non-fulfillment of Dalits' rights.<sup>261</sup> The discriminatory Osu caste system is another example of such tradition and culture that abridges people's rights to free association. Any culture that curtails people's freedom of association based on discrimination violates their human and civil rights and also it is an insult to the human race.<sup>262</sup>

The core value of human rights rest on the foundation of democracy and it cannot prevail with the discriminatory Osu and Dalit caste system in the society. Everyone should have the freedom to pursue happiness, and it cannot be achieved without being free from all social barriers. The Dalits and Osus should have also given the equal rights as given to upper caste for equal enjoyment of liberty, freedom and happiness.<sup>263</sup> When a group is enslaved, there is no freedom for them and where there is no freedom; there is no democracy for the marginalized groups (Osu and Dalit).<sup>264</sup> Ambedkar, the first minister for law and justice of free India and the great leader of Dalit rights have compared slavery and untouchability to show the pain of untouchables. Ambedkar has expressed his thoughts as follows:

“Slavery was never obligatory but untouchability is obligatory. Once he is born untouchable he is subject to all the disability of an untouchable. The law of

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<sup>260</sup> Dike, 2002, p.13.

<sup>261</sup> Center for Human Rights and Global Justice and Human Rights Watch, (2007), p. 76.

<sup>262</sup> Dike, 2002, p.14.

<sup>263</sup> Ibidim, p. 14.

<sup>264</sup> Ibidim, p. 14.

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slavery permitted emancipation. Once a slave always a slave was not the fate of the slave but in untouchability there is no escape since once an untouchable always an untouchable. The other difference is that untouchability is an indirect and therefore worst form of slavery. A deprivation of a man's freedom by an open and direct way is a preferable form of enslavement. It makes the slave conscious of his enslavement and to become conscious of slavery is the first and most important step in the battle for freedom. But if a man is deprived of his liberty indirectly he has no consciousness of his enslavement. Untouchability is an indirect form of slavery. To tell an untouchable 'you are free, you are a citizen, you have all the rights of a citizen', and to tighten the rope in such a way as to leave him no opportunity to realize the ideal is a cruel deception. It is enslavement without making the untouchable conscious of their enslavement. It is slavery though it is untouchability. It is real though it is indirect. It is injury because it is unconscious of the two order, untouchability is beyond doubt, the worst."<sup>265</sup>

The tighten rope and deception of being citizen can only be made true with the realisation of the right to education for marginalized and Dalit persons. Education will empower these groups of persons to fight for their emancipation from enslavement. Ambedkar correctly understood the importance of education as the most powerful instrument to free the Dalits from the century-old miseries, sufferings, insult and stigma inflicted on them by the caste system.<sup>266</sup> As a result, there will be freedom, equality and liberty for all. It is accepted by all that education contributes to overall development of the human personality and their growth. The term education can be defined in several ways. In broad sense, education helps the society to perform their tasks including daily things and also helps in to inculcate the social, cultural spiritual and philosophical values. In accordance of its significance, education has been given the status of human rights at the international level and also in many constitutions.

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<sup>265</sup> Dr. B.R. Ambedkar quoted in, Mungekar, Education: The Only Key to DALIT Progress, [http://www.ambedkar.org/Worldwide\\_Dalits/education\\_and\\_dalits.htm](http://www.ambedkar.org/Worldwide_Dalits/education_and_dalits.htm), accessed on 07/10/2013.

<sup>266</sup> Ibidim.

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Article 13 is seen as the most important formulation of the right to education in international instruments. International law has defined education as human rights since the Universal Declaration of Human Rights was laid down. Still the situation of education leaves much to be desired even at the beginning of the twenty first century. It is ironical that 875 million of world's population is illiterate, one out of every 5 children in the age of 6 to 11 is not in the school and mostly they are from developing countries.<sup>267</sup>

Despite the fact that the right to education is protected in various human right treaties, the Bretton Woods Organizations “the World Bank and IMF” tried to make education a need rather than a right through their structural adjustment programme. This demotion of education from “right” to “need” has thereby made education a commodity which can be traded for a price.<sup>268</sup> This notion goes against the values of an egalitarian society because now who can afford the price will get quality education and the rest will be left out. It is quite apparent that the biggest burden of structural adjustment has been borne by poor, i.e., Dalits and marginalized persons of the world, since they were not able to buy education with money. Hence, they were excluded from access to education and it became a dream for poor persons. Once the education is treated as “human rights”, it entails responsibilities from the state to provide free and affordable quality education to all without any discrimination. It is the obligation of the state to fulfill it and failure to comply with it leads to human rights violations.

The right to education is considered as part of the empowerment rights which provide an individual control over his / her life and also protection from the state. Empowerment rights make an individual competent to take charge of his life and provide space to determine the shape of their lives. It facilitates participation in political, economic, social and cultural life. Hence, empowerment rights are seen as a precondition for the exercise of other human rights.<sup>269</sup> The importance of education is huge and it is prerequisite for the emancipation of marginalized and Dalit persons. Their problem is

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<sup>267</sup> Beiter, 2005, p.1.

<sup>268</sup> Ibidim, p.2.

<sup>269</sup> Beiter, 2005, p.28.



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identical, they don't have political, economic, social and cultural participation and it can be restored by education itself for Dalits or Osus.

In India, jurisprudence also underlines State obligations relating to the right to education and equality of educational opportunities. The Supreme Court of India has interpreted the provisions on equality before law in article 14 of India's Constitution to promote equality in law and in fact.<sup>270</sup> The judicial activism of India has really impressed a lot in making the right to education reality for the poor and marginalized persons. In the *Unni Krishnan* case<sup>271</sup>, the Supreme Court of India has compared the right to education with the right to life. Hence, depriving someone from education is denied of the right to life, too. Even a Nigerian Court has given its verdict in the case of *SERAP v. Nigeria*<sup>272</sup>, where the court has dismissed the view of Federal Government and, it said that education is a mere directive policy and not a legal entitlement of the citizens. The Court said that the right to education can be enforced before the Court and it is justiciable, and, thus, education is an obligation of state and state has to fulfill it.

The present study has made an attempt to deal with various aspects of rights to education for disadvantaged and marginalized persons. It is obvious from the discussion that in order to promote rights to education for all, the school management, government, parents, NGOs/INGOs and community have to play an important role. Quality education should be provided to all children especially to marginalized children in order to bring them in the mainstream of education. Herein, it is pertinent to quote the case of the Kentucky Supreme Court that provided with a methodology for the quality education. The much highlighted case of *Rose v Council for Better Education*<sup>273</sup> has suggested seven steps of quality education and instructed the state to follow them for the best interest of children.

- (1) Sufficient oral and written communication skills should be given to enable students to work in a complex situation.<sup>274</sup>

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<sup>270</sup> UN Doc. A/HRC/17/29, Para 67.

<sup>271</sup> (1993) 1 SCC 645.

<sup>272</sup> ECW/CCJ/APP/0808.

<sup>273</sup> 790 S.W.2d 186 (Ky. 1989).

<sup>274</sup> Langford, 2008, p. 13.

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- (2) Sufficient knowledge of economic, social and political systems to enable the students to make informed choices.<sup>275</sup>
- (3) Sufficient understanding of governmental process to enable student to understand the issues that affects the community.<sup>276</sup>
- (4) Sufficient self-knowledge of his or her mental and physical wellness.
- (5) Sufficient training of arts to enable each student to appreciate his or her cultural and historical heritage.<sup>277</sup>
- (6) Sufficient training to children to enable them to pursue their life or work intelligently.
- (7) Sufficient levels of academic or vocational skills to enable public school students to compete with their counter parts in surrounding states, in the academic or the job market.<sup>278</sup>

After the adoption of these steps in Kentucky schools, first time students showed positive improvement as per the national average on the basis of skills assessment. The quality of education in India and Nigeria is very poor hence both the countries should replicate this methodology into their educational system to improve the skills of their children. The efforts of India on implementation of the right to education were highly criticized for its failure to allocate adequate financial resources. Lack of resources is one of the major barriers for the quality education too. The Government has allocated 2.1 billion U.S. dollars for the implementation of the right to education on the contrary, it requires 3 billion U.S. dollars to fully implement the right to education.<sup>279</sup> This gap of financial resources leads to poor quality of education.

There is another limitation of the Fundamental Right of education of India is about the age. This right only talks about free education for the children between the age of six and fourteen. This is clear violation of the decision of the Supreme Court of India in the Unni Krishnan case where court has held that every child below the age of fourteen has

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<sup>275</sup> Ibidim, p.13.

<sup>276</sup> Ibidim, p.13.

<sup>277</sup> Ibidim, p.13.

<sup>278</sup> Ibidim, p. 13.

<sup>279</sup> Sripati and Thiruvengadam, 2004, p.155.

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a fundamental right for primary education.<sup>280</sup> It is also widely accepted that quality education should be given to children from their pre-primary level because children's attitude for the race and colors are formed during the years of pre-primary school. It is another discouraging trait of the right for marginalized or poor persons of India. Since they are poor and they cannot afford sending their children to kindergarten schools for the early development of their children. Dalits are deprived from the schooling of their children from the age of three to six. This period is important to learn foundational things and it makes a platform for the higher classes. The children of Dalits do not go to the early child care schools hence, once they are enrolled in schools in the age of six, they cannot cope in the class and with other students from the upper caste, who has been nurtured and groomed from the age of three. Dalit students get disenchanted and the education appears non-promising to them, hence it leads to high drop outs.

The legislation of India and Nigeria can be inspired from Brazilian law. In Brazil the Supreme Court has found that pre-school is of absolute importance for the children. Hence, the court has given the mandate in article 208, item IV in the Federal Constitution that it is the state duty to guarantee assistance to the children of zero to six years of age in day-care centers and pre-schools.<sup>281</sup> Replication of this policy in the constitution will truly help the students from marginalized groups to access the education freely and in a more advanced way. Even the Colombian government has also recognized the right to education in article 27 as free and compulsory for children from the age of five to fifteen years.<sup>282</sup> Hence, Indian Government should seriously think about the adoption of the policies of Brazil and Columbia into their educational policies for better coverage of the right to education for Dalits and marginalized.

The ongoing discussion on the problem of schooling of Dalit Children in India reveals that the students from this community have been facing various kinds of problems including their experience of discrimination and restrictions in accessing schools, and getting mid-day meals, free textbooks and uniforms. They are segregated in classrooms and during mid-day meals. Their teachers curse themselves that in this life they are

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<sup>280</sup> Ibidim, p.155.

<sup>281</sup> Federal Supreme Court, RE.411518/SP (2004).

<sup>282</sup> T-534 / 97.

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made to teach the most polluted people, the Untouchables.<sup>283</sup> Now the question is how to remove these caste prejudices toward Dalit students and marginalized persons. What can be done to bring an end to the apartheid-kind of system that prevails in India and Nigeria?

One way of bringing an egalitarian system and an end to caste discrimination is to dismantle the caste system. The Indian Constitution has abolished the custom of untouchability and even the Nigerian Government has outlawed Osu caste system in 1950s but it was never enforced in reality. If the laws prohibiting untouchability, are implemented in their letter and spirit and the perpetrators of atrocities against Dalits are punished, the practices of discrimination in schools also will gradually come to an end.<sup>284</sup> The other way to make education more universally accessible, mutual relationship should be developed with the teacher and students and school program and curriculum should be developed in a more child-friendly atmosphere. Innovative and interactive programs to attract more students to attend the class and regular monitoring and evaluation should be done for quality education.

Based on the findings of the study, following recommendations are made:

**Ensure non-discrimination:** Ensure no marginalized groups child is discriminated at school.

**Awareness:** There is a lack of awareness among the Dalit communities working as the major barrier to educating children. Authorities should conduct awareness programmes to address the need of the mass of community people.

**Irregularity and dropout:** To ensure that no children from Dalit drop out before completing primary education.

**Early age at marriage:** The age of marriage must be revised because premature marriage deprives them from the opportunity for personal development as well as their rights to full reproductive health and wellbeing, education, and participation in civic

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<sup>283</sup> Vijapur, 2007, p.164.

<sup>284</sup> Ibidim, p. 164.

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life. It is a big problem in India where 47 % girls are married under the age of 18 and in Nigeria 39 % of girls are married under the age of 18.<sup>285</sup>

**Mother tongue:** The primary education should be provided in mother tongue. Thus, children do not face problem in understanding basic information.

**Focus on the most disadvantaged group of children:** Priority should be given to the children from disadvantaged background in all the programs to motivate them to participate more in all the school curricular activities.

**Financial problem:** Community participation is very important to collect and manage resources in the schools. The government has to provide fund and resources for managing library.

**Need of adequate support to students:** Policies initiated by the Government such as scholarship, freeships, textbooks, exercise books, bags and tiffin facility etc. should be well implemented without any corruption.

The implementation of the right to education is an ambitious project for countries like India, Nigeria and those which have witnessed decades of policy failure. To make the rhetoric of free compulsory elementary education available for all children until the age of fourteen, it requires a lot of political commitment and efforts by government. Based on countries experience, some more recommendations are made here:

The governments should increase the expenditure on education at least 5 %, by increasing spending the government will be able to improve the quality of education by providing more schools and teachers, higher salaries for teachers, better teacher training and increased availability of school materials. Governments should also conduct some random audits to schools to ensure that teachers are not forcing Dalit children to sit in the back of the class or they are not being segregated. If a teacher is found to be violating any student's rights, regardless of their caste, then he should be given a strict penalty, such as suspension without payment.

At last education will improve a transformation of the citizenry, and making marginalized persons aware of their rights and duties in the society. Through access to

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<sup>285</sup> UNICEF, Nigeria, [http://www.unicef.org/infobycountry/nigeria\\_statistics.html](http://www.unicef.org/infobycountry/nigeria_statistics.html), accessed on 05/24/2013.

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education, awareness can be created to reduce ignorance and in turn increase social interaction. It is true that old habits are hard to break but with the realisation of the right to education, they can be dismantled. It can be said that if all the recommendations and suggestions are adopted by the Indian and Nigerian governments, education can be more universally realized for the marginalized group of persons. Here it would be suitable to finish with the poem of Robert Prouty who has correctly written about the right to learn that describes education should be accessible for all.

#### My right to learn

I do not have to earn  
The right to learn  
It's mine.  
And if because  
Of faulty laws  
And errors of design,  
And far too many places where  
Still far too many people do not care –  
If because of all these things, and more,  
For me, the classroom door,  
With someone who can teach,  
Is still beyond my reach,  
Still out of sight,  
Those wrongs do not remove my right.  
So here I am. I too  
Am one of you  
And by God's grace,  
And yours, I'll find my place.  
We haven't met.  
You do not know me yet  
And so  
You don't yet know  
That there is much that I can give you in return.  
The future is my name  
And all I claim  
Is this: my right to learn.<sup>286</sup>



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<sup>286</sup> UNICEF & UNESCCO, 2007, p. Xiv.

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1949 Statute of the Council of Europe

1950 Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols No. 11 and 14

1961 European Social Charter

1981 African Charter on Human and Peoples' Rights

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