

# Theorising the Disability Experience

## 'Power' Is the Key

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This paper illustrates how power relations in a society dominated by an able-bodied majority provide structural sanctions for the oppression and exclusion of the disabled. It critically evaluates the approaches developed by Kalpana Kannabiran and Martha Nussbaum to liberate the disabled, arguing that their basic premises are located within the able-bodied power paradigm. A fresh starting point for academicians and disability rights activists calls for a relocation of disability rights jurisprudence within the broader scheme of the power relations operating in a society. The elimination of the subject of power, the "other," through a model of self-reflection, and the creation of an expansive notion of the self is essential in constructing a theoretical foundation for equal citizenship.

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Civilisation is the process in which one gradually increases the number of people included in the term "we" or "us" and at the same time decreases those labeled "you" or "them" until that category has no one left in it—Howard Winters

—Carol Lynn Pearson (2007)

Amongst the paramount challenges facing modern democratic nations in contemporary times is the task of globalising the claims of social justice or making its claims more inclusive in nature (Nussbaum 2006). Inclusion, in this sense, presupposes the existence of a standard-setting authority that wields power as it identifies the criteria of inclusion (defining who is identified as self/we/us), and thereby those of exclusion (creating as a necessary attendant the category of the "other") as well. To ask for a shift in, or rather, a renegotiation of, these criteria of inclusion and exclusion is to offer a resistance to the power that constitutes and shapes social reality, making it a complex task, at the theoretical and practical levels. In this context, the attempts by disability rights movements at various levels to push for a structure that is inclusive of the claims of disabled people are a discourse located within a broad jurisprudential struggle against the notion of power, making indispensable the analysis of the experience of disability from the standpoint of power relations.

Therefore, disability rights jurisprudence, which attempts to critically analyse the practice and dimensions of disability oppression and marginalisation in the context of power relations, must recognise at the very outset that in a social structure where power is the "major source of social discipline and conformity" (Gaventa 2003), disabled people come to internalise their position of helplessness through the process of socialisation and education. They come to accept the differential treatment accorded to them as appropriate. Consequently, they are significantly disempowered in terms of their ability to identify the discriminatory practices of the ruling class as unjust (Charlton 2010: 153–57). In this context, therefore, it is easy to identify the relatively late emergence of the discourse on disability rights in the Indian context, which began in the late 1980s or early 1990s (Addlakha 2016; Mehrotra 2011) with the passage of legislations, most importantly, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Addlakha and Mandal (2009) identify the reasons for this late emergence as (i) internal, due to the inability to identify differential treatment as unjust, and (ii) external, with social institutions structured in a manner

that silences the voice of disabled people and prevents the sharing of their experiences (Wendell 2010).

In such an environment of hostility to ideas opposing the status quo, theories promoting the social inclusion of disabled people were proposed either by articulating the fundamental right against discrimination on grounds of disability under Article 15<sup>1</sup> of the Constitution through an intersectional jurisprudential reading of the said provision in light of Article 21 (Kannabiran 2012), or by redefining the terms of equal citizenship in a neo-Aristotelian sense,<sup>2</sup> and shifting the focus of the rights discourse from normalcy to capability (Nussbaum 2006). Both these approaches, however, fail to promise the liberation of disabled people, particularly because they do not take into consideration the interplay of power at various levels in the social field, which will hinder the translation of theoretical claims into practical efforts for social inclusion through a modification of laws and public policy aimed at bringing about social transformation on a broader scale.

In this paper, I argue that there is an urgent need to redefine the starting point of the analysis of the experiences of disabled people, and the scope and focus of theoretical structures designed to address the marginalisation and oppression they face. The true liberation of disabled people and equal opportunities for their full participation in every aspect of life, as is the case for the general population we term able-bodied, is not possible by simply giving them civil and political rights in this regard (Foucault 1981). Only a model of social inclusion—in which relationships based on notions of power are diluted to the greatest extent possible—will truly liberate disabled people. The progress of the disabled must be identified with our progress as humankind, because conduct in society is not only influenced by law; internalised social norms also affect the behaviour both of those wielding power and the subjects thereof (Hayward 2000).

If disability rights jurisprudence then aims to bring about a social transformation for disabled people, ensuring their recognition as equal members in a discourse of social justice that is inclusive in nature, a nuanced understanding of power, as reflected in the writings of Foucault, is called for (Foucault 1982; Rabinow 1984; Gutting 2005). Disability rights activists must not conceive power only as relationships of coercion but also as a “conceptual tool” to analyse the social order (Haugaard and Clegg 2009: 4–5). They must consider its quintessential presence in society while framing each of the theoretical assumptions aiming to promote a sense of social inclusion for disabled people. In this paper, I attempt to offer a solution within this framework, as one of many possibilities for a social structure where disabled people are identified with the self, and thus, foundationally included as equal members of human society, members whose claims form a part of the discourse of social justice and who represent a notion of citizenship that recognises diversity.

### Outlining the Disability Experience

Let us first delineate the dimensions of disability oppression, exclusions and marginalisation, so that we may be able to

judge the magnitude of the problem and locate the structural sanctions (reflective of the power relations) that secure such discriminatory treatment of the disabled. The task of outlining these lived realities and their interconnections with concepts of power is a colossal undertaking, so we will restrict ourselves here to a context-specific analysis of the problems faced in the Indian cultural space. We will seek to dismantle these experiences and analyse them with particular reference to power as a subjugating force, making this the starting point for a mapping of the project of social inclusion.

In India, disability finds statutory recognition through a strictly biomedical definition<sup>3</sup> (Panicker 2014)—as a deviation from the characteristics of the able-bodied “average man.”<sup>4</sup> This reflects a direct causal relationship between physical impairments in a person’s body and the social oppression they face (Dinz et al 2009), and fails to recognise that the experience of oppression is not incidental to inherent bodily features but is largely caused by attitudinal, value-based, and environmental barriers that prevent effective social participation (Dinz et al 2009). As the latter social model of disability<sup>5</sup> has not been adopted in Indian law, unlike the definition<sup>6</sup> of the term in the United Nations (UN) Convention on the Rights of Persons with Disabilities (UNCRPD) (United Nations 2006: Article 1), we see how the law restricts the scope of who counts as disabled and prevents many who undergo oppressive treatment from accessing welfare services. Further, this legal fiction of disability “gives rise to a false or distorted ontology ... in whose terms disability is construed as a lack or negative valence” (Campbell 2005: 118). Naturalising the cause of oppression and putting the scope of control of the causation factors beyond human reach, societal power structures eliminate the responsibility on the community to remove barriers that prevent inclusion of the disabled.<sup>7</sup>

Disabled people in India regularly face differential and exclusionary treatment not only at the definitional and ontological level, but also in physical access, disregarding international commitments.<sup>8</sup> The recent Supreme Court judgment imposing an exemplary fine on SpiceJet for refusing to let a person suffering from cerebral palsy on board due to her disability,<sup>9</sup> and the fact that the Karnataka State Commission is the only state-level body to conduct audits of accessibility of public buildings (*Economic & Political Weekly* 2001) illustrate how power structures hinder the implementation of the law to serve the interests of the majority able-bodied population.

Selective abortion techniques present an immediate moral, ethical, and legal dilemma in the disability rights movement, but notions of power prevent these questions from being raised in the social arena. Modern prenatal technologies have been developed to detect foetal anomalies and possibilities of developing a disability, allowing the expectant mother to make the choice to abort or not. However, as pointed out by Hubbard (2010), these methods perpetuate social prejudices that view the life of a disabled person as unworthy of being lived and give scientists and physicians the power to identify “what lives to ‘target’ as not worth living by deciding what tests to develop.” This indicates how power constructs reality and moulds

reproductive choices in a manner that perpetuates the majoritarian norm of the able-bodied person as socially acceptable, excluding, in the process, the possibility of a disabled person coming into existence.<sup>10</sup> The problem is magnified further in India, where we legalise abortions done in good faith to prevent the birth of a child with disabilities.<sup>11</sup> The notion of power that structures our choices for a “perfect child” by defining the able-bodied as the normal and desirable condition, not only commodifies the process of pregnancy and the child, but negates the choice to give birth to a disabled child, an exclusion foundational in nature (Saxton 2010).<sup>12</sup>

In her seminal work on disability rights jurisprudence, Kalpana Kannabiran (2012) classifies the cases filed by the physically disabled as largely those relating to the right to equality protected under Article 14 of the Constitution, and those of the mentally impaired relating to illegal custodial detention restraining the right to liberty guaranteed to all persons under Article 21. In the former set of judicial precedents, judges are seen to determine the capability to perform a particular job from the perspective of an able-bodied person, and though reservations in jobs for disabled people may seem progressive, the reasoning remains highly discriminatory as it fails to recognise the capabilities and human worth of disabled people from an independent standpoint (2012: 57–58). In the case of illegal custodial detention of the mentally impaired, in a critical analysis of the decision in *Veena Sethi v State of Bihar* (1983),<sup>13</sup> Kannabiran (2012: 69–77) reflects that although the judiciary recognised the deplorable state of the prisons, it justified continued detention on the grounds that the prison had better conditions to treat the disabled than a lunatic asylum.

Kannabiran (2012) uses the concept of jurisprudential dissociation to explain these judicial trends. Jurisprudential dissociation is when judges, as members of the bench, know that the matter before them is manifestly and expressly unjust, but choose not to interfere on the grounds that the point was not raised before them as a question of law, even though it is well within their discretion to interpret (interpretation in itself having the inherent possibility of discretion even if not expressly allowed by the letter of the law) the law in a dynamic and inclusive manner. Such jurisprudential dissociation indirectly allows the perpetuation of public morality through the law by inaction. This approach of the judiciary reflects how judges push the progression of law and constitutional morality in particular cases only to a certain extent, leaving social morality largely intact (Kannabiran 2012). This perpetuation of social morality through the legal system is itself an effect of the operation of power, because in a Foucauldian analysis of the concept, power through the mechanism of discourse generates, and is constitutive of, knowledge and the “regimes of truth” (Gaventa 2003). As judges possess the means and the authority to distinguish the true from the false, they reinforce the social norms of able-bodied men and women as the correct/true forms of human existence.

Apart from these oppressive and exclusionary mechanisms that marginalise disabled people and disregard their claims as

equal members of the human race, the experience of disabled people is never publicly known as their narratives are dismissed as “complaining, mundane or less than that of the able-bodied people” (Wendell 2010). Given the biomedical definition of disability, the medical profession certifies and authorises what counts as the real experience of disability (Wendell 2010) and therefore, their accounts structure reality (Gaventa 2003). Such an exercise of power from the perspective of an able-bodied person creates a social structure that is governed by oppressive and exclusionary norms of social control. Once these norms are internalised by the disabled (Charlton 2010), it becomes difficult for them to shift the boundaries of possible action which are determined by those in power (Hayward 2000).

[a] common source [of both law and cultural morality], which may be more or less conscious, is the interests of those who enjoy positions of dominance within the society.

—Greenawalt (1992: 167)

Power, according to Foucault, is existent only in action upon a free person and defines his/her possibilities for action (Felluga 2011), and when these possibilities are minimal, Foucault describes it as a state of dominance (Dean 2009). The able-bodied population, in this sense, is in a position of dominance. Their interests and exercise of power are protected by law, and moreover, as pointed out by Greenawalt (1992), their exercise of power *becomes* the source of law, because the possibilities of action of disabled people are restricted by an internalisation of the social conception of normalcy. In addition, disabled people lack political representation and avenues for the exercise of their political rights in the selection of representatives,<sup>14</sup> giving structural sanction to oppressive practices against the disabled.<sup>15</sup>

### Theories of Social Inclusion: Critical Analysis

Several theories have been proposed to enable disabled people to participate in society on an equal basis and in a manner that recognises their human dignity. However, I shall restrict my analysis to the approaches developed by Kannabiran in *Tools of Justice: Non-discrimination and the Indian Constitution* (2012) and Martha Nussbaum’s capabilities approach articulated in her book *Frontiers of Justice: Disability, Nationality, Species Membership* (2006), as they adopt diverse jurisprudential modalities to address the issue of social inclusion. I will evaluate the ability of these theories to address effectively the questions posed by the interplay of power and social exclusion, and thereby seek to assess the extent to which we can rely on law to bring about a social transformation ensuring inclusion for the disabled.

Kannabiran (2012) presents a remarkable analysis of the issue by using counterfactual jurisprudential aspects of the Constitution to create a notion of equal citizenship for disabled people that is in sync with constitutional principles of diversity and plurality. She insists that as disability remains an inarticulate ground under Article 15 (fundamental right against discrimination), jurisprudential dissociation prevents judges from interpreting the Constitution progressively. As a result, the disabled face an attendant violation of their right to

personal liberty. Such a reluctance on the part of the judiciary can only be removed by making disability an articulate ground under Article 15. This change needs to be brought by people's participation in the democratic process, which will generate a political ethos that values disabled people as equal citizens, and does not merely accommodate their needs in a manner that does not disturb the status quo. Such a development is possible in contemporary times, as public thinking has evolved from viewing disability as a form of abnormality to recognising disability as a human rights issue. Theorising the possibilities for liberation of the disabled must then, for Kannabiran (2012), begin from the counterfactual vision of the Constitution.<sup>16</sup>

### Notions of Power and Plurality

This theory reveals two major loopholes when scrutinised using the concept of power. First, the notion of plurality, according to Butler and Spivak (2007), creates a single coordinated system recognising the existence of diverse groups. Nonetheless, "practices of dominance, hegemony and exclusion are tied to social location within the system" (Kannabiran 2012: 33). Therefore, the majority will use their power to construct a reality and social norms that are exclusive of the disabled, and expecting them to *suo motu* generate a political ethos pushing forward an idea of equal citizenship is, to say the least, utopian. Second, since power is an inherent feature structuring the social order of all human societies, discrimination will occur if people are left to themselves without the governing framework of the Constitution,<sup>17</sup> which was designed to limit the exercise of power in certain ways—for instance, in non-discriminatory ways (Article 15). So, if we expect that a limitation of power will come from the political process, which is likely to represent majoritarian interests, we are overlooking the politics of power. Considering these aspects, we realise that the theory proposed by Kannabiran (2012) calls for a reformation in social conditioning, which cannot be single-handedly achieved by law, as the notion of power that guides social action operates largely in an extra-legal manner.<sup>18</sup>

While Kannabiran (2012) envisages change through the political process, Nussbaum (2006) develops her capabilities approach as a political theory within the human rights framework to globalise social justice by making its claims more inclusive. Nussbaum attempts to extend John Rawls's social contract theory of "justice as fairness" to better address the claims of disabled people by attempting an ontological reformulation of the notion of equal citizenship. She defines citizenship in a neo-Aristotelian sense to include all children of human beings, conceiving their interests to be tied together so that progress is collective, with the disabled considered equally important and their claims addressed as claims of justice. Nussbaum's theory is outcome-oriented, aiming to secure to all citizens a life worthy of human dignity. A life worthy of human dignity can be secured only when we deliver all the elements on the list of "central human capabilities" to all members of society, undertaking this as a social contract entered into for the mutual care, justice and human dignity of all.

Nussbaum's (2006) theory does excellent groundwork at the ontological level in securing the theoretical worth and human dignity of disabled people. However, it fails in outlining ways to realise this in practical life as she leaves the notion of human dignity extremely fluid and uncertain, leaving the theory open to moulding by conceptions of power in a manner that is detrimental to the claims of the disabled at many levels.

Nussbaum (2006: 80) identifies the list of capabilities as persuasive, and justifies the use of economic and military sanction in grave circumstances that constitute crime against humanity as respecting state sovereignty. However, this leaves space for a social morality that is shaped through the exercise of power and allows those considered "normal" to determine what constitutes these grave crimes. Thus, the whole purpose of the list of capabilities as regulating state power to include and address the concerns of everybody (all persons defined in the neo-Aristotelian sense) fails in practice. Next, Nussbaum (2006: 154) renders it a matter of lower priority to provide a justification of the structures that make lives worthy of human dignity<sup>19</sup> as compared to the opportunities people have to lead good lives, and this makes it more plausible that the people in power will design a policy or law that suits their interests best. As in the theory of Rawls, the element of mutual advantage will creep into the picture indirectly, to exclude the weak and the marginalised with respect to the design of political principles addressing questions of justice. An account of political justification is of prime importance in providing the correct impetus in organising society in sync with conceptions of justice that are inclusive in nature.

Further, Nussbaum associates the notion of human dignity with the animal/human body, but is not the notion of who is human and human dignity itself socially defined through discourses structured by power in a manner that allows for foundational exclusions of the disabled on the basis of the "normal?" Will not the exercise of power through the medium of discourse tend to define the attributes of animality and sociability in terms of a normal range that is likely to exclude people who fall below these minimum standards?

When analysed from this perspective of power, there seem to be endless problems in realising the inclusionary vision of Nussbaum. Even if we succeed in framing a central, broad idea that is inclusive of the concerns of all people within our Constitution, the law will specify how these capabilities will be realised, and the law is framed by a legislature that is likely to define human needs and human dignity in terms of the priorities of the majority whose abilities fall in the so-called normal range, as they are the people who enjoy maximum political participation.<sup>20</sup> Further, if the list of central human capabilities that are attributes of human dignity is to contain the "good" capabilities and not the "bad" ones, how do you universalise the elements of the list when good and bad are themselves highly subjective notions? What if public morality considers the elimination of an inferior race of beings a good, as for instance, Hitler's regime did in exterminating the Jews?<sup>21</sup> Thus, there is an inherent

tension in Nussbaum's theory of allowing the state to determine the good and central human capabilities that need to be constitutionally protected, for these will be determined in accordance with public morality. There is also a tension in her definition of the person in an inclusive manner, in the neo-Aristotelian sense, and the need to treat her/him as an end and not the means. One final challenge that Nussbaum's theory is unable to answer in relation to the operation of power is that when the majority of the able-bodied population is allowed to choose to waive the enjoyment of some capabilities, the theory is unable to provide the state with a motivation to maintain a social and political structure that protects the disabled in an inclusive manner.<sup>22</sup>

In this sense, Nussbaum's (2006) theory faces a similar problem as that proposed by Kannabiran (2012): the existence of power in the social field, which they have not fully considered when designing the theoretical structure, prevents effective realisation of their ideas for the social inclusion of the disabled. Therefore, there is a need to modify their structures to enable equal worth and human dignity for disabled persons.

### Restructuring Power Relations: Social Transformation

The preceding sections establish the pervasive influence of power over the construction of the social order, and therefore, the social inclusion of the disabled demands the dismantling of the attitudinal and environmental barriers constructed through the exercise of power. One crucial consequence of the exercise of power is the constraints on the liberty of the disabled person, in the sense of restricting the scope for self-realisation and self-fulfillment (Kannabiran 2012). In this paper, power is reflective of the Foucauldian understanding of the "essentially contested concept" (Haugaard and Clegg 2009: 3)

and this understanding has been preferred as an analytical tool over orthodox theories of the relationship between power and liberty<sup>23</sup> as it opens up a broad field for social inquiry, not restricted to answering questions of the legitimacy of power, but rather employing the idea of "rationalities of the government"<sup>24</sup> to identify a particular state of affairs (here, the experience of disability) as problematic and offering possible solutions for the same (Dean 2009: 187–88).

For Foucault, one of the primary requirements for identifying the existence of power relations in action is the existence of the "other" as an identifiable and socially recognised identity, capable of action (Felluga 2011). Power is then an action upon the actions or reactions of the subject (Felluga 2011), which then determines the "specific form of freedom" that the subject can enjoy by structuring through the medium of discourse the social norms and "regimes of truth" that condition the mindset of people and direct their actions in conformity with the norm (Gaventa 2003). Therefore, eliminating the idea of the "other" by encompassing them within the conception of the self is the best way to promote social inclusion for the disabled whilst recognising that they are entitled to an equal worth of human dignity. Such a convergence of identity is essential for the creation of an inclusionary society, because a theoretical union of the self will fail to translate into reality unless specific steps are taken to advocate for such a shift in the political, social, cultural, and economic acts of the able-bodied population.

Ginsburg and Rapp (2010) have made such an attempt, offering an anthropological reading of the experience of disability in American society. They suggest that as the family of the disabled person travels from the "shock" to the "acceptance" phase, they should articulate their changing experience, which reveals an increasing awareness about the issue of disability,

## Dr V V Bhatt Endowment Fund

In honour of the late Dr V V Bhatt, a well-known Development Economist, who had served in the Reserve Bank of India and the Industrial Development Bank of India, and also in multilateral institutions such as the Asian Institute for Development and Planning, the World Bank and the Economic Development Institute, his wife Smt Prafulla Bhatt has instituted an Endowment Fund, titled **Dr V V Bhatt Endowment Fund**, with the Sameeksha Trust. This Fund would be administered by the Trust's research wing, *EPW Research Foundation (EPWRF)*, Mumbai.

Under the **Dr V V Bhatt Endowment Fund**, every year one student pursuing MA/MPhil/PhD programme in Development Economics will be provided Internship for a period up to three months.

The awardee will work under the supervision of a senior staff at EPWRF. Though undertaking assigned work, he/she will be encouraged to do research on a theme broadly in Development Economics.

Towards this end, an advertisement will be released in *Economic & Political Weekly (EPW)* in the month of January every year, inviting applications for the Internship under this **Dr V V Bhatt Endowment Fund**.

through the popular media in order to provide a similar model of inclusion for the body politic. As this normalising narrative alters the cultural landscape and social norms, recognising diverse ways of existence as natural and the duty of care being performed as part of an emotional attachment towards a family member, there will be a simultaneous transformation in the notion of citizenship, which was earlier constituted by the “normative, able-bodied, non-dependant, wage earning individual” (Ginsburg and Rapp 2010: 250), but will now recognise the disabled, the disabling phases of an ordinary life, and their caretakers. Such inclusion will automatically allow for the granting of equal civil rights, and will create an atmosphere for their special needs being addressed by state institutions, as seen in the evolution of treatment of the disabled<sup>25</sup> in institutions to community-based rehabilitation (Ginsburg and Rapp 2010: 244–45).

Allan (2005), in a totally different context of analysis—the educational system—applies the Foucauldian analysis of the ethical project of self-transformation as a model for inclusion of disabled children in the mainstream educational system. It is argued that we must not aim at integration, which is to increase the level of participation in mainstream educational undertakings, but rather, aim for inclusion, which presupposes that it is the right of the disabled to feel a sense of belonging to society and its institutions. We must realise that the idea of inclusion is not a utopian vision, but a site of constant “struggle” where the goal will be realised only when each person acts according to her/his responsibility. In this approach, Foucault recognises one’s own body as the subject of regulation by exercise of power, and the motivation to undertake this task of self-transformation is twofold. First, the curiosity and ability to question the importance attached to the “traditional hierarchies of what is important and fundamental” (Ginsburg and Rapp 2010: 285) and second, the identification of mutual good for both yourself and the disabled.<sup>26</sup> The subjects of this ethical project of inclusion must orient their actions by emphasising the ability to introspect both the falsities surrounding the common sense idea of inclusion and the exclusionary effects of one’s own actions on a continuous basis as this project deals with desires, which constantly change. Allan explores how teachers can be made to cultivate such a scrutinising attitude towards their own actions to promote inclusion of disabled children in mainstream classrooms by promoting behavioural change initially at an ontological level, which then becomes habitual.

In the approaches developed by Allan (2005) and Ginsburg and Rapp (2010), the distinction between the self and the “other,” which is the basis of power relations, is eliminated from the limited area of the social sphere by an activity of introspection and by emotional attachment towards family members and the attendant sense of oneness, and hence, the inclusionary space created for the disabled persons accepts them as they are, without aiming to use medical technology to perfect their biological attributes. The theories discussed in the previous section as advanced by Kannabiran (2012) and Nussbaum (2006) fail precisely because they fail to provide the motivation

to eliminate the power relations existing between the able-bodied and the disabled members of society, which has the capacity to distort the social structure in an exclusionary fashion, as elaborated above.

As the approaches that eliminate power relations explained above do not encompass the entire social sphere, we need to extend the theoretical structure that they provide to construct a conceptualisation of a society inclusive of the disabled. If the two approaches are closely analysed, we realise that only members of the disabled community, their families, disability rights activists and academia will be capable of acting as the torchbearers of the social transformation project, given their ability to introspect and question the popular notion of inclusion located within traditional power hierarchies, because they either have first-hand experience of, or academic knowledge of, disability. These groups must then advocate for reformulations of constitutional premises to be in line with notions of equal citizenship that recognise diversity and equal respect for all persons as enshrined in the UNCRPD. Such a reformulation of the constitutional structure will provide the much-needed impetus for the public to engage in the exercise of self-transformation, when reinforced and socialised in the minds of the general public by the use of popular media, education, literature and other forms of cultural narratives. It is an elaborate project, I believe, but such a scheme is necessary to achieve inclusion not by forcing standards of perfection by use of technology to normalise the disabled, but rather by accepting their existence as diverse and equal members of the human race.

This mode of collective reorganisation would be a step towards the creation of a social structure that is in line with the theories proposed for the social inclusion of the disabled, in order to ensure that power relations do not make the convergence between the theoretical propositions and reality an impossible task.

## Conclusions

We need a theory of disability for the liberation of both disabled and able-bodied people, since the theory of disability is also the theory of the oppression of the body by a society and its culture.

—Susan Wendell (2010)

The principal aim of this paper has been to emphasise that we cannot effectively globalise any theory of social justice to create an inclusionary environment for the disabled if we do not consider the effects of power relations on the construction of reality and means of social control/discipline. Any ontological reformulation of the concept of “human” in the discourse of human rights, or the notion of equal citizenship, to recognise diversity, just as any framing of inclusive principles of governance as enshrined in the UNCRPD, will remain at the level of rhetoric until power relations are eliminated from society.

As Wendell (2010) succinctly summarises, it becomes amply clear that the narratives and social constructions of the concept of normalcy do not only exclude and oppress the disabled, but also the so-called able-bodied person in the

phases of dependency in his/her life—namely childhood, old age, recovery from accident and so on. This similarity of experience of oppressive and exclusionary treatment could be used as an analogy to eliminate exercise of power over the “other” group of the disabled, as such a coherent and inclusive conception of the self would extend to the whole of humanity and thereby globalise the claims of social justice, which all contemporary societies must aim for if they want to coexist in peace.

Only by eliminating the recognition and formulation of the identity of the “other” (in this case the disabled person) can we

truly locate the goal and map the scope of the theoretical endeavour to undertake a social transformation and create a social sphere that is inclusive of the claims of the disabled as equals. The loopholes in many theories proposed for the liberation of the disabled must be understood by academia at the earliest, so that their intellectual undertakings are not futile in effecting social change in reality. Without this caution, it is probable that their theory is too abstract, failing to recognise the realities that pose crucial questions, a problem that Nussbaum asserted each theoretical project must avoid (Taylor 2009).

## NOTES

- 1 Article 15 of the Constitution was designed to protect against discrimination in physical access to public places based on forms of social disability, particularly practices attached to the caste system, which is clarified by an interrelated reading of the said provision alongside Article 17 of the Constitution. According to Kalpana Kannabiran, since the said article reflects the same spirit of accessibility as regards disabled people, disability can be included as an express ground in the same provision.
- 2 Nussbaum begins with the neo-Aristotelian conception of the person to justify the concept of equal citizenship, where every human being is conceived as a social and political being whose interests are intertwined with those of other members of society and where the happiness of the other is valued not merely for instrumental reasons but for being an inherent part of the happiness and wellbeing of oneself. To know more about the influence of Aristotelian ideas on Nussbaum's work, see Taylor (2009).
- 3 “Disability” means (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (vii) mental illness”—Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- 4 For an interesting account of the construction of the notion of the “average man” as an embodiment of the concept of normalcy during the 19th century, particularly through the discipline of eugenics and the literary form of the novel, see Davis (2010).
- 5 For an understanding of the social model of disability, and in particular, an explanation of its evolution, strengths and weaknesses, see Shakespeare (2010).
- 6 “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”—Article 1 of the United Nations Convention on Rights of Persons with Disabilities, 2006.
- 7 In the process of social inclusion, the tendency is to use technological inventions to normalise the disabled body, conceiving it to be perfectible and recognising the possibility of treating the disability in such a manner as to meet the characteristics of the ideal average person. In such a process of socialisation, power structures the discourse such that the disabled body is not valued in its natural form, and hence, social inclusion is not happening in the true sense. Therefore, the challenge of balancing the need to prevent the occurrence of disability and at the same time accord respect to disabled members of society, offering them a sense of inclusive treatment is a major task, as outlined by this passage from Jones and Basser Marks (2000): “Most people with disabilities would share the view that being disabled is not a desirable state to be in, and even agree that disability should, where possible, be prevented. However, the suggestion that this carries negative implications about the entitlement to rights, or the values, respect and dignity of people with disabilities, should be resisted. While it may seem paradoxical, it is essential to meet the challenge of truly valuing those who are disabled at the same time as taking action to prevent or limit disability.”
- 8 See Articles 3, 9, 12, 19, 20 and 21 of the United Nations Convention on the Rights of Persons with Disabilities, 2006.
- 9 “Even though human rights activists have made their best efforts to create awareness that people with disabilities have also right to enjoy their life and spend the same not only with the sense of fulfillment but also to make them contribute in the growth of the society, yet mindset of large section of the people who claim themselves to be ‘able’ persons still needs to be changed towards differently abled persons. It is this mindset of the other class which is still preventing, in a great measure, differently abled persons from enjoying their human rights which are otherwise recognised in their favour”—*Jeeja Ghosh & Anr v Union of India & Ors*, Writ Petition (C) No 98 of 2012 in the Supreme Court of India. This observation of the Honourable Supreme Court at the very beginning of the judgment is testimony to how power through discourse (as noted by Foucault) shapes and conditions social norms, which are then imbibed and form the mindset of the able-bodied population, further preventing the implementation of laws according rights to disabled people in the social sphere. Power operates extra-legally in this sense, and serves to continually direct actions of community members so as to exclude disabled people from participating in society, often by preventing access to services designed for the public as in the above case.
- 10 For an elaboration of the argument see Hubbard (2010). The conclusion that the author comes to therein, in my opinion, reflects that power structures societies in such a manner that choices are made to perpetuate the ideals of the powerful. Therefore, the author suggests making the scientists and physicians who wield power by way of their knowledge accountable to the public, who the author believes will uphold humanitarian concerns. However, as I will argue in this paper, I believe that the majority of the public constructs the norms and hence social reality, through the use of their power, and these are reflective of the social prejudices that exclude and position disabled people disadvantageously. Therefore, in order to secure equal respect for the human dignity that inheres in disabled people, we must eliminate the concept of power and prevent it from structuring our relationships if we are to create a society that is inclusive of the disabled in the true sense.
- 11 See Section 3 of the Medical Termination of Pregnancy Act, 1971.
- 12 For an extremely insightful and crucial analysis of a similar problem, but complicated because of its interconnections with the concept of custody and consent, see the analysis of the case of *Suchita Srivastava and Anr v Chandigarh Administration*, 2010 (1) CHN (SC) 96 in Kannabiran (2012: 108–11).
- 13 1983 AIR (SC) 339.
- 14 “Article 326: Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage: The elections to the House of People and to the Legislative Assembly of every state shall be on the basis of adult suffrage that is to say, every person who is a citizen of India and who is not less than 18 years of age ... and is not otherwise disqualified under the Constitution or any law made by the appropriate Legislature on the ground of ... *unsoundness of mind* ... shall be entitled to be registered as a voter at any such election”—Constitution of India, 1950.
- 15 For instance, in India all citizens have a fundamental right to free movement by virtue of Article 19(1)(e), but laws construct public places in a manner that they are accessible only to the normally abled person, thereby proving one of the major ways in which the structurally sanctioned process involved in the creation of the law inhibits the inclusion of disabled people as their interests go unrepresented in a legislative forum.
- 16 According to Kannabiran, the constitutional vision, which is counterfactual albeit equitable in nature, must be made the basis of a theoretical understanding of the jurisprudence of disability rights—particularly the right against discrimination and its interconnection with the right to life and personal liberty. If we accept that social realities and notions of power formulated by the majority determine the criteria of normalcy and inclusion, we limit the life chances of the disabled to the opportunities we artificially create for them through the law. However, the Constitution, as a foundational text that embodies at its core a vision that is counterfactual, helps us to remove these restrictions and provide equal opportunities for the development of the disabled.
- 17 Discrimination will be a natural consequence of the concept of power structuring relations between the majority of the population that is able-bodied. In Foucauldian terms, the majority will use their capability to shape the reality through discourse to construct social norms and manners of conformity that restrict the scope of action of the disabled, who are constantly recognised as the “other.” In this process, the treatment of the disabled will be discriminatory and oppressive due to the inability of those wielding power to identify with the interests of the disabled.
- 18 We can again use the idea of “government” proposed by Foucault to understand this premise. In

- the simplest of terms, government for Foucault means “conduct of conduct” (Dean 2009). It is the means to administer and manage power in a society, and as we influence the conduct of people whom we identify as the “other” in all aspects of life and not just through the law, to bring about a change in power relations, we need reformation in all social systems and not only a revolution at the level of the state (Foucault 1981), because power as a concept that is constantly negotiated must be recognised as playing out not only by means of the law but in all our responses to the actions and reactions of others (Felluga 2011).
- 19 “... In particular, it [her theory] takes the value of people’s opportunities to live good lives to be primary and the account of political justification to be posterior to the account of what makes lives in accordance with human dignity possible (an account itself closely linked to a non-Kantian conception of the person and human dignity)” (Nussbaum 2006: 154).
- 20 It becomes even more problematic when the disabled are denied the right to participate in the political process, as in the case of India by virtue of Article 326 of the Indian Constitution.
- 21 For an excellent analysis of the similarity between the “racial hygiene” programme undertaken in Germany under the reign of Adolf Hitler and the practice of selective abortion in relation to disabled people in present times, see Hubbard (2010).
- 22 For example, the majority of the adult able-bodied, so-called normal population chooses to allow smoking openly in public places despite being aware of the associated risks: how will you protect the capability of life, health and bodily integrity say of children and the disabled?
- 23 There are basically two orthodox conceptions of the relationship between power and liberty: firstly, the inverse quantitative conception, which views the exercise of power by one as limiting the liberty of the other, and secondly, the juridical conception, which is mainly proposed to explain the creation of the state, and power that is exercised with the consent of the subject is deemed to be legitimate. For a deeper analysis of these conceptions and their applications to analyses of the nature of public policies implemented by modern-day democracies, see Dean (2009). The Foucauldian understanding of the relationship between power and liberty displaces, and does away with, the juridical conception, because Foucault believes that the method of management and administration of power is through the government, which is simply understood as being the “conduct of conduct” (Dean 2009: 187), or simply all those ways and mechanisms to influence, control and direct the conduct of another being, the subject. The state then, is only one form of government that is highly organised and is used to run the institutions of a nation (Foucault 1982: 59–60).
- 24 “... By rationalities of government I mean the more or less systematic ways of thinking about problems to be addressed, the means by which they can be solved, the actors and identities involved, and the goals sought in so doing” (Dean 2009: 187–88).
- 25 For a comprehensive account of the treatment of disabled people from biblical times to the contemporary era, along with an analysis of the political, social and cultural issues that have structured their experience, see Barnes (2010).
- 26 Allan notes that students feel motivated to transform themselves through this ethical project as they feel they are contributing in a positive way towards a desired form of social change, and in turn are themselves gaining greater respect for their disabled peers, which is seen as a matter of personal advantage as it makes one aware about human diversity.

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