Tracing the Change and Continuity in Discrimination in Rights of Persons with Disabilities Act, 2016 from Liberal Feminist Perspective

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Abstract

This paper takes on disability as a human rights issue and focuses on social model of disability among the different models that are available within the disability literature. The ideas and the consequent United Nations Convention on Rights of Persons with Disabilities (UNCRPD) that set the stage for social model of disability are being discussed in the paper. The main motive of the paper is to imply that disability discourse has emerged in the Western world and is being used globally without taking into consideration the local needs of other countries where the disability is still being looked at through the mixed lens of individual and societal problem like India. This paper will dig into liberal feminism and through its lens will try to find out the inadequacies in Rights of Persons with Disabilities Act, 2016 (RPwD).

Keywords: *Women with Disabilities; Liberal Feminism; India, Social Model of Disability*.

Introduction

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The World Health Organization (WHO)[3] defines disability as "disability is a complex phenomenon, reflecting an interaction between features of a person's body and features of a society in which he or she lives. Disability should be studied in the context of social culture to which such a person belongs". The Social Model of Disability diverges from the previously dominant Medical Model of Disability and identifies systemic barriers, derogatory attitudes and social exclusion, which make it difficult or impossible for individuals with impairments to attain their valued functioning. The origins of the approach can be traced to 1960s, and the specific term emerged from the United Kingdom in 1980s. The "Social Model" was further developed by academics and activists in Australia, the UK, the US and other countries, and extended to include all **people with disabilities**, including those who have learning difficulties or who are intellectually disabled, or people with emotional, mental health or behavioral problems. With the paradigm shift from "Medical Model" to "Social Model", this category has been re-classified as a human rights issue. Zina Bethune coined the term "differently-able" to reframe discussions on people with disabilities. The "Human Development Model of Disability, Health and Wellbeing" based on Amartya Sen's "Capability Approach" dominate the contemporary disability discourse. Disability is defined as a deprivation in terms of functioning and/or capability among persons with health conditions and/or impairments. The Human Development Model highlights in relation to wellbeing the roles of resources, conversion functions, agency, and it uses capabilities and/or functioning's as metric for wellbeing. It does not consider impairments/health conditions as individual characteristics; instead, they are themselves determined by resources, structural factors and personal characteristics, and thus the model is determined by the socioeconomic determinants of health literature.

In Indian context, the understanding of the status and problems of the persons with disabilities is based on two approaches-Welfare based and Rights based:

a) Welfare based approach: In the welfare-based approach, the persons with disabilities are viewed as objects of the state charity in need of medical treatment and social protection. The status of the disabled persons has always been viewed from the prism of paternalistic social welfare---which looks upon them as those who are in need of special protection by the state and society in general. The consequence of the same is that individuals with disabilities or groups representing them are seldom given an adequate opportunity to participate in the framing of policies for their benefit. This lack of inclusion and effective consultation in policy making leads to piecemeal measures that are often imposed or ineffective in meeting the legitimate needs.

b) Rights based approach: Through the lens of this approach; the persons with disabilities are viewed as citizens with rights, equally capable of claiming these rights and making autonomous decisions based on their free and informed consent as well as being active members of the society. The philosophical underpinning of rights-based approach is that persons with disabilities should be accepted as part of the inherent diversity in society and that they should be given full opportunity to participate in the creation of measures meant to regulate their conduct and protect their interests.
Amartya Sen in his book "Development As Freedom" states that individual freedom quintessentially a social product, and there is a two-way relation between (1) social

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[3] World Health Organization, & World Health Organization. (2001). International classification of functioning. *Disability and Health (ICF)*, *28*, 66.

arrangements to expand individual freedom and (2) the use of individual freedom not only to improve the respective lives but also to make the social arrangements more appropriate and effective. In this context the shift to human rights perspective to disability discourse and the recognition of rights-based approach to disability at the level of United Nations is significant development. Same is reflected in several developments which took place at the international platforms since the year 1981 was proclaimed by UN General Assembly as the International Year of the Disabled under the slogan "Full Participation and Equality". The policy environment for disabled people has also undergone transformation due to several movements launched by disabled people themselves. Today, disabled people have their own group identity and they are seen more in the context of an equal opportunities and human rights. However, there are still many complex issues to be addressed regarding equal treatment of disabled people in the policy context and to create a genuinely inclusive society for all. In this regard, disability rights movements play significant roles. The Preamble of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) states; Disability is an evolving concept, and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders full and effective participation in society on an equal basis with others. India (among 177 countries) has ratified UNCRPD in 2007.

The Constitution of India is premised on the principle of social justice and human rights. The Preamble, the Directive Principles of State Policy and the Fundamental Rights enshrined in the Constitution stand testimony to the commitment of the State to its people. These provisions envisage a very positive role for the State in the enhancement of the status of disadvantaged groups. The term "Disability" does not find any distinctive position in the Constitution of India. Women and children are the only two only groups that are considered to be vulnerable who require extra care and security.

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and Rights of Persons with Disabilities Act, 2016 are considered as two most enlightened and landmark disability legislations in India (it is pertinent to mention here that Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995) received severe criticism from different disability organizations and activists for having traits of Medical Model of Disability).

Feminist Interpretations:

Susan James asserts at the outset that "Feminism is grounded on the belief that women are oppressed or disadvantaged by comparison with men, and that their oppression is in some way illegitimate or unjustified" (James, 1998: 576).

Jaggar entails that feminism "help women to achieve the fullest possible liberation". She further argues that there has been a shift from feminism to women's liberation movement in the contemporary period as "Earlier feminists used the language of 'rights' and 'equality'. But in the late 1960s 'oppression' and 'liberation' became the key words for the political activists of the new left. The change in language reflects a significant development in the political perspective of contemporary feminism" (Jaggar, 1983:5).

For Hooks, feminism is "the struggle to end sexist oppression" (2000:28). She further argues that "To understand feminism it implies one has to necessarily understand sexism" (Hooks, 2015:1).

For Thompson, "Feminism aims to expose the reality of male domination, while struggling for a world where women are recognized as human beings in their own right" (Thompson, 2001:8).

Feminism refers to a range of socio-political movements and ideologies that aim to define and establish the political, economic, personal, and social equality of sexes. Feminism demonstrates that society prioritizes the male point of view and that women are unjustly treated in these societies. Feminists highlight and ask for women's rights in areas of electoral political representation, run for public office, work, earn equal pay, own property, receive education, enter contracts, have equal rights within marriage, and maternity leave. Feminists also work for ensuring social integration and to protect women and girls from rape, sexual harassment, and domestic violence. Changes in female dress standards have also been part of feminist movements. Although, feminist advocacy is mainly focused on women's rights, some feminists argue for the men's liberation within its aims, because they believe that men are also harmed by traditional gender roles. Feminist theorists have developed theories in a variety of disciplines in order to respond to issues concerning gender.

Numerous feminist movements and ideologies have developed over the years and represent different viewpoints and aims. Since the 19th century, there has been several waves of feminism: first wave "liberal feminism" sought political and legal equality through reforms within a liberal democratic framework. Second wave that emerged was Socialist and Marxist feminism based on class struggle theory. These traditions of feminism were followed by radical feminism that calls for a radical reordering of society to eliminate male supremacy. Together, liber-socialist-radical are called the "Big Three" schools of feminist thought.

Liberal Feminist Perspective:

The basic tenets of liberal feminism include:

- All individuals have certain essential features---they are capable of achieving rationality, moral agency and self-realization.
- These qualities can be recognized through legal recognition of universal rights.
- The inequalities between the sexes are not based on 'any natura' differences but are the consequences of socially constructed patterns of behavior.
- Gender equality in society can be achieved through an organized appeal to the human capacity to be moved by rational arguments.

Also called mainstream feminism, liberal feminism focuses on achieving gender equality through political and legal reform within the framework of liberal democracy. Liberal feminism traces its origin to 19th century first-wave feminism that focused particularly on women's suffrage and access to education, which was associated with 19th century liberalism and progressivism. Liberal feminism "works within the structure of mainstream society to integrate women into that structure". Liberal feminism puts more emphasis on public work, thereby talks about laws, political institutions, education and working life, and considers denial of equal legal and political rights as the main obstacle to equality. Liberal feminists

work to bring women into the political mainstream. Liberal feminism is inclusive and socially progressive, while broadly supporting existing institutions of power in liberal democratic societies, and is associated with centrism and reformism. Modern liberal feminists support LGTB rights as a core feminist issue.

Feminist Perspectives on Disability:

Feminism is used both as a point of comparison and as a tool to constructively critique the social model of disability. In the Western world, the social model of disability and disability rights campaigns based on the social model of disability have only relatively recently begun to grapple with issues of difference and diversity between and amongst various groupings in relation to gender and also impairment, race, class, age, sexuality and varying dimensions of social division. Different writers put forth different viewpoints. Oliver, subsume issues of difference and diversity under the heading of 'multiple oppression' (Oliver 1996:39). There are several writers who support disability rights movements based on social model of disability, but who critique the model for not considering gender, the effects of impairment and other differences. French (1993) and Finkelstein (1993a) have pointed out that within a broadly accepted political program based on the social model of disability, certain areas such as disability benefits and the situation of older disabled people, particularly women and individuals with learning and communication impairments, continue to be contested. Begum (1992), Morris (1993a) and Abu Habib (1997) have emphasized the need for a greater exploration of issues related to gender and race. Morris (1993a), French (1993) and Crow (1996) have also specifically critiqued the social model of disability based for appearing to ignoring the implications of individual impairments. Shakespeare (1994) argues for the social model to be reconceptualized to take into account not just material discrimination but prejudice which is implicit in cultural representation, language and socialization. Morris (1993a) and Begum (1992) have used the feminist slogan 'the personal is political' as a means of linking the personal experiences to the political arena and highlighting gender differences.

Bodies are not just biological, physiological entities, but sites of meaning, both positive and negative, for the individual concerned. It is the appropriation of meaning by able-bodied women and men that can be seen to cause further difficulties for disabled women and men and subject them to the negative stereotypical categoricalism of bodily impairment, in addition to the generally embracing categoricalism of appearances.

Findings through the theoretical lens:

With regard to the social model of disability, emphasis on the social model as a unifying perspective can be seen to have obscured deconstructive analysis related to areas such as 'impairment' and 'defect'. Impairment as a biological problem is looked on differently in different societies and is stigmatised differently thereby giving rise to 'defect'. Unitary categories such as 'women' or 'disabled women' need to be repositioned and the local circumstances should be considered while framing disability laws and policies.

Largely as a result of binary forms of analyses, disability rights movements based on social model of disability, and feminism (s) have often been presented as homogeneous and unified movements, with feminism appearing to speak for all women, and disability rights movements based on social model of disability, appearing to speak for all people with disabilities. But the point of contention here is that both feminism and social model of disability are westernized concepts and with the Indian context the social organization and the setup is altogether different at the ground level.

We see the simplistic analyses which focuses on disability in isolation from other important issues and social relations. People with disabilities are not sexless: they are men and women with different interests, different characteristics including age, economic status, aspirations and different life experiences.

During 1980s, several NGOs crusaded for Disability Rights Movement in India, resulting into the adoption of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This Act, in accordance to empowerment perspective, reserved three percent (3%) of government posts for PWDs with no mention for women with disabilities as a preferred group[4]. The subsequent RPD Act, 2016 stands for four percent (4%) reservation for persons with disabilities with no mention of women preference and exclusion of private sector as an opportunity for persons with disabilities.

In many States of India, the allowance is given to non-disabled person for marrying a disabled person, thus continue to propagate the age-old demeaning charity/dowry system. Women specific legislations like Protection of Domestic Violence Act remain un amended to address the rights of women with disabilities.

Reports from the ground:

1. The annual report of the Ministry of Women and Child Development has not reported on the number of girl/women beneficiaries under each of their schemes.
2. The National Crime Record Bureau (NCRB) does not keep specific records of women with disabilities.
3. The RPwD Act stands for termination of pregnancy of women with severe disability without their express consent[5].
4. This report highlighted the gender discrimination in India as a whole. According to the Population Census, 2011, women with disabilities constitute about 44 percent of the total population with disabilities. Out of the total number of literates with disabilities, only 36 percent are women. And, among the working people with disabilities, only 25 percent are women.[6] This report further points out that least number of women with disabilities have disability certificates out of the total population with disabilities (44.7 percent of people with disabilities have disability certificates in India).[7]

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[4]*Note: Women face double marginalization.*
[5] Note: Medical science substantiates those healthy babies can born thereof.
[6] Population Census 2011 accessed at
http://www.censusindia.gov.in/2011census/population enumeration.html on 04 May, 2022
[7] annual Report-2014-2015, Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment

5. RPwD Act, 2016 mandates governance to take measures to ensure women and children with disabilities enjoy all human rights, with support for livelihood, childcare, sexual and reproductive health care, land, housing, NREGA and inclusion in various developmental programmes. Mental Health Act, 2017 has no gender-based equality provisions.

Conclusion:

Disability discourse has emerged in the West owing to different disability movements and especially the causalities caused by world war 1st. The result of all these events ushered into the consolidation of United Nations Convention on Rights of Persons with Disabilities (UNCRPD) which is the parent document for Rights of Persons with Disabilities Act, 2016 but the argument here is that the disability policies and legislations are not framed according to the local societal conditions and perceptions.

References:

❖ Al-Aoufi, H., Al-Zyoud, N., & Shahminan, N. (2012). Islam and the cultural conceptualisation of disability. *International Journal of Adolescence and Youth*, *17*(4), 205-219.

❖ Bandyopadhyay, R., & Roy, S. (2010). Has India Undeniably Secured the Educational Rights of the Differently Abled-An Appraisal. *Indian JL & Just.*, *1*, 22.

❖ Campbell, J., & Oliver, M. (2013). *Disability politics: Understanding our past, changing our future*. Routledge.

❖ Charlton, J. I. (1998). Nothing about us without us. In *Nothing About Us Without Us*. University of California Press.

❖ Dutt, A. K., & Rao, J. M. (2000). Globalization and its social discontents: The case of India. *Centre for Economic Policy Analysis Working Paper*, (16).

❖ Goodley, D. (2001). 'Learning difficulties', the social model of disability and impairment: challenging epistemologies. *Disability & Society*, *16*(2), 207-231.

❖ Kothari, J. (2012). *The future of disability law in India: A critical analysis of the persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995*. Oxford University Press.

❖ Lloyd, M. (1992). Does she boil eggs? Towards a feminist model of disability. *Disability, Handicap & Society*, *7*(3), 207-221.

❖ Morris, J. (1996). *Encounters with strangers: Feminism and disability*. Women's PressLtd.

❖ Oliver, M. (2013). The social model of disability: Thirty years on. *Disability & society*, *28*(7), 1024-1026.

❖ Paley, J. (2002). The Cartesian melodrama in nursing. *Nursing Philosophy*, *3*(3), 189-192.

❖ Pandey, S., Chirimar, P., & D'souza, D. (2005). *Disability and the law*. Human Rights Law Net Work.

❖ Thomas, P., Gradwell, L., & Markham, N. (1997). Defining impairment within the social model of disability. *Greater Manchester Coalition of Disabled People*.

❖ Uddin, H. (1995). *Normal and handicapped children: A comparative approach*. APH Publishing.

❖ Wendell, S. (2013). *The rejected body: Feminist philosophical reflections on disability*. Routledge.