



## CHAPTER 4

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# Children's Participation in Their Right to Education: Learning from the Delhi High Court Cases, 1998–2001

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### INTRODUCTION

On March 3, 2021 UNICEF unveiled its 'pandemic classroom' to remind the world of the number of students who had missed school during the past year. This 'pandemic classroom', a physical installation set up outside the UN headquarters in New York, consists of rows of neatly arranged new prefab chair-desks, 168 in total, each adorned with a bright blue school bag emblazoned with a white UNICEF logo. The affect of an eerily empty open-air classroom is powerfully achieved by an oversize blackboard on which, in uppercase letters, is written the following words: "Class attendance: Absent 168 million children".

COVID-19-related lockdowns have closed schools across the world and it is this unequivocal loss of schooling for 168 million children that the empty benches symbolize, one chair standing in for one million

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children. The affective pull of the installation is empirically supplemented by a UNICEF report that discusses how children in different regions have been unevenly affected by these lockdowns. While the most severely impacted regions, in terms of overall percentages, include Latin America and the Caribbean, South Asia ranks high in terms of sheer numbers. Stating how “children unable to access in-person schooling fall further and further behind, with the most marginalized paying the heaviest price” the Report argues for governments to prioritize schooling in their ‘re-opening plans’. Fearing that these empty benches and attendant statistics may not do enough to convey the critical role that schooling plays in children’s lives, the Report also shares how children worldwide “rely on their schools as a place where they can interact with their peers, seek support, access health and immunization services and a nutritious meal” and warns that “the longer schools remain closed, the longer children are cut off from these critical elements of childhood”.

Explaining the exhibit, Henrietta Fore, UNICEF’s Executive-Director, shares how “Behind each empty chair hangs an empty backpack—a placeholder for a child’s deferred potential,” adding that “shuttered doors and closed buildings” meant that “children’s futures are being put on indefinite pause”. This instillation was intended as a message to governments to not only prioritize reopening schools but to reopen them, “better than they were before”. This grudging recognition of a deeper problem, which is almost hidden in the well-provisioned ‘pandemic classroom’, points to how this moment is being leveraged to openly conceal a parallel and more enduring “educational emergency”. This is namely the scandalous irony that contemporary schooling efforts in the global south have effectively normalized the existing landscape of highly class, caste and racially segregated schools (Akyeampong, 2009; Srivastava & Noronha, 2016). Quite unlike the well-provisioned ‘pandemic classroom’, in these iniquitous and poorly provisioned classrooms, it is increased teacher surveillance, precarity and the unlikelihood of schooling translating into greater social mobility that are the experience of most first-generation school students. The UNICEF Report’s narrative around what these students miss when school is closed reveals the dynamic that aids in the continued legitimization of these unequal school spaces. This is namely that with school closures these first-generation school attendees miss not only their peers but also their immunizations and a nutritious meal. The normalization of these socially and economically marginalized children within a victimhood narrative, in which the school space provides them a modicum of basic services, is also

that which help defer, and effectively sideline, considerations of school quality and equity. While there is no denying that marginal children require these services, the pivoting of schools as spaces that primarily provide these services helps produce schooling for this population as a simplistic exercise, that is, the necessity of securing the presence of children in unequal and segregated school spaces is tied to the provision of these services.

This segregated landscape of schooling, which marks most children's exercise of their right to education in a majority of countries in the global south, fundamentally disrupts the traditional association of schooling with the equalizing of opportunity. Instead, it alerts us to schooling having emerged as a critical compensatory technology that helps maintain existing differences rather than mitigate them. This chapter problematizes how children's participation in their right to education in the Indian context has been overdetermined by victimhood narratives. I do this through sharing a set of court cases adjudicated in the Delhi High Court between 1997 and 2001. These cases helped foreground the state's role in perpetuating existing inequalities and thereby helped highlight the extent to which dominant construction of school participation for first-generation students is framed through a reassertion of their poverty and marginality. These cases, which precede India's adoption of the right to education, played a key role in several provisions of this legal act which went into effect in 2009. By anticipating and countering this more simplistic narrative around what constitutes marginalized children's participation in school, these Delhi High Court cases not only center the critical role that the materiality of school spaces exercise in children's learning, but also aid in recalibrating how these children should be signified within a school space. This is namely through their identity as learners and not as marginal children who are recipients of state welfare services. By shifting the onus away from the child and onto the school, these cases foreground the critical structural role the state is required to assume to fulfill these children's equitable exercise of their right to education. To better situate these cases, the chapter begins with a brief discussion around shifts that mark the broader theorization of children's participation and weaves into this discussion the critical need to open up children's participation to focus on the right to education. It then shifts focus to the Delhi High Court cases which, quite unlike several previous cases which had established the need to legalize the right to education, drew national attention to the harsh realities that confront marginal children *once they enroll in school*.<sup>1</sup> By

making visible the material and social reality of first-generation school attendees' experiences in schools, these cases critically interrogate whether children's enrollment in unequal and largely segregated schools could serve as an adequate metric of children's participation. In addition, they importantly helped disclose how an underlying politics of representation reproduces, rather than redresses, the structural exclusions that marked them first-generation school attendees. This chapter's discussion of these court cases is organized around how these helped foreground the poor quality of schools together with revealing the dominant construction of these marginal children within these school spaces. Following this, the chapter concludes by analyzing what these cases add to existing theorizations on children's participation in their right to education.

### FROM CHILDREN'S 'VOICES' TO 'CITIZENSHIP': SITUATING THE RIGHT TO EDUCATION WITHIN EXISTING CONCEPTUALIZATIONS AROUND CHILDREN'S PARTICIPATION

The global acceptance of the UNCRC (United Nations Convention on the Rights of the Child) as well as the parallel rise of social theory that view children as active agents has produced a plethora of research that centers, both methodologically and analytically, the importance of children's participation. Article 12 of the UNCRC which focuses on children's capabilities to form their own views and express them on all matters that affect them asserts children's right to have a voice in decision making. However, scholars recognize several contradictions that mark its working out. On the one hand, there has been a global shift in recognizing the importance of including children's viewpoints even though the extent to which these are listened to or included within the global policy regime remains ambiguous (Prout & Hallet, 2003). On the other hand, given the parallel rise of children's rights and neoliberal economic regimes across the globe, the amplification of children's voices has also served as a highly effective smokescreen to mask worsening inequalities. Prescient to these complexities, Allison James (2007) warned of the dangers of privileging 'children's voices' through highlighting the problems posed by authenticity, singularity and paternalism risked in this inclusion. Concerned around the "why and how" of children's participation, James views this as a critical epistemological issue that includes issues of representation and methodology. She foregrounds a range of other problems—specifically those of

translation, interpretation and mediation (ref). By flagging concerns around translation, interpretation and mediation, James helps foreground how children's interests come to be represented, and recognizes the potential of children's voices being used to confirm existing agendas. Authenticity for James is about foregrounding the terms under which children's voices materialize. Moreover, she highlights how the inclusion of children's voices, by privileging the 'child' as a singular category risks 'glossing over' intersectional differences between children including those of class, race, culture and gender, to name a few. She says that this singular focus risks disempowering children further while giving them greater visibility.<sup>2</sup>

James' warnings broadly resonate with the experiences of scholars and practitioners who work on children's participation, who've created and tweaked models and programs in order to ensure that these risks are increasingly mitigated. With Hart's (2008) conceptualization of a linear ladder of participation having been dismissed as overtly reductionist and simplistic (Carpentier, 2016; Larkins et al., 2014), scholars have offered other models that attend to the power dynamics and complex intersectionalities that mark children's lives. Some of these include Larkins et al.'s (2014) conceptualization of children and young people's participation in research as a 'lattice'; Lundy's (2007) incorporation of space, audience, voice and influence as the four key components of children's participation; and Johnson's (2017) change-scape which acknowledges wider contextual issues and how processes of participation change over time.

Barry Percy-Smith and Percy-Smith, B., & Thomas, N. (2010) in their Introduction to their handbook on children's participation, acknowledge how critical scholarship on children's participation recognizes this as open-ended and multiply enacted and not as a singular and uniform set of actions undertaken by children and youth. This recognition around how differences in context and everyday material realities make it difficult to clearly define children's participation has prompted them to conceptualize children's participation as closely linked to their exercising citizenship. They state,

If children are to achieve real benefits in their own lives and their communities, and create a better future, they can only do this by being active citizens, articulating their own values, perspectives, experiences and visions for the future, using these to inform and take action in their own right and, where necessary, contesting with those who have power over their lives. (p. 3)

Their turn toward citizenship as an indicator of participation understands children neither as pre-political beings nor as ‘not-yet-citizens’ but as politically marginalized subjects (Moosa-Mitha 2005). Further disaggregating this overarching framing to include how intersectional differences/Intersectionalities/intersectional differences, asymmetries of power and the strong traces of a more exclusionary past constitutively produce children’s exercise of citizenship as a disparate, and far from uniform, terrain, would allow us to more critically analyze participation in terms of a more politicized framing.

Given the generalized condition of neoliberal economics that marks contemporary global capitalism, this imperative to learn from the pitfalls of children’s participation has become even more urgent. This is especially true if one also keeps in mind what Jessica Whyte (2019) discusses as the parallel histories of human rights and neoliberalism, or the role that human rights have played within neoliberal attempts to develop a moral framework for a market society. With several countries in the global south having set in place a legal guarantee around children’s right to education, there appears to be a shared agreement around the critical significance of this right. However, unlike other rights, whose exercise and violation are easier to assess, what exactly constitutes children’s participation in their right to education is particularly complex. For example, it is easy to identify actions that violate children’s participation in their right to freedom of thought and expression (Saunders, 2012). When it comes to the right to education, however, what counts as children’s participation in, or exercise of, this right is more ambiguous as schooling is a complex and multi-faceted experience, that involves control, compulsion, disciplining and, at times, material rewards.

As a valuable experience in and of itself, as well as a preparation for other activities, children’s participation in their right to education has thus far been complexly entangled within a neoliberal terrain has produced a dilution of structural issues. David Harvey (2005) discusses neoliberalism as being in ascension since the 1970s and setting in place processes of deregulation, privatization and the withdrawal of the state from the provision of social welfare services. Neoliberalism constructs human well-being as best advanced “by liberating individual entrepreneurial freedom and skills within an institutional framework characterized by strong private property rights, free market and free trade” (Harvey, 2005, p. 2). In the Indian context, more recent efforts to democratize schooling, which resulted in the legalization of free and compulsory elementary education

in 2009, emerged in the early 1990s with the liberalization of country's economy and more specifically with the government's acceptance of the structural adjustment program (SAP) of the International Monetary Fund and the World Bank (Balagopalan, 2022; Kumar et al., 2001; Mukhopadhyay & Sarangapani, 2018). Tempered by lessons learnt from Latin America and Africa, the World Bank had by the early 1990s already targeted school education as a critical safety net while it simultaneously dismantled other measures of social welfare. In fact, the legalization of the right to education in many countries of the global south coincides with the rise of neoliberal policies which produced this right within a politics of enumeration, increased privatization and deferment of equity (Balagopalan, 2018).

Promoted by transnational organizations and postcolonial states, the enumerative politics around the right to education excessively rely on enrollment numbers, with organizations like UNESCO, for example, having naturalized this logic to shape the narrative on the success of this right. This technocratic landscape—in which longer national and local histories and complexities of educational exclusion get erased within an universal language of numbers—devastatingly aids in the parallel masking of an increasingly segregated landscape of schooling. Stephen Ball (2012) powerfully contextualizes this politics of enumeration within global policy-setting's efforts to conceal the unevenness of compulsory schooling. He links this normalization of metrics to the World Bank's structural adjustment programs and neoliberal economic policies as well as the parallel technocratic investments in privatization by state and non-state actors. His work resonates strongly with that of other scholars who've discussed how governments by disinvesting in education as a public good appeared to support moves that allow them to relinquish their responsibility around guaranteeing the necessary financial and social investments required to realize all children's right to education (Fredman et al., 2018; Unterhalter, 2007).

Moreover, this landscape of enumeration coexists with the global affirmation of this right within a highly speculative dynamic. This is namely parallel efforts within global policy discourse that amplify the individuated and aspirational 'futures' that schooling will make possible (Balagopalan, 2022; Huijismans et al., 2021). Untethered from more substantive structural and equity concerns in education and with schooling, in effect, no longer being about the equalizing of opportunity through state provisioning, this speculative dynamic resonates with what Gill-Peterson (2015) in

the context of racialized schooling practices in the United States has discussed as the restaging of education as ‘entrepreneurial labor’. This is in stark contrast to what the first UN Special Rapporteur on children’s right to education, Katarina Tomasevski, had advocated in terms of the four A’s needed for the proper realization of this right. Tomasevski (2003) argued that the right to education consisted of schooling being available, accessible, agreeable and adaptable. By framing these 4 A’s around substantive ‘input factors’ that foreground the need for systemic change, and not just the kind indicated in the UNICEF report on schooling during the pandemic, it is particularly timely to theorize what constitutes children’s participation in their right to education now that this right is globally guaranteed.

Within existing research, rights-based approaches to educational policy have challenged dominant political and economic ideologies of neoliberalism and economic austerity that promote the commodification of education (Greany, 2008; Spreen & Vally, 2006). Their arguments around the inseparability of education from deepening poverty and inequality foreground state obligations to ensure this fundamental human right. They help re-emphasize how the protection and exercise of this right is intimately linked to the exercise of citizenship and depends on the state fulfilling certain conditions under which this right can be meaningfully claimed (Thapliyal et al., 2013). By combining this human rights framework with Amartya Sen’s human capabilities approach they help reinforce the critical role the state exercises in guaranteeing this right; a role that is irreconcilable with the increased privatization of education (McCowan, 2011).

Adding to this, the following cases heard before the Delhi High Court serve as a cautionary note around the underlying material and social conditions required to facilitate the meaningful educational participation of first-generation school attendees. By insisting that these children’s primary identities in school are as ‘learners’, these cases help foreground considerations of school equity as urgent and central to children’s exercise of their right to education. This is quite unlike the UNICEF report which views these same children’s presence in school primarily in terms of their ‘marginal’ status. The latter is what is used to legitimize all schools, irrespective of whether they are of questionable quality or deeply segregated, as always an improvement on these children’s existing lives. Serving less as a space in which the state attempts to set in place the necessary measures for achieving educational equity, these schools instead aid state efforts to provide a modicum of essential services. In contrast, the effort in these



cases to foreground these children's entitlements as citizens helps unpack the power dynamics that underlie dominant representations of first-generation school attendees as 'marginal children' (Balagopalan, 2022).

### DELHI HIGH COURT CASES, 1998–2001

The lawyer Ashok Agarwal, a key figure in filing these public interest litigation (PIL) cases,<sup>3</sup> began his career as a labor lawyer. The backstory of how he became interested in schooling is noteworthy because he began by advocating against tuition hikes in private schools on behalf of middle-class parents.<sup>4</sup> Approached by the Delhi Abhibhavak Mahasangh, a parent coalition, in December 1997 to file a case against the massive increase (113% in some cases) in school fees in Delhi's private schools, it was while fighting this case that his attention was drawn to government primary schools in the capital. Run by the Municipal Corporation of Delhi these 1776 schools which enrolled 800,000 of the city's children were, according to Mr. Agarwal, largely responsible for the increase in private school fees. What he meant was that the poor state of these municipal schools left middle-class parents with no choice but to enroll their children in private schools. After receiving a court injunction to cap the fee hike at 40%, he shifted his attention to the MCD schools and began to file PILs in Court under the All India Lawyer's Union (AILU). From 1997 onward he filed several cases including those involving issues of school infrastructure, teacher recruitment, transparency in exam evaluation, distribution of the mid-day meal and school uniforms, banning of corporal punishment, to name a few. In this section, I share details from a few court cases, adjudicated by the Delhi High Court between 1998 and 2001, that focused on two separate, though inter-related, concerns. The first set of cases problematized enrollment as an inadequate measure of children's participation in schools by through amplifying the state's grossly inadequate provision of school infrastructure, while the second case focused specifically on upholding the dignity of marginal children as 'learners' within school spaces. Read together these cases help highlight the complexities that frame marginalized children's right to education including the critical role of the state and the enduring effects of a representational politics that constructs these first-generation school attendees primarily as marginal children rather than as citizens who have recently gained their right to an equitable education.

*Equity as indexed in the materiality of school spaces:* Focused on the ‘lack of basic amenities’ in the city’s MCD schools, this sub-section discusses two cases which drew heightened media attention and produced a robust and very public investigation of Delhi’s school infrastructure. The first case was filed on behalf of the family of a seven-year-old boy, Anshu Sharma, student of MCD Primary School in southwest Delhi who was crushed to death on December 23, 1997, while crossing the road during school hours to get a drink of water. His death raised a public outcry as it happened within months of the first PIL filed by the AILU to highlight the ‘deplorable’ state of MCD schools.<sup>5</sup> This case focused attention on the absence in MCD schools of basic amenities like drinking water, electricity, fans, toilet blocks, desks, playground, play material and the lack of pucca buildings, boundary walls and black boards. The AILU utilized reports filed by MCD’s public works department, several years preceding Anshu’s death, which had already declared as ‘dangerous’ 64 primary school buildings with 327 classrooms.

With no action having been taken to demolish and re-construct these structures and to provide an alternate learning space for children, Anshu’s death served as a grim reminder of the everyday conditions that marginal children faced in school.<sup>6</sup> Moreover, through deploying statistics that brought the city’s entire municipal school system under media scrutiny, these cases exposed how 54 MCD schools with an average of 600 students in each had no water connection, that as many as 137 primary schools in Delhi were being run in tents, that 65 primary schools had no toilet blocks and that another 83 primary schools had no electricity connections. With winter temperatures falling as low as 6 degree Celsius, this PIL additionally disclosed the Municipal Corporation of Delhi using better resourced school buildings as local offices. All of these disparate statistics around the deplorable state of school infrastructure in the nation’s capital helped construct a very public narrative that contradicted the MCD’s version of events around the ‘accidental’ death of seven-year-old, Anshu.<sup>7</sup>

The MCD’s response was to provide the Court with figures, aggregate numbers on the facilities that did exist as well as the money that had been spent on improving schools. The MCD also worked to counter the reports on dilapidated schools by blaming these existing conditions on children and their families. The MCD’s defense included brazen attempts to justify the dilapidated infrastructure by highlighting how the majority of nine lakh enrolled students were children of construction workers and slum dwellers. These children, according to the MCD, were being raised in an

environment in which the basic sense of individual safety, hygiene and personal conduct is not very well developed. They argued that given the very low literacy levels of parents, disciplining these children had proved to be a very difficult exercise as a majority of children who had grown up in construction sites as infants demonstrated an entrenched habit of recklessness and rash disregard for danger to their own person and towards their peers. This 'deficit framing' of the poor was, however, something that the Court refused to legitimize. Instead, the Court directed the municipal authorities to improve the provision of water in schools stating, "Water sustains life and the importance of provision of drinking water in a school cannot be over emphasized. To deny water is to deny adequate sustenance. Provision for wholesome potable water in schools is part of right to life enshrined under Article 21 of the Constitution".<sup>8</sup>

This right to life, or Article 21, was again invoked in 1999 after the death of another child, Mehnaz, who was 16 years of age. On February 5 Mehnaz, a ninth-grade student who attended the Government Girls Senior Secondary School in Brahmpuri, Delhi, was shot dead in the middle of the school day by a boy who had walked into the school with a gun and had managed to reach the second floor of the building where Mehnaz was seated. Though her assailant was arrested and Mehnaz survived the immediate attack, she died a week later in hospital. Ashok Agarwal, as part of the Social Jurist filed a case to get Mahnaz's parents compensation as their child's death on school premises was a violation of Article 21. This case also helped amplify the gendered toll exerted by the absence of security in schools. In this particular case not only was the main gate and boundary wall of the school broken and no security guard in place but the gate was seldom shut on a regular basis. By invoking the constitutional duty of the school to take care of its students, this case was extended to include the prevailing state of security in other girls' schools in the capital. Facts and photographs were provided as evidence on the despicable state of building infrastructure that affected 3000 schools that had a shift-system (where girls attended in the morning and boys in the afternoon) with the absence of adequate security measures exposing girls to the constant risk of being harassed and attacked.

The Court in its judgment stated, "The State must by its acts show that it cares for its citizens and values life.... Such disregard for the security of the girl students negates Article 21 of the Constitution".<sup>9</sup>

In addition, Social Jurist, the non-profit that emerged out of this increased interest of a group of lawyers in elementary education,

mobilized municipal school children to write postcards to all of the High Court judges around the general condition of their schools. Kusum Kumari, a 11-year-old girl wrote, “Our school has no rooms. In the winter we sit in a tent and we fall ill. There is no electricity. I have no shoes,” and her letter was used by the newspapers with dramatic effect to discuss increased state investment in schools as a concrete step in the right direction. In its verdict around these set of cases, the High Court in February 2003, observed:

It is a very sorry state of affairs that in the capital of the country, despite the petition being filed by a citizen, required actions have not been taken up by any of the authorities and school children are required to sit either under tin sheds or in open for the purpose of education.... Court has to interpret so as to advance the provisions made in the Constitution. If the children who are attending the schools are not provided a good class-room with sitting arrangements or a playground, it would not be possible for the students to get proper education. Other facilities such as sanitation and pure water are also required to be provided by the school authorities. *In absence of adequate facilities, if the children are sent to the schools, it means torture on them.* They are not expected to do any hard work at this age. *But they are expected to be trained with love and affection and by providing necessary infrastructure so that they can have love and affection for the school/Institute and they attend the school regularly and drops out are minimized.* It is for this reason the government should provide adequate facilities.

Before these cases were adjudicated, the dominant discourse on marginal children and schooling was their lack of access to school, a viewpoint promoted nationwide by the Indian government’s District Primary Education Program. Within this metanarrative of access less was said on the quality of the government schools in which these marginal children were enrolled. The Delhi High Court cases interrupted this narrative by making available for public consumption a devastating catalogue of what ‘access’ had meant in the lives of children who had diligently attended school. Through tactically deploying statistics, photographs and narratives of children, these cases disaggregated ‘access’ to disclose children’s less than ideal participation in these school spaces. As the evidence shared and the judges verdicts made clear, the state received a strong rebuke for its apathy and its efforts to legitimize decrepit school spaces.

Though this criticism, directed at the state, appears at face level to be an assertion around increased equity and accountability in schooling, the

outcome of these cases was far more complex. This was because the disapproval directed at the state resonated more broadly with the rise of a more technocratic imagination in these years in which the liberalization of India's economy was in full swing. Echoing judgments passed by the High Court in several other cases, the underlying pattern of these was to expose the state's managerial inefficiencies in order to legitimize technocratic and corporatist solutions that moved in the direction of privatizing state infrastructure. This move was evident, for example, a slew of cases aimed at evicting the poor from residing in 'unauthorized' slums (Ghertner, 2011) and in what Ghertner has analyzed as "green evictions" or efforts of middle-class housing associations to have more control over land use in the city by citing concerns around security and the environment.

Benefiting middle-class and elite interests had not been the intent of the cases taken up by the Social Jurist. However, the media attention these cases received helped produce broad based public support around the need to open-up government schools to technocratic and corporatist remedies. These technocratic efforts would set in place a range of pedagogic interventions to address school quality without any radical redistribution of resources to improve school infrastructure nor address entrenched and enduring segregation of schools. These interventions skillfully leveraged the continued victimization of the marginal child producing school improvement as best addressed by corporatist and private technocratic interventions. In the case of government schools, these corporate interventions reiterated the ruse around the 'urgency' of schooling as that which could transform the lives of poor children and recalibrated discussions away from infrastructural provisions to focus on entrepreneurialism instead (Subramanian, 2020).

*Maintaining the dignity of the schooled child as learner:* This case concerned the distribution of 'essential items' to marginal children in school. In the complaint filed with the National Human Rights Commission in 2001 the Social Jurist stated that distribution of blankets, sweaters and other essential items to these children in "full public view" constituted a human rights violation.<sup>10</sup> The complaint was filed after a member of the team noticed a newspaper report in a leading regional language daily that contained a photograph and a caption of a high-ranking official of the Delhi local government distributing winter clothes among marginal children enrolled in one of the city's more elite government schools.<sup>11</sup> Stating that the photograph depicted the government official handing out these clothes in a very public ceremony, the lawsuit went on to confirm that this

mode of distribution was the norm within these educational spaces. They cited two more media images from another vernacular newspaper that contained similar photos of high-ranking political party officials and other government functionaries handing out these “essential items” to marginal students within the school space.<sup>12</sup> The case stated that this “routine practice” of handing out these items were a “mode of propaganda” and strongly denounced this practice as “derogatory to the dignity of the school children most of whom belong to lower strata of society but also tantamount to violation of human rights of these children” (Agarwal, unpublished, p. 68). The case did not contest the distribution of these “essential items” but rather foreground that what made this humiliating to the children involved was the fact that it was done in “full public view”. The complaint also cited Articles 39 and 40 of UNCRC. Though these provisions specifically refer to the child victim and the child in violation of the law, they were invoked more because they discuss the need for the child to be in “an environment which fosters the health, self-respect and dignity of the child” and “be treated in a manner consistent with the promotion of the child’s sense of dignity and worth”.

By framing the performative distribution of essential items as a violation of these provisions, the lawsuit urged the Government of Delhi and Municipal Corporation of Delhi to immediately ban such practices. That this case went beyond the three mediatized images and school sites to include all marginal children in the city was made clear through language that reiterated how “a majority of children of poor parents who go to school in this country are being educated in 7.5 odd lakh government schools. It is estimated that in Delhi alone, more than 20 lakh children are studying in schools run by Delhi Government and Municipal Corporation of Delhi”. Stating that their being from the “lower strata of society” made it all the more urgent, “to adopt even more careful attitude towards these to instill in them the sense of pride and dignity” the lawsuit went on to detail how these children might suffer from a “sense of insecurity” within these spaces as they lack many of the “facilities which children of the rich enjoy”. It went on to declare that, if such practices are encouraged, their self-respect will be adversely affected and it would be very difficult to bring them at par with the rest of the society. Facilities of free education, food, shelter, writing material, uniform etc. to the children should be encouraged but not at the cost of their self respect and dignity. Even otherwise, the provisions of free education, food, books, bags, clothing etc. are made

at the cost of national exchequer and there is no provision which allows these schools to use these facilities for their publicity benefits.

This self-respect was tied to children believing that they were being singled out because they were poor. If the child “from the beginning is condemned to a mere beggar,” the complaint added, not only will this affect their psychological development but will severely misrepresent the fact that they are in school as a matter of right and not charity. The National Human Rights Commission agreed with the complaint filed and directed the government of Delhi to take appropriate actions.<sup>13</sup> Around a year later, by February 28, 2002, the Directorate of Education issued an order to all schools banning the practice of distributing “essential items” “in full public view” and also prevented schools from inviting notable individuals who were interested in encouraging this form of publicity. This case helped recalibrate dominant representations that constructed first-generation school students primarily through their marginal status. It helped explain the psychological toll that these representations can have on children and the critical importance of recognizing them as learners who have a right to schooling. Rather than attempting to stop the distribution of these much needed items this case emphasized the importance of maintaining children’s dignity while addressing their needs. Schooling as a process hinged to the preservation, and not the erosion, of children’s dignity, can only unfold within equitable learning spaces in which these children are valued as learners and not constructed as recipients of charity.

Both of these cases variously highlight the role of the state in both guaranteeing educational infrastructure and protecting the dignity of children who are first-generation learners. Bluntly speaking these cases helped demonstrate ‘access’ and enrollment as inadequate measures of children’s participation. Instead, these cases moved the focus away from marginal children as charitable objects to their role as subjects, as learners within these spaces and thereby helped frame their school participation within a more robust interrogation of equity in government schooling. This much-needed public scrutiny, however, unfolded within the larger context of India’s economic liberalization and paradoxically aided processes already underway to privatize schooling and further dilute infrastructural concerns.<sup>14</sup> With calculations around school quality increasingly constructed as having less to do with addressing inequity and more to do with pedagogical innovations a rising technocratic class reframed the concerns raised by these cases in terms of a corporatist ‘ethics of privilege’ (Balagopalan, 2014; Sadgopal, 2010; Subramanian, 2020). Corporate interest in

government schools, along with the state's willingness to cede control through 'public-private partnerships', drastically redrew the template of educational justice for the marginal child. This increasing marketization of school choice and the parallel rise of low-fee private schools rendered government schools as a less desirable choice. However, several of these provisions that these Delhi High Court cases helped establish around educational equity were included in India's 2009 Right to Education Act (Juneja, 2014).<sup>15</sup>

## CONCLUSION

As a result of these processes, in India we have a situation in which a strong law around all children's right to education coexists with the reality of deeply segregated and increasingly privatized school spaces. With the state intentionally ceding its role, as evidenced most starkly in the reduction of budget allocations for elementary education, the implementation of this right is paradoxically marked by parallel processes that erase, mystify and continually defer concerns around educational equity. The representational logics that underlie UNICEF's pandemic report serves as a good example of this obfuscation of equity. Instead of utilizing the loss of schooling that marginal children experienced during the pandemic to draw urgent global attention to disparities in learning outcomes as that which precedes this more recent disruption and is tied to the increasing normalization of segregated and iniquitous schooling for first-generation learners across the global South, the report instead constructs this urgency around schools serving as a site that provides a range of compensatory services to marginal children. Children's participation in their right to education rests upon the image of a child signified primarily in terms of their enduring poverty. The dominance of this representation produces these children's educational participation within a dialectic that combines victimhood and futurity (Balagopalan, 2021, 2022). First, they overarchingly construct all schools, including poor quality and highly segregated schools, as virtuous spaces in which marginal children have much-needed access to compensatory services. And second, by positioning schools as the only spaces through which marginal children can access an improved future of social mobility they broadly affirm the importance of equity and quality schooling while simultaneously managing to construct these as less urgent concerns. This dynamic produces a self-sustaining logic in which the accountability of international organizations and



nation-states is indexed in a fluid and continuously deferrable set of criteria (as reflected in the SDG and MDG goals) with this being justified through children's access to compensatory services within these highly unequal spaces of instruction.

Rather than fundamentally challenging the Indian state's steady withdrawal from guaranteeing this right, UNICEF's representational logics appear to ventriloquize the mystification of concerns linked to equity. This underscores what this chapter has discussed regarding children's participation in their right to education as that which is seldom separable from the power dynamics within which they are represented. This resonates strongly with what several scholars have analyzed in relation to representations of marginal populations. In her work on young Black mothers in the UK, Anne Phoenix (1993) used the term "normalized absence, pathologized presence" to mark how these mothers were represented within social commentary and academic research. In a similar manner, Daniel Bray discusses how the "*partial or incomplete* conception of an object, which is subsequently used as the basis for representative activity" produces certain 'constitutive effects' (Nakata, 2015, p 8). Broadly speaking these analyses help foreground how, "representative claims concern more than the act of representation; they produce power relations by constituting the content, value and meaning of the represented. In short, representative claims are intended to have certain effects on politics" (ibid.).

Similarly, representations of marginalized children's exercise of their right to education get produced through an amalgam of 'constitutive effects' that primarily work to sediment their pathologized presence as marginal children and not as learners. The Delhi High Court cases not only helped draw attention to this representational politics but also alerts us of the need to set in place a more robust idea of children's participation that prioritizes educational equity (McCowan, 2010, 2011). This is a framework that constructs these children first and foremost as learners who have a right to school and not as recipients of charity within school spaces. By bringing into public conversation the abysmal experiences of first-generation learners in school, these cases helped rethink existing assertions that upheld schooling as the self-apparent resolution to their current marginality. Building on these cases to develop a counterintuitive view of children's participation in their right to education requires us to destabilize the prevailing commonsense of educational equity as a continually deferrable goal. Pivoting the discussion around citizenship would allow us to push back against the depoliticized social optimism that marks

the parallel construction of schools as sites for the distribution of basic welfare services to marginal children. However, by foregrounding citizenship, this counterintuitive framing of children's participation does not at all believe that the marginal status of first-generation school attendees can be magically erased or overturned. Rather, by underscoring the strong resonances between earlier moments of casteist and capitalist exploitation and the present educational crises that we currently inhabit, we can begin to think about alternatives that holistically center these first-generation students as learners and citizens.<sup>16</sup> As the Delhi High Court cases remind us, this centering could be both shaped and challenged by a vision of social justice that values substantive educational equality as a central criterion for these children's exercise of citizenship and not as a goal that can be perpetually deferred.

## NOTES

1. These cases include the *Mohini Jain vs State of Karnataka* (1992) and the *J.P Unnikrishman vs State of Andhra Pradesh* (1993), both of which pushed for the right to education to be made legally enforceable. In the former case, India's Supreme Court ruled that the framers of the Constitution had intended to guarantee all children's right to education by including a Directive Principle and tied this right to the fulfillment of Article 21 or the 'right to life'. This obligation of the state as part of the fulfillment of Article 21 was reasserted the following year in the *Unnikrishman* case, with the judges clearly stating that free and compulsory education until 14 years of age should be made legally enforceable.
2. In addition, James also interrogates the extent to which children as co-researchers within projects, and particularly children's rights projects, also risk generating a form of paternalism either by overlooking power differentials between adult and children researchers or by providing provided children with a significant role in carrying out the research, *simply because they are children*.
3. According to Ashok Agarwal the PIL, or public interest litigation, was adopted by the Supreme Court of India in 1976. It refers to: "PIL can be defined as a forum of litigation where the petitioner is not the aggrieved party but a public spirited persons taking up the cause of other person/ persons who are unable to approach the court for enforcement of his/their rights due to reason of poverty, illiteracy, backwardness etc." (Agarwal, unpublished manuscript, p. 14).
4. For someone who started his career in litigating education cases by taking on a case for the parents of private schools it is quite poignant that the

same parents would later come to oppose him quite bitterly and side with school authorities around a case that required these private schools to reserve seats for economically backward children in lieu of the subsidized land they had received from the state.

5. These cumulative figures included documentation on the number of primary school buildings (1310), total numbers of classrooms (17,209), number of 'Lavatory Blocks' (2675) and boundary walls (1298), as well as an affidavit that stated that the MCD 'repair and maintenance budget' had been enhanced from Rs. 1.5 crore to Rs. 15 crore that year, in addition to which Rs. 30 crores was being made available for the construction of buildings and new rooms, with 400 pucca rooms and 400 semi pucca rooms already underway.
6. In Shahadara in northwest Delhi, the Delhi Corporation had displaced 700 children and in Krishna Nagar students were denied access to the playground.
7. Given that this case preceded the 2009 Right to Education Act, the law that the AILU cited included the 1957 MCD Act which made the maintenance and running of primary schools the responsibility of the Corporation in the 12 zones of the city. In addition, it also cited Rule five of the 1973 Delhi School Education Rules which stated that the MCD will impart free education for all children until the eighth grade or until they reached 14.
8. While in this particular utterance the judges were linking undrinkable water to marginal children's "right to life", it isn't unusual for the court to invoke Article 21 of the Indian constitution in relation to education. This is because the Supreme Court had in the *Unnikrishman* case (1993) had declared that every child in the country up to the age of 14 had a fundamental right to education as part of their right to life. However, this was the first case in which schooling was being disaggregated to include key infrastructural provisions as part of this fundamental right.
9. The case was made that girls are usually subjected to harassment at the hands of local boys who are often members of local gangs and who have free reign of the school space because of the total lack of security personnel. These boys at times make it difficult for these girls to attend school and might also be used as a reason by the girls' family to stop sending her to school.
10. *Social Jurist vs. Government of NCT and Others* (Complaint to NHRC), date of complaint: 02.03.2001.
11. This appeared in the popular Punjabi newspaper *Punjab Kesari* on January 23, 2001, along with a photograph that showed the Deputy Speaker of Delhi Assembly handing out woolen clothing among economically marginalized schoolgirls of Sarvodaya Vidyalaya.

12. These appeared in the popular Hindi newspaper *Dainik Jagaran* on January 21, 2001, and January 27, 2001. While the first image depicted high-ranking members of the youth wing of the Bharatiya Janata Party distributing pullovers among the poor students in another Sarvodaya Vidyalaya school in the city, the second showed a Municipal Councilor and a Member of Education Committee distributing the same at an MCD school.
13. The NHRC did not take much time at all to attend to this complaint and issued its order on March 30, 2001.
14. This haphazard approach to school infrastructure was also affected by the success of government-run one-room schools in rural areas of the country and the emergence of low-fee private schools. Both types of schools got presented as robust and cheap alternative to the heavy burden of reforming government schools. These newer spaces of schooling had rebuffed infrastructural norms and their modular template circulated as more easily replicable than the repair of existing government infrastructure signaled by the Delhi High Court.
15. This chapter does not have the space to discuss this important case but it did insert a key provision in Section 12 c of the 2009 Right to Education Act that requires private schools to reserve 25% of their annual admission for economically and socially marginalized children from the neighborhood.
16. Schooling is a complex endeavor and in thinking about it holistically we would also need to rethink the curriculum that first-generation learners get taught within these spaces as well as become more aware of the racial, caste and class habitus that marks school spaces even when they are segregated. The contents of this curriculum, language used in the classroom, the privileging of upper-caste worldviews in a school's ethos while neglecting Dalit lifeworlds—all of this would need to be taken into account to make schooling a meaningful exercise for first-generation learners.

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