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## Rethinking the Right to Education: Toward A Sociological Analysis

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**Abstract:** The neoliberalization process and increasing inequalities between and within the countries have created a deteriorating environment for the enjoyment of human rights especially for the working classes and other disadvantaged groups all around the world. This article seeks to contribute to the burgeoning field of sociology of human rights through providing a political economy analysis of the right to education within the context of neoliberal socio-economic conditions. It will be argued that economic, social and cultural rights, despite their formal recognition, have been demoted to 'consumer rights' with the increasing retreat of the state from the provision of the public services and the introduction of the market relations in these services since the mid-1970s. The purpose of this article is to explore the gap in formal recognition and substantive enjoyment of the right to education and to discuss the contributions of a sociological analysis for the realisation of this right.

**Keywords:** Sociology of the Right to Education, Educational Policy, Neoliberalism, Political Economy

## Eđitim Hakkını Yeniden Düşünmek: Sosyolojik Bir Çözümlemeye Doğru

**Özet:** Neoliberalleşme süreci ve ülkeler arasında ve içinde artan eşitsizlikler insan haklarından yararlanılması bakımından özellikle işçi sınıfı ve diğer dezavantajlı gruplar için kötüleşen bir ortam yaratmıştır. Bu makale, gelişmekte olan insan hakları sosyolojisine eğitim hakkının politik ekonomi çerçevesinden bir çözümlemesini yaparak katkıda bulunmayı amaçlamaktadır. Makalede, ekonomik, sosyal ve kültürel hakların resmi olarak kabul edilmelerine karşın, 1970'lerden itibaren devletin kamu hizmetlerinin sağlanması alanından çekilmeye başlaması ve bu hizmetlerin karşılanmasında piyasa ilişkilerinin devreye sokulmasıyla, adı geçen hakların "tüketici haklarına" indirildiği ileri sürülecektir. Bu makalenin amacı eğitim hakkının resmî olarak tanınmasıyla gerçek anlamda yararlanılması arasındaki farkı soruşturmak ve bu hakkın gerçekleşmesi için sosyolojik bir analizin yapabileceği katkıları tartışmaktır.

**Anahtar Kelimeler:** Eğitim Hakkı Sosyolojisi, Eğitim Politikası, Neoliberalizm, Politik Ekonomi

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**Introduction: Sociology of Human Rights**

Consolidation of neoliberalism and expansion of capitalist relations in every aspect of life have resulted in a decline in the well-being of people throughout the world. Hence, the neoliberalisation process and increasing inequalities between and within the countries have created a deteriorating environment for the enjoyment of human rights especially for the working classes and other disadvantaged groups all around the world. This article will try to make a contribution to the growing field of the sociology of human rights, particularly by proposing a political economy approach for the analysis of the right to education within the context of neoliberal socio-economic structure.

Even though sociology, until quite recently, was silent about rights (Turner, 1993), in recent years new studies have been published in this discipline on rights from different perspectives; amongst them are the works of Ted Benton (1993), Diane Elson (2002), Judith Blau and Alberto Moncada (2005), Anthony Woodiwiss (2005), Lydia Morris (ed.) (2006) and Rhiannon Morgan and Bryan S. Turner (eds.) (2009). In his pioneering article, Bryan Turner (1993) has argued that the analysis of human rights presents a problem for sociology because of its scepticism about the possibility of the social existence of universal rights and obligations. According to him, sociology as a discipline has no obvious foundation for a contemporary theory of rights (1993, p.490). Therefore he proposes that sociology can ground the analysis of human rights “in a concept of human frailty, in the idea of precariousness of social institutions, and in a theory of moral sympathy” (1993, p.489). On the other hand, Malcolm Waters (1996), in his response to Turner, argues that a sociological theory of human rights must take a social-constructionist approach that treats the universality of human rights itself as a social construction. According to him, a social constructionist theory of human rights assumes that “the institutionalisation of rights is a product of the balance of power between political interests” (1996, p.595). From a similar perspective, Morris (2006b) proposes a practice based approach to rights. According to her, sociology, rather than trying to establish a theory of foundation for rights, should focus on the practice of rights (2006b, p.243). She distinguishes four distinctive approaches to the sociological study of rights: political economy; status, norms and institutions; meaning and interpretation; and the clash of rights (Morris, 2006b, p.249). Here a political economy approach will be employed (Benton, 1993, 2006; Chomsky and Herman, 1980; Evans, 1998, 2005; Morris, 2006a:17-19) for the analysis of the right to education “in which an emphasis is placed on the holistic understanding of a social formation, through a focus on the political and economic relationships that underpin social life” (Morris, 2006a, p.17). An analysis of power relations and structural inequalities in capitalist

society is central for the political economy approach (Benton, 2006; Evans, 1998).

Despite the theoretical evolution and expansion of the scope of the concept of human rights after the Second World War, there has been a considerable gap between the formal and empirical perceptions of human rights. At the formal level, rights are not only broadly defined and accepted as universal but are also treated as inseparable and interdependent components of an integrated concept. At the empirical level, on the other hand, we see a much more limited and selective application of the concept (Arat, 1999, p.123). In other words, we can talk about a simultaneous presence and absence of rights. It means that there is a right in theory but actual enjoyment of it is absence. According to Morris it is this indeterminacy of rights, i.e. the gap between recognition of the need for protection and its achievement in practice, which makes them sociologically interesting (2006a, p.15). For Benton it is this contrast between formal and substantive rights which is central to the “sociological critique” of liberal rights. According to him, “the bourgeois socioeconomic relations make rights substantively unrealizable” (1993, p.112). He then asserts that the “sociological critique” of the liberal-individualist concept and practice of rights shows that

the actual structure of social relationships (the economic, cultural and political inequalities of capitalist societies, the forms of institutional separation of state and civil society and so on) render the equal rights proclaimed in the liberal discourse incapable of substantive realization (1993, p.112).

In other words, if the socioeconomic inequalities are preventing individuals in practice from acquiring the necessary skills or resources to exercise rights, they become simply formal and ineffective (Benton, 1993, p.118). Thus it is this gap between the recognition and realisation of rights which makes sociology of human rights significant for the better achievement of rights. Moreover, legal formulation of human rights is not always able to resolve or address some of the most important questions relating to the enjoyment of rights. To resolve these questions we need to supplement traditional human rights principles with a sociological study of rights. Hence, a sociological critique of the liberal-individualist formulation and practice of rights needs to concentrate on “broadening and equalizing the range of capabilities enjoyed by [individuals]” (Elson, 2006, p.105). Diane Elson calls this “transformative equality” that must be “underpinned by supportive economic, social and political structures that enable people to experiment and take risks by guaranteeing their enjoyment of the economic, social and cultural human rights” (2006, p.105). She

notes that “transformative equality” comprises what Nancy Fraser calls “transformative redistribution combined with transformative recognition” (cited in Elson, 2006, p.105). Fraser’s analysis of redistribution and recognition (1995) depicts the interaction between the economic and cultural inequalities which constrain the enjoyment of rights.

The aim of this work is to contribute to the sociology of human rights by particularly focusing on the right to education. It is primarily concerned with the question of how we can analyse the right to education from a sociological perspective in the age of neoliberalism. Realisation of human rights, especially economic, social and cultural rights are best left to the market, according to the neoliberal ideology. Moreover, the state’s role as the provider of education has been changing under the neoliberal order. Education is more and more considered to be a commodity rather than a public service. Thus this article will discuss the possibility of provision and enjoyment of the right to education within the current neoliberal socio-economic structure as well as looking at the normative framework of the right to education in international human rights instruments and analyse it from a critical perspective.

### **The Political Economy of Human Rights**

From a sociological perspective, the recognition of rights as legal entitlements is not a sufficient condition for the substantive enjoyment of rights. Its realisation is also determined by social structures through which power, material resources and meanings are distributed (Nash 2009, p.1069). Thus sociology of human rights is mainly concerned with the practice of human rights; in other words, with the gap between this normative framework and the actual realisation of rights. Therefore, the sociological perspective, first, has a social constructionist approach to rights, which highlights the contextual character of human rights in different socio-historical settings and conditions, and the variable role of rights in consolidating and challenging political and economic power and control at the global and national levels (Waters, 1996; Stammers, 1999). This entails investigating the social forces underlying the development of legal human rights regimes by using historical and comparative methods and recognizing the ideological character of the concept of human rights (Freeman, 2006, p.49). Second, the political economy approach within the sociology of human rights situates its discussion on human rights in a critical analysis of social, economic and political structures of power relations (Woodiwiss, 2005; Evans, 2005). Third, following Benton’s reading of Marx on rights and alongside the second point, the political economy approach provides “a critique of a specific discourse of rights in its specific complex of relations to a set of historically transient socio-economic and political forms.”

However, “this is a critique of the theory and practice of bourgeois rights, not of rights as such” (Benton, 1993, p.109). Thus, the political economy approach offers a critique of the discourse of human rights under the current neoliberal socio-economic structure and investigates the possibility of provision and enjoyment of human rights within the context of institutional and economic inequalities created by the capitalist socio-economic relations.

Moreover, the political economy approach analyses human rights by articulating the global and the local. Until quite recently the discussions on human rights focused on the national level, however, as Sigrun Skogly (2005) has pointed out, the territorial focus of human rights may now be obsolete under the conditions of globalisation and strong international interdependence. Thus, it might be said that the realisation of human rights increasingly has international dimensions, as recognised in Article 28 of the Universal Declaration of Human Rights (UDHR) which states that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” In addition, Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) underlines the importance of international co-operation in order to guarantee the full realisation of economic, social and cultural rights. As Mark Goodale suggests the practice of human rights is more complicated than it is considered (Goodale, 2007, p.4), and it has become even more complicated under the power relations that emerged as a result of the neoliberal globalisation. Thus the analysis of the articulation of the global and the local, on the one hand, investigates the changing capacity of the State for the implementation of human rights, especially economic, social and cultural rights, and the new forms of responsibilities emerged as a result of the globalisation process, like the responsibilities of intergovernmental organisations, IFIs and multinational corporations (see Brysk (ed), 2002; Windfuhr (ed), 2005), on the other hand, demonstrates how legal entitlement is not the only basis for a claim to rights by focusing on practices at different localities (see Glucksmann, 2006; Goodale and Engle Merry (eds), 2007).

Even though human rights have become a significant reference point for national and international politics and policy making, there is an unprecedented gap between the formal recognition and the substantive realisation of human rights. This gap indicates that the international protection and implementation mechanisms for human rights are not as effective as the overriding rhetoric suggests. Moreover, as Michael Freeman (2006, p.57) notes:

The incorporation of human rights into law does not itself secure their protection, and may conceal the fact that human rights are per-

sistently violated in practice. The legalization of human rights has led to the domination of human-rights studies by legal scholars, and consequently we have an inadequate understanding of the gap between human-rights law and the realities of human-rights violations. This understanding must come from the social sciences.

As Balakrishnan Rajagopal, in his rereading of international law, argues, the structure of dominant international law discourses, like human rights, conceals certain forms of what he calls “economic violence” (2003, p.231). Only a few statistics are enough to show the degree of this “economic violence” or, in Thomas Pogge’s (2007) words, “the current massive underfulfillment of human rights” around the world. In 2002 in all developing countries more than 1,000 million people were living on less than \$1 a day (PPP US\$) (UNDP, 2005, p.44). However, income poverty is not only a reality of the developing world. In the OECD countries more than 130 million people are living in income poverty (UNDP, 2000, p.30). About 18 million people are dying annually because of poverty related reasons. This is approximately one third of all human deaths. This means that over 300 million people died in the last twenty years which could have been easily prevented through better nutrition, safe drinking water, mosquito nets, re-hydration packs, vaccines and other medicines (Pogge, 2007, p.13). As Pogge (2007, p.13) points out this number is many more than the deaths caused by all the wars, civil wars, and government oppression of the whole twentieth century<sup>1</sup>. Moreover the developments in recent years like the unilateral war against Iraq launched by the US and the UK in the name of democracy and human rights and the subsequent gross human rights violations and the increasing inequalities between the North and the South of the world (and within the countries all over the world) (see UNDP, 2005), intensifies the scepticism against human rights and the UN system, and leave them as rhetorical tools of powerful states to intervene in other countries. Furthermore there has been a widespread understanding that neoliberal globalisation has created a deterring environment for

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<sup>1</sup> Yet, as Pogge (2007) states, all the poverty and the deaths caused by it can easily be avoided. The World Bank reports that the “collective annual consumption of the 2,735 million people reportedly living below the World Bank’s \$2/day poverty line is about \$440 billion and their collective shortfall from that poverty line roughly \$330 billion per year. This poverty gap is less than one percent of the gross national incomes of the high-income countries, which sum to \$35,142 billion in 2005” (World Bank, 2006:289). However, while almost half of the world’s population is living in poverty, 2.4% of world gross domestic product (GDP), or \$217 for each person in the world was spent for military expenditure in 2008. According to the Stockholm International Peace Research Institute (SIPRI)’s 2009 Year Book on Armaments, Disarmament and International Security, world military expenditure in 2008 is estimated to have reached \$1.464 trillion in current dollars (cited in [www.globalissues.org](http://www.globalissues.org)).

the enjoyment of human rights, especially the economic, social and cultural rights, for the subordinate classes and disadvantaged groups of the world's population (Beetham, 1995; Falk, 2000; Elson, 2002; Freeman, 2002).

The ideological nature of human rights means that rights discourse is "double-edged" (Woodiwiss, 2006, p.38). On the one hand, it can be used as a discourse for legitimating State actions and the current structures of power in society (Douzinas, 2000; Freeman, 2002; Evans, 2005). For instance, the US officials used the language of human rights to legitimize and to defend the US military action in Afghanistan and Iraq, by calling the War on Terror "a war for human rights" as stated by Wendy Brown (2004, p.460 cited in Chen and Churchill, 2005). On the other hand, human rights can be used as a discourse of social transformation and as "a language of resistance or even social emancipation, easily appropriated by myriad forms of popular struggles around the world" (Rajagopal, 2003, p.55). Elson argues that with some "re-visioning" human rights can uphold anti-systemic politics (2006, p.102-103), especially the discourse of economic and social rights provides a basis to challenge the operation of contemporary capitalism (Elson and Gideon, 2004, p.15). According to Elson "[m]uch depends on how human rights are deployed and by whom" (2006, p.103). For example, Elson and Gideon (2004) show how some international women's networks use the language of economic and social rights as an arena for activism in their resistance to the erosion of living standards under the neoliberal economic restructuring<sup>2</sup>.

The emphasis on "re-visioning" is important. I would argue that in order to use the language of human rights to contest the current structures of power, the liberal-individualistic (as well as androcentric and ethnocentric, as shown by feminist theorists, see Elson, 2006), conceptualisation of human rights needs to be reconceptualised in an alternative framework which is more egalitarian and has a substantive commitment to rights (Bartholomew, 1990). According to this new framework, "...rights are not abstract and general, but are tied closely to political struggle and to the undoing of social inequality... In other words ... rights are that which need to be achieved through altering the social structures of inequality" (Schwartzman, 1999, p.41). So rather than having a top-down perspective based on formal legal equality, the new framework will have a bottom-up approach to human rights that will merge struggles over the redistribution of resources with the ones for identity-based recognition (see Fraser, 1995; Fraser and Honneth, 2003). Sociological cri-

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<sup>2</sup> For another example of how human rights language is used to enhance state welfare responsibility by South Korean non-governmental organisations (NGOs), see Lee-Gong, 2010.

tique of liberal rights makes a significant contribution for the development of an alternative framework by focusing on the practice of human rights.

Ted Benton (1993; 2006) develops a radical critique of the liberal-individualist discourse of rights and sets up a framework for thinking about rights in the broader context of structured inequality, without departing from some acceptance of the need for protectionism against harms from various sources. According to this critique, rights proclaimed by liberal-individualist discourse are not realizable in capitalist societies because of their endemic inequalities of wealth and power (Benton, 1993, p.133). In other words, if individuals have different capacities to exercise rights because of substantive inequalities of condition, rights become purely formal and ineffective (Benton, 1993, p.114). Moreover, “to the extent that the discourse of universal rights is proclaimed and legally enforced in a society characterised by endemic social inequality, it functions as a means of both legitimating and reproducing those inequalities” (Benton, 2006, p.27). Thus, it might be said that the liberal model of rights does not address substantive inequalities which affect individuals’ capacity for enjoyment of rights but instead produce unequal outcomes where they are applied in situations marked by substantive inequality (Bartholomew, 1990, p.257). Woodiwiss (2006, p.38) notes that

even the small number of economic and social rights included in the UDHR—to social security, work, protection against unemployment, non-discrimination in employment, “just and favourable remuneration”, trade union membership, rest and leisure, and education—are intended only to limit the effects of economic and social inequality rather than do anything about the inequality that is intrinsic to the capitalist employment relation.

Moreover, liberal-individualist discourse of human rights is based on the principle of the equality of access/opportunity, which implies that if provided the same access/opportunities each individual, with hard work, has the capacity to achieve the same results, but is not concerned with the equality of outcome<sup>3</sup>. However, equality of access means little when applied in situations marked by substantive inequality and results with perpetuation of the inequalities. For instance, even if the equality of access to schooling for all is provided, individuals do not have the same capacity to exercise the right to education because of the economic, cultural and political inequalities of capitalist societies.

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<sup>3</sup> For a discussion on the relationship between equality of opportunity and equality of outcome, see Phillips, 2004.

Another principle the liberal model of human rights is based on is the principle of individual responsibility for both the realisation and the violation of human rights (Evans, 2005, p.30), including economic, social and cultural rights which are commonly thought to require a strong state for their realisation (Freeman, 2002, p.165). They remain essentially individualistic in their content in as much as it is the material welfare of each and every individual that is supposed to be secured by the provisions of the ICESCR (Hirschl, 2000, p.1071; Anderson, 2002, p.210). Moreover, Eide argues that it is initially the individual's responsibility to ensure the realisation of economic, social and cultural rights. "The individual is expected, whenever possible through his or her own efforts and by use of own resources, to find ways to ensure the satisfaction of his or her own needs, individually or in association with others" (Eide, 2001, p.27). However, this liberal focus on the individual conceals both the structural inequalities which constrain the enjoyment of rights and the structural causes of violations.

The individualistic character of the liberal model of human rights is manifested in the classification of state obligations. States assume obligations on three different levels: to respect, to protect and to fulfil. According to this classification of states' obligations, states should ensure that, for instance, the right to food is not violated by states' policy measures, i.e. they have to respect the existing access to food that people have; second, states should protect existing access to food that people have from third parties; finally, states are obligated to fulfil the right to food for all people who currently cannot feed themselves. Paul Hunt (1996, p.31) in fact implies that there is a hierarchy between these obligations in the above order. This hierarchical classification of state obligations is an outcome of a liberal-individualist conceptualization of human rights. This classification, first, assumes that in a free market environment people will have access to food. Then states are obliged to protect their citizens from the third parties which include other citizens, other states, inter-governmental organizations and multinational corporations. Only at the last stage, the state has to fulfil the right to food for people suffering from hunger. State's obligation to fulfil emerges when/if there are people who are suffering from hunger. However, the existence of people who do not have access to food is a violation of the right to food in the first place. Hence, according to the liberal model of human rights, first the right to food has to be violated and then the state has to act to remedy the situation. The state fulfils a right only when people do not have access to it, when it is violated. This means that human rights in their liberal conceptualisation do not intend to prevent the violations but only correct the situation when it is already broken. According to Evans (2005, p.13) this indicates an approach that is dominant within the

current human rights regime. This approach, rather than looking at the causes of violations and the means of prevention, emphasizes post-violation redress. Thus, as Benton says “[a]t its strongest, the case against liberal rights makes it out to be a form of legitimation of inequality and injustice” (2006, p.27). Individuals need the social conditions and institutional power arrangements in order to enjoy rights. People who are oppressed socially will be unable to exercise their rights in the same way that their oppressors will be able to do (Schwartzman, 1999). Benton’s critique of liberal-individualist discourse of rights needs to be understood not as a stark critique of rights in themselves, but rather as a critique of the way in which liberal theory conceptualizes and employs these rights without considering the questions of equality.

Benton argues that liberalism was radicalised and revitalised after the Second World War by democratic socialist thinking and this radicalisation was materialized in the consolidation of welfare states and in the UDHR as recognition of positive rights like universal provision of social security, health and education and the right to a standard of living (2006, p.32). However, since the late 1970s this (left) radicalised liberalism was replaced with a new form of (right) radicalisation of liberalism, namely neoliberalism. Upendra Baxi (2002, p.132) argues that

the paradigm of the UDHR is being steadily, but surely supplanted by that of trade-related, market friendly human rights...The emergent paradigm insists upon the promotion and the protection of the collective human rights of global capital in ways that justify corporate well being and dignity even when it entails gross and flagrant violation of human rights of actually existing human beings and communities.

The “neoliberal conception of rights ...reflects and promotes the ideological premises of the new “global economic order” - social atomism, anti-unionism, formal equality, and “minimal state” policies” (Hirschl, 2000, p.1063)<sup>4</sup>. According to Ran Hirschl (2000, p.1095) this neoliberal conceptualisation of rights while emphasizing the autonomy of the economic sphere and its property rights calls for the state’s withdrawal from all labour relations and collective social and welfare spheres. Under international law, States are

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<sup>4</sup> In his analysis of the interpretations given by national high courts of the constitutional rights in Canada, New Zealand, and Israel, Ran Hirschl (2000) finds that an individualistic neoliberal conceptualization of rights has been dominant in the interpretations of the aforementioned high courts. Hirschl (2000, p.1096) argues that ‘[a]ll of the fundamentals of the emerging neo-liberal economic order (such as deregulation, commodification of public services, and reduced social spending), owe their origins to the same concepts of anti-statism, social atomism, and strict protection of the private sphere that are currently enjoying dominance in the discourse of rights’.

*still* the main bodies for implementation of human rights. Yet, the neoliberal agenda assumes that the best way to materialize human rights is to reduce the role of the state, achieve economic efficiency, and promote faster economic growth through the free market (Elson, 2002, p.80). The market, it is argued, spreads democracy, good governance and the rule of law and achieves economic growth, creates employment and prosperity. In the process it strengthens human rights (Chen and Churchill, 2005; Ghai, 2008[1999]). Market advocates argue that everyone<sup>5</sup> benefits from the greater supply of goods and services made available through growth. Thus, according to the neoliberal ideology realisation of human rights, especially economic, social and cultural rights are best left to the market. In other words, economic growth becomes the intermediary for the realisation of economic, social and cultural rights (Elson, 2002, p.100). However, markets are not designed to distribute wealth according to needs or to protect economic and social rights (Donnelly, 2003, p.80; Freeman, 2002, p.149).

The neoliberalisation process, by transforming the state through deregulation, privatisation and reduction of welfare services challenges the classical view that states were responsible for the implementation of human rights and especially the view that the implementation of economic, social rights required strong states (Freeman, 2002, p.165). Moreover, increasing inequalities between and within the countries and trends towards, what Richard Falk (2000, p.22) calls, “the social disempowerment of the state”, which upholds private sector solutions to social issues such as poverty, unemployment, and inequality, including social safety nets and encouragement of wealthier people to give to the poor (Elson, 2002, p.83; Falk, 2000, p.22), have put the realisation of human rights, particularly economic, social and cultural rights at risk (Elson 2002; Freeman, 2002). These neoliberal policies significantly transform the capacities of states in provision of public services, and therefore their capacity to implement social and economic rights (Windfuhr, 2005; Evans 2000, p.420). For example, Elson (2002) shows that in the case of women’s enjoyment of specific rights, in the neoliberal era there has been regress rather than progress in the realisation of economic and social rights in many countries.

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<sup>5</sup> However, as Donnelly (2003, p.201) notes ‘[e]veryone does not mean each (every) person. The referent instead is the average ‘individual’, an abstract collective entity. In the here and now, and well into the future, many human beings and families suffer. Because markets distribute the benefits of growth without regard to short-term deprivations, those who suffer adjustment costs – lost jobs, higher food prices, inferior health care – acquire no special claim to a share of the collective benefits of efficient markets.’

All these changes point to a “paradigm shift” as Baxi (2002) calls it. According to him in the UDHR mode states had human rights responsibilities such as to construct “a just social order, national and global, that will at least meet the basic needs of human beings” (Baxi, 2002, p.139). The new [neoliberal] model on the other hand denies any significant redistributive role to the state and calls upon the state to free as many spaces for capital as possible (Baxi, 2002, p.139). Hence, it might be said that in the age of neoliberalism the state no longer assumes its traditional role as the provider of rights but, instead, acts to create and manage an environment that is favourable for the economic interests of the capital (Evans, 2005, p.45). Moreover, with the privatisation of public services through methods such as contracting out and introducing fees for use, the citizen user has been transformed to a consuming customer, exercising the rights of choice through paying for services. Thus, it might be said that economic, social and cultural rights have been reduced to “consumer rights” and access to publicly provided services such as health and education has been made dependent on the ability to pay through the introduction of user fees. For instance, in education, schooling increasingly relies on familial support for children and schools with both finance and unpaid labour. This all goes alongside the more visible shift to parents as choice exercising “consumers” of their children’s education (Gewirtz, Ball and Bowe, 1995). The next section is going to look more closely at the right to education both in the framework of international human rights law and in the framework of the neoliberal transformation.

### **The Right to Education in Neoliberal Times**

The human right to education was first specified in the UDHR (Article 26) in 1948 and then it has been further reiterated in other universal and regional human rights instruments such as the UNESCO Convention Against Discrimination in Education (Article 5) (1960), the ICESCR (Articles 13, 14) (1966), the International Convention on the Rights of the Child (CRC) (Articles 28, 29) (1989), and the European Convention on Human Rights and Fundamental Freedoms (Protocol 1 (1954) Article 2). As well as conventions and covenants, several UN conferences over the last twenty years have produced declarations that urge for education for all through setting goals and targets such as the Jomtien Declaration on Education for All (EFA) (1990), the Vienna Declaration and Programme of Action (1993), the Beijing Declaration and Platform for Action (1995) and the Dakar Framework for Action (2000). In addition to these human rights instruments, the Committee on Economic, Social and Cultural Rights (CESCR) has adopted two General Comments on the implementation of Articles 13 and 14 of the ICESCR.

While General Comment No.11 elaborates on different elements of Article 14, such as compulsion and progressive implementation, General Comment No.13 (1999) explains and expands upon the requirements of Article 13 of the ICESCR. Furthermore, the Commission on Human Rights established a UN Special Rapporteur on the right to education by its resolution 1998/33 of 17 April 1998.

The right to education is a complex right which contains various components. In addition, as it is stated in General Comment No.11, the right to education is commonly considered as a precondition for the exercise of all human rights. According to the former UN Special Rapporteur on the right to education Katarina Tomasevski, the right to education is the key for unlocking other human rights. She says that

[m]any individual rights are beyond the reach of those who have been deprived of education, especially rights associated with employment and social security. Education operates as a multiplier, enhancing the enjoyment of all individual rights and freedoms where the right to education is effectively guaranteed, while depriving people of the enjoyment of many rights and freedoms where the right to education is denied or violated (2001a, p.7).

The aforementioned human rights instruments map out the normative framework of the right to education and the corresponding obligations of States. Following General Comment No.13 (CESCR, 1999), we can distinguish three categories of provisions arising from the normative contents of the right to education. The first category of provisions is related to aims and objectives of education<sup>6</sup>. The second category of provisions concerns receiving education free of charge, without discrimination and based on equality of treatment and opportunity. Provisions in this category change depending on the level of education. According to Novak (1995, p.198) to receive education constitutes the core of the right to education. The third category of provisions is related to educational freedoms. The main emphases of these provisions are on the parents' freedom to ensure their children's moral and religious education according to their own beliefs and the personal freedom of individuals to choose between public and private education. They also guarantee the freedom of natural persons or legal entities to establish their own educational

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<sup>6</sup> The major aims and objectives of the right to education arising from human rights treaties are a) to enable a human being to freely develop his or her personality; b) to enable a human being to actively participate in a free society in the spirit of mutual tolerance and respect for other civilizations, cultures and religions; c) to develop respect for one's parents, the national values of one's country and for the natural environment; and d) to develop respect for human rights, fundamental freedoms and maintenance of peace (Novak, 1995, p.195).

institutions in conformity with certain minimum educational standards laid down by the State (CESCR, 1999; Novak, 1995, p.197).

Under international human rights law, these provisions create corresponding State obligations for the full realisation of the right to education. As defined in Article 2(1) of the ICESCR and Article 28(1) of the CRC these obligations are “progressive obligations”, according to which each State party undertakes steps “to the maximum of its available resources, with a view to achieving progressively the full realization of”, in this case, the right to education. However, non-discrimination is not subject to progressive realization but has to be secured immediately and fully (Tomasevski, 1999). Moreover, according to Coomans (1998, p.9), obligation to provide compulsory and free primary education for all is also unconditional and defined without a reference to progressiveness in Article 13(2)(a) of the ICESCR, thus must be provided immediately by a State party. As reported by Novak (1995, p.199) provisions laid down in human rights instruments broadly create the following obligations: a) primary education shall be free and compulsory for all; b) secondary education shall be available and accessible to all; in addition, free education and financial assistance in case of need shall be introduced progressively; c) higher education shall be accessible to all on the basis of capacity; free education shall be introduced progressively; d) fundamental (basic) education shall be intensified for those not having completed primary education; e) programmes of special education should be established for the handicapped; and f) elimination of ignorance and illiteracy.

The former UN Special Rapporteur on the right to education Katarina Tomasevski (1999; 2001d) has developed a conceptual framework for the analysis of the State obligations which has been also adopted by the CESCR in General Comment No.13. Her conceptual framework goes beyond the three-level typology of obligations and enables an analysis of the right to education in its socio-historical settings as well as an examination of the interrelationships among its various components.

The framework demonstrates [the] inter-relatedness of individual components of the right to education, relates them to the type of governmental human rights obligations which are their counterparts, and adds examples of issues that figure prominently in translating the right to education from requirement into reality (Tomasevski, 2001d).

This conceptual framework outlines the government obligations through the explicit guarantees of the right to education. According to this framework, state obligations can be structured into a 4-A scheme, representing the four essential features, namely availability, accessibility, acceptability and adapt-

ability (Tomasevski, 1999, p.18; 2000; 2001d). Governments are obliged to make education available, accessible, acceptable and adaptable. Availability means, as defined by General Comment No.13, that functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party (CESCR, 1999). As Tomasevski (2001d, p.13) explains, availability embodies two different types of government obligations:

the right to education as a civil and political right requires the government to permit the establishment of educational institutions by non-state actors while the right to education as a social, economic and cultural right requires the government to establish them, or fund them, or use a combination of these and other means so as to ensure that is available.

Accessibility relates to ensuring access to available public schools, in accordance with the principle of non-discrimination. For primary education, according to this principle, the government is obliged to secure access to education for all children in the compulsory age range. Moreover, compulsory education ought to be free of charge (Tomasevski, 1999; 2003a). According to General Comment No.13, accessibility has three overlapping dimensions: non-discrimination - education must be accessible to all; physical accessibility - education has to be within safe physical reach; and economic accessibility - education has to be affordable to all. Acceptability entails obligation to set minimum standards for education, including the contents in textbooks and curricula, methods of teaching, school discipline, health and safety and professional requirements for teachers, as well as the obligation to improve the quality of education by ensuring that the entire education system conforms to all human rights (Tomasevski, 1999; 2001d). Finally, adaptability contains the obligation to design and implement education for children excluded from formal schooling such as refugees and working children and the obligation to adapt education to the best interests of each child, especially regarding children with special needs and disabilities (Tomasevski, 2000; 2001d).

The 4-A scheme demonstrates the complexity of governmental obligations corresponding to the right to education. Moreover, Tomasevski analyzes governmental obligations on two levels: on the level of individual states and on the level of global and regional inter-governmental structures within which governments act collectively (1999, p.4). She argues that even though individual states are the primary duty holders for the realisation of human rights, it is possible to limit the ability and the willingness of individual governments to guarantee the right to education through global economic and fiscal policies.

However, according to her, there is no commitment to the right to education by international financial institutions such as the World Bank and the IMF, nor the international donor community as a whole (2001b, p.9). Tomasevski, in her extensive work on the right to education, aims to mainstream human rights by integrating the right to education into both global and national educational strategies and into different roles of the State in primary education, namely, regulation, funding, and provision (Tomasevski, 1999, p.18). Throughout her work as the Special Rapporteur, Tomasevski directed her focus on primary education and prioritized the issue of financial obstacles in the realisation of the right to education.

The neoliberal challenge of the 1980s has been to argue that education is not a public good but a commodity and would be delivered more efficiently to its consumers (parents and children) if the State progressively withdrew its involvement by leaving the “invisible” hand of market forces to provide the optimum solution to issues of both efficiency and of equity. Tomasevski (2001d, p.9) argues that the role of the government, as defined in international and domestic human rights law, provides a strong protection against these trends and application of the existing human rights standards for education can neutralize negative dimensions of globalisation at all levels.

According to Tomasevski (2003a, p.53), the aforementioned human rights treaties define the core content of the right to education as “to ensure that primary education is all-inclusive, free and compulsory; to guarantee parental choice in the education of their children; to apply non-discrimination to the right to education and human rights in education and to prevent abuse of education by defining what education is for”. Furthermore, in her report in 2000, she adds that according to international human rights bodies the requirement upon governments to make primary education free implies that “governments should eliminate financial obstacles in order to enable all children – no matter how poor – to complete primary schooling. Imposing a requirement upon children to attend school whose cost their parents cannot afford would make compulsory education illusory” (Tomasevski, 2000, p.19). Based on an examination of government reports under human rights treaties Tomasevski (2003b, p.34) notes that there is a legal guarantee of free primary education in 145 countries and only 45 have no such guarantee. However, the legal guarantee to ensure free primary education does not mean that primary education is free and without cost. Government reports most of the time do not represent what real-life schools look like, thus asserting the importance of looking at both macro and micro levels for understanding the extent of the enjoyment of the right to education. Tomasevski acknowledges that even though governments are obliged to make primary education free of charge,

education cannot be free of cost in theory or in practice. Parents finance their children's education both through general taxation and through other additional charges, such as books, transportation and school meals, uniforms, pens and pencils, or sports equipment (Tomasevski, 2000, p.19). However, these extra costs may indirectly cause problems for certain people in maintaining their right to education.

Direct costs of education for parents, either in the form of school fees or so-called "voluntary" contributions, are one of the key obstacles for the accessibility of education and consequently for the realisation of the right to education. Some form of cost-sharing exists in most countries; however, as Tomasevski notes, if access to education is defined as self-provisioning, there is a risk that it will become a correlate of purchasing power. As a result, the income of the child's parents and/or family will become the factor determining whether a child has access to school. Thus, if access to services is determined by national and international income distribution, this will contradict with one of the main features of human rights (Tomasevski, 1998, p.2). Moreover, if provision of schooling is connected with incomes of the parents of the pupils, it creates a system of bad schools for the poor majority and good schools for the rich.

Despite the widespread ratification of legally binding international human rights treaties containing strong guarantees of the right to education and the process of goal-setting, for many people throughout the world, the enjoyment of the right to education remains a distant goal, as demonstrated by the Education for All Global Monitoring Reports<sup>7</sup>. General Comment No.13 (CESCR, 1999) too acknowledges that in many cases, this goal is becoming increasingly remote. The *2010 Education for All Global Monitoring Report* (UNESCO, 2010) argues that the recent global economic crisis could create "a lost generation of children whose life chances will have been irreversibly damaged by a failure to protect their right to education". The same argument can be claimed for the 1970s, 1980s and 1990s which had been marked by SAPs, debt crisis, financial crisis, and schools fees and consequently retrogression rather than progressive realisation of the right to education as required by the ICESCR, especially in Africa (UNESCO, 2000, p.46). There were 72 million children out of school in 2007<sup>8</sup>. If the trends remain the same, there

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<sup>7</sup> This is an independent annual publication based at UNESCO and established for systematic monitoring of progress towards the six EFA goals (full texts of the reports are available at <http://www.unesco.org/en/efareport>).

<sup>8</sup> However, as pointed out by Tomasevski (2004, p.19), statistical categorizations have significant influence on the figures referring to out-of-school children. For example, the reduction of primary schooling by one year in China, India and the Russian Federation reduced the number

will be 56 million out-of-school children in 2015. Around 54 per cent of out-of-school children are girls. Moreover, even though a large majority of children in the world today start primary education, millions of them drop out before completing primary education, especially children in poverty, girls, children with special needs and those from ethnic minorities (UNESCO, 2010, p.11). At world level the gross enrolment ratio (GER)<sup>9</sup> in primary education in 2006 was 105 per cent with 688 million attending schools, but the net enrolment ratio (NER)<sup>10</sup> in the same year was 86 per cent (UNESCO, 2009, p.57). Even if the figures at the world level look relatively good, the differences between developing and developed countries confirm global inequalities. In 2006 the GER in developing countries was 106 per cent and in developed countries it was 101 per cent. The NERs, on the other hand, were 85 per cent and 95 per cent respectively (UNESCO, 2009, p.57).

In addition, millions of children receive sub-standard quality education and emerge from school without having acquired basic literacy and numeracy skills. International assessments reinforce the significant achievement gap between students from rich and poor countries. For example, the Programme for International Student Assessment (PISA) 2006 showed that over 60 per cent of students from Brazil and Indonesia scored at or below the lowest level in science, compared with fewer than 10 per cent in Canada or Finland. Within countries too, inequality exists between regions, communities, private and public schools and classrooms. In Morocco and South Africa, for instance, the top 5 per cent of pupils covered in the Progress in International Reading Literacy Survey (PIRLS) assessment registered scores comparable to those of the best pupils in high-achieving countries. But the scores of the bottom 5 per cent were less than one-fifth of those for top performers. The scale of within-country inequalities is similar to global disparities. Learning disparities within countries are influenced by various factors, including socio-economic status, family size and composition, immigrant status and home language, the organization of the education system and the school environment (UNESCO, 2009, p.12).

Another factor that influences the quality of education is the level of financing. The Global Campaign for Education estimates that \$16 billion is

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of out-of-school children in the world from 115 million in 1999 to 104 million in 2003.

<sup>9</sup> Gross enrolment ratio (GER) is total enrolment in a specific level of education, regardless of age, expressed as a percentage of the population in the official age group corresponding to this level of education. The GER can exceed 100% due to early or late entry and/or grade repetition (UNESCO, 2009).

<sup>10</sup> Net enrolment ratio (NER) is enrolment of the official age group for a given level of education, expressed as a percentage of the population in that age group (UNESCO, 2009).

needed to pay for EFA ([www.campaignforeducation.org](http://www.campaignforeducation.org)). According to the *2009 EFA Global Monitoring Report*, in the majority of countries with data, national spending on education has increased since Dakar, but in 40 of the 105 countries with data the share of national income devoted to education decreased between 1999 and 2006 (UNESCO, 2009, p.133). The Report shows that low-income countries are still spending significantly less on education than are other countries. In sub-Saharan Africa, eleven out of the twenty-one low income countries with data spend less than 4 per cent of their GNP (UNESCO, 2009, p.133). Global inequalities are also reflected in educational spending. In 2004, North America and Western Europe alone accounted for 55 per cent of the world's spending on education but only 10 per cent of the population aged five to 25. Sub-Saharan Africa accounts for 15 per cent of five- to 25-year-olds but just 2 per cent of global spending. South and West Asia represents over one-quarter of the population and just 7 per cent of spending. Differences in per-student spending illustrate another uneven global distribution of public expenditure on education. In 2006, per-student expenditure in primary education varied between US\$39 in the Democratic Republic of the Congo and US\$9,953 in Luxembourg, at purchasing power parity (PPP) in constant 2005 dollars (UNESCO, 2009, p.136).

### **Conclusion**

The above figures demonstrate that promises made by governments both legally and politically have not been materialized. There has been progress in most regions, but, taking all countries together, universalisation of primary education has not been achieved, nor has access to it been enjoyed equally by different groups. Thus we might say that for many the four essential elements of the right to education – accessibility, availability, acceptability, and adaptability – is still an unrealized dream.

The enjoyment of the right to education is influenced by many factors including socio-economic background, cultural capital of family, neighbourhood, gender and nationality. Moreover, as recognized by international human rights instruments, receiving quality education is an essential part of the full realisation of the right to education as well as accessing education. The gap between the formal recognition and substantive enjoyment of the right to education shows that despite their clear and strong wording, statements of rights are not simple tools for achieving desired educational outcomes, thus they do not necessarily deliver what they appear to promise (Christie, 2010, p.3). What human rights frameworks portray is an idealised and abstract social order which is removed from the real-life schools. Tomasevski (2000; 2003) and Christie (2010) argue that transformation of education from being

a public service to a traded service overshadows its legal status, but implementation of the right to education requires not only a legal framework of entitlement but also policies for translating the law into practice on the ground and diversion of resources to implement the legislation (Lansdown, 2001, p.50). Moreover, it also requires not only achieving the equality of access, but also elimination of existing socio-economic inequalities which restrict individuals' capacities to exercise rights.

What we find in the current socio-economic environment is two competing frameworks trying to shape education, namely the neoliberal framework and human rights framework. I would add to the comments of the former Special Rapporteur on the right to education, Katarina Tomasevski, a particular concern regarding the impact of neoliberal policies on equality and non-discrimination in the enjoyment of the right to education. The ICESCR and the CRC, like all human rights treaties, specify that the rights they define must be available without discrimination. It might be said that neoliberal educational policies deteriorate the enjoyment of the right to education by increasing the inequalities in education. Even if there is no formal discrimination, there is the danger of substantive discrimination against children from poor families, when parents are required to make contributions of time and money to the schooling of their children to compensate for inadequate allocation of public expenditure. However, the definition of the core content the right to education is also not sufficient as in its existing form, because it is unable to deal with the new social and economic conditions created by the neoliberal governance of education, particularly the new forms of inequalities.

Education is a complex institution and has varying relationships with and effects on society. Schools are associated with modernisation, nation-building, social cohesion, labour markets and economic development. However, it has also been demonstrated that education tends to reproduce structural inequalities, rather than change them. Therefore, in order to disclose the gap between the recognition and realization of the right to education, it is necessary to rethink the right to education from a sociological perspective, and supplement the legal definition and principles of it with the sociological theories of education and introduce the complexities of education's relationships with the state and society in a globalising era into the framework of the right to education. However, while doing this, it is also important to remember both the limitations and the possibilities of the right to education (Christie, 2010, p.8).

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