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Spectrum of Difference: Applying Feminist Critique to Disability Law

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ABSTRACT

The analysis of Nivedita Menon's work regarding gender binaries serves as a foundation for this paper's assessment of medicalized and exclusionary structures within Indian disability law. The paper demonstrates how gender and disability represent two categories which society constructs through fluid systems that previously operated under strict societal norms and capitalist productivity standards. By examining legal judgments such as LIC v. Chief Commissioner for Disabilities and Naveen Kumar v. University of Delhi, the paper illustrates how courts have either reinforced or challenged ableist assumptions. The analysis demonstrates the necessity to move away from disability models based on individual patient care to a social system which understands workplace relationships and inclusion. The "ideal worker" standard maintains its basis from gendered and ableist perspectives which results in double marginalization of women and disabled persons. The paper uses an intersectional analysis to expose the dual disadvantage faced by disabled women while advocating for rights-based decision-making processes that prioritize minority community perspectives. This paper recommends fundamental reforms to laws together with institutions alongside cultural elements which should demonstrate human diversity and establish authentic inclusion.

Keywords: Feminist, Disability, rights, women.

The key arguments that Nivedita Menon makes in *Seeing Like a Feminist*³, are that neither gender nor sex is not a binary, and that the apparent differences in abilities between the genders, while appearing rooted in 'science', are actually a result of centuries of societal norms that confined people to gender roles and did not allow them to develop the skills of the other gender. She uses historical examples to prove her point, highlighting that women and men were not always assigned the roles they hold in today's societies, and that gender is a fluid concept that has always been evolving.

Menon fights against the normalization of gender standards through studies of how the family alongside state institutions alongside legal systems and religious bodies maintained patriarchal

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³ NIVEDITA MENON, *SEEING LIKE A FEMINIST* (Zubaan 2012).

rule through fixed gender mandates. According to her analysis destiny should not be determined by biology while social construction reveals better how power operates throughout society. Menon explains how gender constructs combine with social factors including caste and class and sexuality to require a feminist perspective for revealing systemic oppression. Feminism requires a complete transformation according to Menon who views it as an active process of questioning while standing against every social hierarchy. She demonstrates feminism as an inclusive framework that combines intersectionality and transformative approach.

The same reliance on ‘science’ and medical opinions of disability in defining what a disabled person can do can be seen running through the cases on disability. In this area the authors discuss how courts have used medical opinion as a deciding factor in several cases.⁴ For example, in the case of *Naveen Kumar v. University of Delhi*⁵ the judge merely directed the University to decide the question of admission of the disabled applicant on the basis of a medical examination to be conducted within a stipulated period of time.

While mapping the gender debate onto the disability debate, two things are especially relevant:

1. That disability, just like gender, is not a binary. The Persons with Disabilities Act⁶ defines disabilities very narrowly, and is entirely based on a medical conception of disability. It also takes into account percentage of disability to determine whether a person is entitled to benefits under the Act, which misunderstands the nature of disabilities. A person who is 30% disabled as opposed to a person who is 50% disabled is still unable to exercise their full autonomy and live their lives free from the impacts of their immutable status as a disabled person. Disability, therefore, is not a binary, but a spectrum just like gender. It is important that this be understood when creating benefits for disabled persons.
2. Just like gender, disability does not necessitate certain roles for disabled persons. The perception of both women and disabled persons as different stems from a common norm in society: the ideal worker. Many academicians have argued that the association of disability with lack of productivity can be attributed to the rise of capitalism and the new norms of production that were unfavourable to the disabled.⁷ The same has been argued about women by Feminist Marxists; they attribute the exclusion of women in the

⁴ Renu Addlakha & Saptarshi Mandal, *Disability Law in India: Paradigm Shift or Evolving Discourse?*, 44 ECON. & POL. WKLY. 62 (Oct. 10–23, 2009).

⁵ Writ Petition (civil) 4657/2000 (unreported)

⁶ The Rights of Persons with Disabilities Act, No. 49 of 2016, INDIA CODE (2016).

⁷ Renu Addlakha & Saptarshi Mandal, *Disability Law in India: Paradigm Shift or Evolving Discourse?*, 44 ECON. & POL. WKLY. 62 (Oct. 10–23, 2009).

workplace to the rise of capitalism. The norm of the ideal worker affects both women and disabled persons, as it is premised upon the image of a healthy male person.

The 2003 judgement of the Delhi High Court in *LIC v. Chief Commissioner for Disabilities*⁸ can be seen as a reflection of the above points. The judgment moved away from reliance on medical opinion somewhat in favour of a more practical approach by recognising that the disabled person would be able to perform most of the tasks of a peon, and could be helped by his fellow employees in case there was something which his disability impaired him from doing. This recognised firstly⁹, that disability is not a binary in that persons are not either qualified or unqualified for a job; abilities to perform tasks exist on a spectrum. Secondly¹⁰, it recognised that the norm of an ideal worker does not have to be the standard for the workplace, by acknowledging the “workplace not only as a site for the exercise of individual skill and achievement, but as an interdependent space of mutual assistance”

The court's decision holds great importance because it indirectly breaks down the conventional beliefs about able-bodied employment standards prevalent in work environments. The court brought forward a relational approach to work through their decision which demonstrated that workplace efficiency can exist beyond individual productivity metrics. Feminist scholar Nivedita Menon among others share the same perspective by challenging the notion of individual self-making while revealing which social structures allow opportunities access to specific groups. The court acknowledges that historical definitions of ideal workers constructed through able-bodied upper-caste heterosexual men serve as prejudiced standards which perpetuate discrimination. As a result of the judgment courts can now establish reasonable accommodation as an essential requirement for legal and ethical standards instead of treating it merely as an act of goodwill. Through this approach disability receives a new definition that shows how it functions as a social condition instead of a personal disadvantage which emerges from environmental limits and shared accountability. The new perspective forces institutions to transform their views on inclusivity by viewing it as an essential redesign of equality rather than viewing it as a financial burden. Through this progressive interpretation the decision works to challenge established norms while promoting expanded understanding about work and ability.¹¹

Through her argument Nivedita Menon establishes that the naturalization of difference depends both on gender constructions along with the comprehensive effect of normative systems on

⁸ Life Ins. Corp. of India v. Chief Comm'r for Persons with Disabilities, (2003) 99 DLT 613 (Del. HC).

⁹ NIVEDITA MENON, SEEING LIKE A FEMINIST (Zubaan 2012).

¹⁰ Ibid.

¹¹ Simi Linton, CLAIMING DISABILITY: KNOWLEDGE AND IDENTITY, 4th edn, pp. 23-45, New York University Press (1998)

social behaviour.¹² Through her analysis she identifies how institutional settings together with cultural and legal frameworks make some identities disappear and mark others as inferior. The criticism shows how systems that constitute medical definitions limit freedom for disabled individuals similarly to how patriarchal events limit freedom for men and women's identities.¹³

Disability studies scholars have consistently criticized the medical model of disability because it uses deficient body standards to define disabled bodies as abnormal.¹⁴ According to Menon's gender framework the norm exists as a social construct rather than representing biological essence. Through her feminist perspective Menon provides crucial tools to expose how society wrongly combines disability with incapacity which leads to exclusionary practices instead of resolving systematic obstacles.¹⁵

According to the social model of disability the main focus should be on environmental barriers and attitudinal and systemic obstacles that prevent participation.¹⁶ According to Menon the way women are situated socially in an unequal system produces their disadvantages instead of their biological features. Society creates both gender and disability barriers that limit individuals rather than these factors being natural limitations.

The assessment process for capability which follows medical criteria demonstrates how capitalist ideologies shape both gendered and ableist social structures. The traditional workplace concept envisions a worker who lacks caregiving duties and physical limitations while this model strongly links to masculine characteristics and able-bodied status. Such exclusions create two-fold discrimination that silences women and disabled people while removing their potential contributions from social interactions. Such standards reinforced by legal institutions create exclusion because they solely depend on medical opinions.

The legal recognition of interdependence, as in the *LIC v. Chief Commissioner*¹⁷ for Disabilities judgment, offers a powerful counter-narrative. Through its ruling the court advanced the dismantling process of ableist ideas present in law by recognizing that workplaces need to support diverse needs while rejecting productivity-based assessments of worth. Such recognition aligns with feminist movements that want to validate essential yet non-economic forms of work including care duties and emotional responsibilities.

¹² Hasan, Zoya. *Politics of inclusion: Castes, minorities, and affirmative action*. Oxford University Press, 2009.

¹³ Ibid.

¹⁴ *What is disability?*, available at <http://www.dwa.org.au/whatisadisability.htm>.

¹⁵ Kannabiran, K., 2009. Judicial meanderings in Patriarchal thickets: Litigating sex discrimination in India. *Economic and Political Weekly*, pp.88-98.

¹⁶ *Disability Rights*, Human Rights Law Network, available at <http://www.hrln.org/hrln/disability-rights.html>.

¹⁷ *Life Ins. Corp. of India v. Chief Comm'r for Persons with Disabilities*, (2003) 99 DLT 613 (Del. HC).

The disability rights movement together with the feminist movement place great emphasis on empowering individuals to control their personal representation.¹⁸ When people who are not disabled and not female speak at the expense of marginalised populations instead of alongside them it generates policies that poorly mirror real-world experiences. Active involvement of discrimination victims becomes essential for creating effective solutions because they directly understand the issues at hand. Menon demonstrates her commitment to hearing marginalized voices through her approach which matches the principle of self-representation.

The analysis requires attention to the way different forms of discrimination intersect with each other. The combined form of discrimination faced by disabled women surpasses what single-rights movements can effectively resolve independently. The intersectional approach demands a better comprehension of how diverse discrimination types connect and boost against one another. In Indian society caste alongside class and religion act as additional layers which affect how disabled people experience gender discrimination.

Important mechanisms which exclude and control people operate across the gender and disability domains as shown through Menon's critique. Social norms and laws with policy must undergo complete transformation because they must accept fluidity combined with human interdependence and representation of all human diversity types. The disability rights movement needs to combat standardizing practices that diminish both autonomy and dignity just like feminist activists have done regarding structured systems and rankings. These critical assessments converge to outline an enhanced justice paradigm based on recognizing diversity because it constructs shared power rather than defining it as disadvantages.

¹⁸ Simi Linton, *CLAIMING DISABILITY: KNOWLEDGE AND IDENTITY*, 4th edn, pp. 23-45, New York University Press (1998)