'Nonconformity Incarnate': Women with Disabilities, 'Gendered' Law and the Problem of Recognition

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Women with disability face discriminatory treatment and are also victims of negative social attitudes. By using law and the democratic political process they should be able to move from charity and benevolence to justice and equality. Their right to sexuality and reproductive choice also needs attention. Dealing with the psycho-social problems of such women the paper points out that women with disabilities do have the potential to carve a space for themselves and acquire a unique identity.

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> The disabled women are not only (the) racialised bodies of positive-identity politics, but also nonconformity incarnate. By refusing with their very beings to conform to social rules and categories, (the) disabled women operate as embodied alternatives to the status quo.
>
> – Rosemarie Garland Thomson (cf Silvers 1999: 75)

The epigraph, drawn from work on the literary use of disability and the portrayal of women with disabilities in African American writing – especially Toni Morrison, Ann Perry and Audre Lorde – suggests that the very physical or psychological condition of a woman with disability outside rules or categories is informed by a de-recognition within patriarchal racist (in our contexts, casteist) identity politics. That is, the identity of the woman of colour subsumes the identity of difference as a disabled woman of colour – a process that draws on flawed and ill-conceived notions of embodiment of negativist disabled bodies, harking back to biological determinism.

1 The Need for a Politics of Presence

The conformity of the racialised positivist identity that is imaginary, eternal, self-evident, autonomous, absolute, abled, rooted in biology and stable is the result of politics of recognition which by the same token forges a condition of "nonconformity incarnate" to the body of the woman with disability that resists any inclusion in privileged social rules or categories. This recognition and/or de-recognition through biological determinism becomes an embodiment of universal "reason" based on the hegemony of ability leading to the hierarchy and recognition of the "abled" body and the de-recognition of its "Other" – the disabled body. In general, at once it subsumes the disabled woman's body within itself and forecloses the possibility of all difference, be it of gender, of nationality, of physiology, psychology, social, economic, cultural, civil or political where the woman with disability is concerned. The double-bind of the politics of recognition and/or de-recognition of identity as a woman with disability within the normative social rules and categories essentialises and homogenises racial and positivist identities.

Both recognition and de-recognition also become precursors for the disqualification for women with disabilities to access the rights of a reasoning or a rational citizen, of the west or its other, and renders them to the margins of socio-economic, cultural and civil, and political privileges. The politics of recognition or derecognition of social rules or categories, we argue, not only de-privilege or delegitimise the very citizenship of women with disabilities – colonising

them in a postcolonial situation – but importantly manifest themselves within the authoritative power of law and policy framework in general and their allied apparatuses of implementing institutions, agencies or individuals in contemporary India.

In other words, the very deployment of the social rules and categories (that are part of the status quo) of a priori conformity that governs the recognition renders women with disabilities as persona non-grata/"diminished"/"lesser" citizens, therefore the need for possible politics of "nonconformity incarnate". Further, the very difference that distinctively shapes the identity of women with disabilities within the "nonconformity incarnate" paradigm also sets it apart from the overarching master narrative of biological determinism. Here we would like to invest the notion of "nonconformity incarnate" with the attributes of resistance to subsumption and assimilation. That is, women with disabilities have the potential to proactively carve a space, which allows them to acquire a unique identity for themselves – an identity which is different and challenges the fundamental assumptions of positivist identity formation in western discourse and patriarchal hegemonic discourse in India.

2 Social Construction of Gender and Disability

> What makes people different is the social construction of disability, like that of gender. The structures, institutions and values of the wider community also determine and define disability more than the biological characteristics of the disabled (Pane 1995: 3).

To begin with, social construction of difference structures institutions of law and policy, at once rendering women with disabilities de-privileged or marginal. If one were to argue from the point of view of a woman with disabilities, from her specific position of marginality, that is, what would be the choices of standpoints available to her? Should she assume the standpoint of "nonconformity incarnate"? Should she speak as a woman with disability? Should she give voice to the "disabled woman"? Or should she speak as a woman – beyond disability?

It is also important to note here that such experience of position outside the recognition as woman with disabilities has to be seen in the context of prevailing stigmatised social attitude, within law and policy – at the international and national levels, both with specific reference to persons with disabilities and more generally with reference to the difference between rich and poor nations. The artefacts of law and policy are spread out and range from the philosophical and cultural to the economic, political and importantly the biomedical artefacts of modern science.

It is apt to summarise this argument in the words of justice A S Anand (2005):

> The difference that disability represents is frequently viewed as deviation, an abnormality, a disqualification and in its extreme form, a danger against which society must be protected. The genesis of this skewed construction of disability can be traced to the ancient laws of India and to a trend in Western thought that provided a scientific justification to maintain social inequality on the basis of 'natural laws' at the level of 'biology'.

On the one hand, women with disabilities, to echo Pane (1995: 2), are "left merely to inhabit the empty space that the progress of women has left behind". On the other hand, they are located on the side of disadvantage and deprivation in a series of binaries that typify unequal classifications based on universal reason – "occident"/"orient", white/coloured, rich/poor, ability/disability, metropolis/the rest (sub/semi-urban/rural), dominant caste/dalit, ruling class/ruled, metropolitan men and women with disabilities/the rest (sub/semi-urban and rural persons with disabilities), rural men/rural women with disabilities.

Further, as justice Anand points out, consequent on their representation as deviant, women with disabilities construct their selves within the multiple parameters of social inequalities that are mirrored in ancient laws, natural laws, constitutional law, western philosophy, biological determinism and human rights discourse. The body of the deviant woman with disabilities, located outside the normative paradigm of both society and law thus becomes the base for/of repression. In the words of Terry and Urla (1995: 2):

> *embodied deviance*…[is] the historically and culturally specific belief that deviant social behaviour (however that is defined) manifests in the materiality of the body, as a cause or an effect, or perhaps as merely a suggestive trace. In short, embodied deviance is the term we give to the scientific and popular postulate that the bodies of subjects classified as deviant are essentially marked in some recognisable fashion.

In summary, the term "deviant" in relation to the body of the subject – the deviant body – traces or tracks "some" recognisable body of modern epistemology in order to postulate what constitutes the basis for recognition or de-recognition of the body of the woman with disabilities in conformity with the social rules and categories. Following are the social rules or categories that determine the deviant body subject, that is, woman with disabilities:
(a) Apart from colour or sex – the size of the body of the subjects – the size and shape of the limb structure, functions of sensory organs such as eyes, ears, mouth, intellect, mobility/kinesis, visual and oral/aural communication from hieroglyphic to gestural, pictorial, oral and written;
(b) Origin or birth of such body in a geographical location sharing the nationality and regional culture that determines the subjectivity – of the deviant body of the subject – of women with disabilities;
(c) Participation in production, productivity and product, in general and propagation of species (Engels 1884) in particular of those deviant body subjects of women with disabilities;
(d) Religion, caste and professional/economic status – the knowledge and/or content of the deviant body subject – of women with disabilities.

The knowledge content of the body subjects, as we have mentioned above, precedes and appropriates the modes of both recognition and de-recognition to assimilate differently the body subject of women with disabilities and able bodied women and men into the social rules and categories. This hegemonises the difference between categories of body subject, that is, full men, women and women with disabilities and erases the value of distinctiveness that exists because of difference both for full bodied men and women and women with disabilities. Thus, the distinctiveness/difference is a value that is associated with nonconformity incarnate which is also resistance to (hegemonic) assimilation to keep distinctions and difference alive towards building a progressive activism.

To the extent that it exists, the recognition of the identity of women with disabilities in policy to date is in the nature of a dole – it is not a recognition of a right. It is not surprising for instance

that the debate on the Women's Reservation Bill in the Parliament does not refer to a constituency of women with disabilities in the context of their right to political representation. Can the women with disabilities negotiate for political power with the ruling class from their position of "nonconformity incarnate" and powerlessness?

As Martha Nussbaum (2006: 4) aptly states:

> Doctrines of the social contract have deep and broad influence in our political life. Images of who we are and why we get together shape our thinking about what political principles we should favour and who should be involved in their framing.

Can there be a place for recognised or de-recognised bodies of women with disabilities or body subjects within the imagined asymmetric capabilities of "full women and men" who decide both political life and principles that govern recognition and de-recognition? The story of social contract is preceded by the imagination of a particular productive/participatory/reasoning body and that body with its particular abilities authorises moral and political right in the social contract and asserts patriarchy in conjuncture with state and judiciary (Pateman 1988). Similarly, the approach to freedom or rights is preceded by bio-centric modes of recognition and/or de-recognition that legitimise and consolidate the power of the State and judiciary in the nation state.

We argue following Pateman, that knowing the history of systematic exclusion from social contract theory of the discussion on family and the private sphere, and its contribution to the growth of society and public institutions, it is more apt to locate our work with reference to political interventions of women with disabilities in the context of resistance to liberal humanism offered by social contract. Nussbaum (2006: 98) summarises this neatly:

> The failure to deal adequately with the needs of citizens with impairments and disabilities is a serious flaw in modern theories that conceive of basic political principles as the result of a contract for mutual advantage. This flaw goes deep, affecting their adequacy as accounts of human justice more generally.

Further, the ruling class, for the hypocritical justification of its exploitation of the oppressed and exploited class of women with disabilities, introduces love, charity and palliation or outright denial to cover the evils of exploitation. To substantiate our earlier statement as to why it is important to work on our international and national legal instruments and constitutional obligations, with reference to resistance to liberal humanism, we quote from the National Human Rights Commission's (NHRC) *Disability Manual*:

> The dominant social attitude towards persons with disability has been one of pity, from which springs insidious forms of discrimination – the eventual source of their exclusion and extreme isolation. While many marginalised social groups have been able to project their specific social experiences of discrimination and their aspirations onto the wider social plane for discussion and debate, interventions from the disabled have been minimal as they lead dispersed social lives that make their discrimination appear as individual problems. This is exemplified in the Constitution of India that prohibits discrimination on grounds of religion, race, caste, sex or place of birth (Article 15) but does not explicitly mention persons with disability as a group to be protected against discrimination (Anand 2005: 3).

The very identity of persons with disabilities in general and women with disabilities in particular does not find mention in the most important article in the Constitution that speaks of non-discrimination, hence the need to focus on the questions that women with disabilities ask for their legitimate role in participatory democracy. The very exclusion of women with disabilities from the Constitution of India is not only the result of ancient laws in India but also the limitations of those able-bodied intellectuals responsible for the writing of the Constitution, who could not think beyond the charity model when it came to persons with disabilities. Marcia Rioux (2005: 18) reflecting on the roots of such thinking observes:

> The charity model shares many common features with the bio-centric model. There is a similar imperative of social responsibility that is derived from charity and benevolence, rather than justice and equality. The notion of charitable privilege has its roots in the English Poor Laws, which primarily protected drain on social resources and created criteria to limit claims to rights. In other words, the charity model was based on an assumption that claim to rights is valid on certain grounds and invalid on certain others. Disability was perceived as a disqualification and perhaps for this very reason the expression "invalid" became synonymous with persons with disabilities.

The use of the term "invalid" carries with it the archaic value that refers to:

"in·va·lid *n.* One who is incapacitated by a chronic illness or disability"[1]

and:

"invalid, *Noun* – a person who is disabled or chronically ill and *Adjective* – sick or disabled"[2]

The usage of this word denotes the standard American and British (respectively) notions that reflect their social attitude, rules and categories. The British came out with the legislations that address the issues of persons with disabilities from 1970 to 1998. Chronologically, these were Sick and Disabled Persons Act 1970, Disability Discrimination Act, 1995 and New Deal for Disabled People, 1998 (Fairchild and Quinn 2000) and the United States government enacted the Americans with Disabilities Act, 1990, in spite of which the significance of the term "invalid" with reference to persons with disabilities still continues to prevail in the dictionaries of those nations.

This means, persons with disabilities in general and women with disabilities in particular have to bear with the archaic notions such as "invalid"/objects of charity that becomes a cultural deterrent to their identity as against citizens with disabilities as bearers of rights. The terms like *ashakth* and *viklang* (as also *manasik viklang*) in the Indian context denote that women with disabilities are either without strength or one with deformed/disfigured limbs, sense perceptions or intellectual capabilities. Recognition/de-recognition as invalid or ashakth and viklang (or manasik viklang) is not simple words that are used for identifying the difference that exists between abled and disabled persons but a hegemonic characterisation of so-called able-bodied individuals, law and culture that privileges its ability over the de-privileged abilities of citizens with disabilities.

In other words, by "othering" women with disabilities with the use of archaic expressions, the able-bodied citizens vest rights exclusively in themselves and deny such privileges to women with disabilities. Hence the need for a critique of the use of law and

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uses of democratic political processes to address the issues of women with disabilities.

3 Two Cases

To demonstrate the need for the use of law and uses of democratic political processes, we examine two cases. The first documents the exemplary work initiated by the disabled peoples' organisations (DPOs) in the state of Andhra Pradesh to address human rights of women with disabilities. The second is a recent Supreme Court decision on the rights of women with disabilities. Significantly, both the cases foreground the criticality of the right to sexuality and reproductive choice where women with disabilities are concerned.

Marriage as Resistance

R who hails from a village in Ananthapur district is 19 years old, belongs to the Boya community and is affected by moderate cerebral palsy. During the absence of her parents, who left for Bangalore in search of livelihood for the better part of an year, she was raped for months by her mother's brother. This happened in spite of the security of her maternal grandmother. As a consequence of this rape, she gave birth to a girl child, who is now seven months old.

When the parents negotiated for marriage between R and her maternal uncle, her grandparents and her uncle denied any such relationship and questioned the legitimacy of R's pregnancy and suspected her chastity. However, the parents of R insisted on marriage, for the reason that both R and her newborn daughter will have the right to inherit the property of the maternal uncle, the perpetrator of the violence. But R, while rejecting the need for sharing conjugal love with a rapist, claimed her right to dignity and right to reproductive freedom alongwith her daughter's right to love and affection of both the parents and other legitimate rights of inheritance such as property/customary rights. When R's family approached the police, the local village elders/politicians stood behind the perpetrator of the violence/violation and managed to prevent the police from registering the case in the police station.

The family of R then approached the village DPO and participated in many consultative meetings organised in the village for justice to the victim. In the final instance, the Mandal Vikalangula Samakhya took up the case and with the consent of the parents and R, lodged a complaint against the perpetrator with the district collector, superintendent of police (the highest police official at the district level) and the district legal services authority. Subsequently, the district collector intervened and asked the district family counselling centre and the superintendent of police to arrange for a reconciliation meeting to legalise the relationship of R and her maternal uncle. Therefore their marriage was performed in the village in the midst of members of the disabled group, village elders and other government officials.

Belaboured by the call for restoration of right to life with dignity and reproductive rights, right to marriage and family and child rights, marriage seems to be one among many solutions that was chosen by R with the support of her peers, though she was reluctant to share a life with the man who had abused her. The very gesture of R to participate actively in the taking of decisions regarding her life is best exemplified as progressive resistance, that of nonconformity incarnate on the one hand and on the other, with her decision she

could draw the support of her peers, family, judiciary and other government bodies to engage with the democratic political processes.

The claim for right to life with dignity and right of reproductive choice instead of the right to property or sharing conjugal love with the perpetrator of violence in fact restores all the possible choices to R and her daughter to decide both to inherit and disinherit property or customary rights. Here we mark that the claim for right to reproductive choice associated with right to life with dignity particularly in the context of R puts into place her identity or recognition on par with rights of women in general and challenges the arbitrary claim of her parents for marriage for the property inheritance that allows the possibility of derecognition of her right to decision-making, right to life with dignity, right to reproductive choice and her right to autonomy to reject the sharing of her conjugal love with the perpetrator of violence.

R demonstrates how her strength to think about the possibilities of turning the tables – that of recognition or derecognition by the privileged – and gives an exemplary message of democratic political process, thereby giving rise to litigation to destabilise fixed social rules/categories that de-privilege the rights of women with disabilities. Though the litigation draws its sources from prevailing law, both national and international, it is important to understand that the larger notion of justice in the context of R is also the result of her peer support, in addition to the intervention of the district collector (who also is the first class magistrate for the district), superintendent of police and family counselling services.

R's success demonstrates the need for necessary legal and social conditions such as the presence of a DPO who is willing to empathise with her against the social rules that advocate for marriage as a condition for consensual sex or otherwise. Though Articles 1, 2(3), 19(1 and 2), 23 and 24(1) under International Covenant on Civil and Political Rights (ICCPR), Article 10 from International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 5b and 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Articles 1, 3 and 8a of International Convention on the Rights of Persons with Disabilities (ICRPD)[3] and Article 21 of the Constitution of India are useful to restore justice to R, it is important to notice that neither R and her family nor the local DPO are educated to understand the law for its uses. It is important because the ability with which R argues her case with the support of her peers has not only destabilised the social rules and norms but redefined the relationship between society and the individual from the vantage point of the conditions that a woman with disabilities lives with and experiences.

The conditions that govern the justice delivery system – be it natural, ancient or modern law – cannot precede any conscious or unconscious relationship or contract/social contract between individuals or the individual and State and as such no values of social rules or categories such as patriarchy remain fixed or stable. The position of women with disabilities – that of "nonconformity incarnate" – while renegotiating for justice brings into life the very law and its delivery systems along with the transformation of social rules, social attitudes and social categories. As R turned the tables, she with her progressive resistance brings her position as "nonconformity incarnate" to the centre in her negotiation for justice and turns around law, social rules and categories to fall in line for change in the margins, hence the praxis of social action calls for the negation of the politics of recognition or derecognition.

In the history of democracy of the world or beyond, there may be thousands of such instances that addressed the issues of social justice in favour of women or women with disabilities.[4] But it is still important to engage with politics of recognition or derecognition that prevail in our understanding of women with disabilities as they are different because their convictions and abilities are on a different track from the easily recognisable capabilities of able bodied men or women. Although the women's movement all over the world could successfully put pressure on respective governments for a binding law internationally in the form of the United Nations CEDAW, the rights of women with disabilities in general and reproductive rights of women with disabilities in particular are still beyond realisation as the key concepts of CEDAW such as human rights, gender discrimination, equality, autonomy, choice, informed consent and confidentiality touch upon women's integrity vis-à-vis right to life with dignity and the question of reproductive rights and abortion are far beyond access to women in general and women with disabilities in particular.

Internationally, the International Conference on Population and Development's (ICPD)[5] Programme of Action recognised the rights of reproductive and sexual health as key to women's health. But even the ICPD, held in 1994, failed to realise that right to reproductive and sexual health is denied to women with disabilities all over the world. According to Carmel Shalev (1998:1), former expert member, United Nations Committee on CEDAW:

> rights to reproductive and sexual health include the right to life, liberty and the security of the person; the right to healthcare and information; and the right to non-discrimination in the allocation of resources to health services and in their availability and accessibility. Of central importance are the rights to autonomy and privacy in making sexual and reproductive decisions, as well as the rights to informed consent and confidentiality in relation to health services.

In spite of these developments that argue for decision-making powers for women in general with reference to reproductive and sexual health, the extension of such rights and powers to make such decisions is still a challenge for women and women with disabilities in many countries, both developed and developing. It becomes more complex in the absence of any positive domestic law in the public sphere or family in the private sphere to argue for such rights in the context of woman with disabilities as a single parent in spite of the recognition of the problem way back in the year 1995.[6]

Chandigarh Administration vs Nemo

Absence of disability rights law – and one that specifically stresses on the issues relating to women with disabilities – and family in the public and private spheres respectively and negative social attitudes, rules or categories leads to the "legal" violation of the human rights of women with disabilities to the extent of dehumanising her and portraying her as "invalid" by the denial of her right to choice. This can be best exemplified in the recent judgment delivered by the High Court of Punjab and Haryana that ordered an Expert Body in various fields of medicine for a judicial abortion on the basis of Medical Termination of Pregnancy Act, 1971 in the case of a 19 or 20-year-old intellectually disabled woman. As per the judgment on 9 June 2009, the woman with intellectual disability wanted to retain her pregnancy because she desired a

child of her own. The most significant fact in this case is that the woman became pregnant while she was in the protective custody of the state – in a Nari Niketan.[7]

We underscore several problematic points in the reading of her ability by the state and judiciary, before moving to a general consideration of the wider implications of this judgment.

(a) The woman's oral testimony is sought to establish her lack of knowledge about justice delivery processes; but her testimony is not taken into consideration when she expresses her desire for the child.

(b) Her thumb impression is sought/accepted/approved in order to conduct physical and psychological tests and to test her for social, economic and cultural skills; but her thumb impression is not taken to test the health of the foetus.[8]

(c) Her ability to conceptualise a toy for the baby growing in her womb is sought, to establish her unsoundness of mind that needs guardianship (in order to give consent to the medical termination of her pregnancy); but her knowledge of the growing foetus in her womb is of no consequence.

(d) Her understanding of dear ones as *bhaiya* is sought to identify the limitations of her familial and social skills; but not to understand the multiplicity of morphemes that she could associate with, regarding the dear one, the child in her womb, etc.[9]

(e) Her distress that her best pair of clothes was torn is foregrounded as proof of her inability to understand sexuality followed by pregnancy and childbirth; but that her distress might point in a direction beyond sexuality is completely unexplored.[10]

(f) Irresponsibility and inefficiency of the institutional arrangements that cannot undergo any transformation overnight is sought to justify the invasion of her right to privacy and reproductive autonomy: the intellectually disabled mother is victimised for daring to desire to bear the child; but the foetus cannot take birth because it grows in the womb of a woman with intellectual disability.[11]

(g) The growing foetus in her body is sought to be ordered for preservation after the medical termination of pregnancy to punish the rapist through criminal procedure; but there is no recognition that its survival is of particular importance to the mother.[12]

(h) More than all this, her pregnant status justifies orders/instructions for remedies/administrative reforms to monitor institutions and their paraphernalia including their staff; but these practices of power do not recognise that such measures once enforced could endanger the very ideal of man-woman relationship that is put on hold for all women in these institutions, including for women with intellectual disabilities who are capable of consensual relationship.[13]

Hence the need for special leave petition to the Supreme Court which issued a stay order on the ruling of the Punjab and Haryana High Court on 17 July 2009.[14]

We will move now to some larger concerns this case raises.

Because of her desire, her difference constitutes a platform for justice. The absence of such justiciability prior to her expression of desire, calls into question the absence of legally recognisable parameters of her fundamental rights such as equality before law and right to life with dignity and liberty (Articles 14 and 21, respectively) – both in terms of the failures of the state in its self assigned role of parens patriae on the one hand and on the other, the possibility of derecognition of her value on par with her peer citizens – women in particular, irrespective of whether they were single or married. Further, it was the legal recognition of her as a "mentally ill" person rather than a person with "mildly retarded" intellectual abilities/disabilities[15] that collapses her emotional quotient with her intellectual quotient and denies her the capacity and volition to consent to continue her pregnancy as she desired. Wrenching her body and mind apart, the court subjects her to the guardianship of a callous "protector" with a scientific, diagnostic stereotype that derecognises her ability and desire.

Consequently, the consent accorded to the guardian (the "protector" state) is privileged/authorised in conjuncture with the support of available modes of dispensing justice for a ward with "unsound mind"– in accordance with Section 375 of IPC.[16] Obviously there are multiple factors other than her intellectual disability: the physical condition of the mother, social conditions and sarrounding environment, financial conditions and social or family support are the conditions deployed to assess the compatibility of the ward with the imagined "ideal mother" and a "full woman" and lead to the benevolent/sympathetic reasoning for the termination of her pregnancy.[17]

'Natural' Parameters

Scientific diagnosis together with law and justiciability in conjuncture with assumed sociocultural notions of ideal mother on the one hand, and self-sustainability in terms of earning capabilities, sociability and adaptive behaviour on the other hand are the "natural" or obvious parameters that characterise the ideal woman/full woman. As such, the assumption is that the character of that ideal of the full woman is universal irrespective of the sociocultural, economic, civil, and political differences. Contrary to this assumption, we argue, that the assumption of full woman with "ideal character" irrespective of physical or psychological conditions, becomes a benchmark for motherhood in wedlock or beyond, and other factors such as sociability, self-sustenance, knowledge of sexuality and pregnancy and child rearing prior to and after wedlock are tagged on to the assumption of ability – working powerfully against the testimony of the ward in this case to fulfil "her" desire – the deviant's desire.

Further, the judiciary under the assumption of having absolute power, rationality, reason, and more than all this, capabilities for justiciability, constitutes a panel of experts ranging from gynaecology, psychiatry and paediatrics on the one hand to, social activists, human rights activists and amicus curae and a judicial officer on the other to defend the guardian state and to direct legal termination of pregnancy of the ward.[18]

It is important to note here that it is not only necessary to enquire into the reason for making the distinction between so-called "mental illness" and "mental retardation" to understand why that distinction is made in the Medical Termination of Pregnancy Act, 1971 but also to unravel the sociological, cultural, judicial and political reasons to the extent possible to study the nature of prejudice that sanctions the medical termination of pregnancy in the context of mental illness of a person.

Is it not the prejudice of the privileged in the society who assume they have access to absolute knowledge of the body and mind of every woman including the woman with intellectual disability – the "unsound mind"? Is this not merely the reinforcement of the

prejudice of the privileged, namely, to mark the distinction between the ideal woman and her "other" by investing the absolute choice in favour of full woman and denying it to the "lesser" woman? What are the possibilities that are open to the woman with intellectual disability to reconcile law, social attitude, medical/social diagnosis, with her desire for reproductive autonomy? These questions must be posed alongside the ability in our society of every woman, in particular the ideal woman, to control her sexuality within or outside wedlock and to rear children with or without social support.

No two women, or even men, in the universe could possibly possess similar capabilities or avail similar socio-economic medical and legal support because of the sociocultural, economic and political and legal arrangements. Every individual in terms of capabilities or incapabilities are different by virtue of their birth, family, nationality, language and region. Hence the need for a point of departure to delineate prejudice of the acquired knowledge system embedded in the social rules, attitudes or categories and to work with it to delineate a space, for "nonconformity incarnate".

The arbitrariness of the 2009 judgment by the Punjab and Haryana High Court foregrounds the fact that questions of justice must necessarily engage not only with prejudices that govern factors of justiciability in the context of women's rights but also in the context of human rights and rights of persons with disabilities.

Conclusions

We hope that such an enquiry could allow us to understand the inherent social prejudice embedded in inherited knowledge systems such as the judiciary, justice delivery paraphernalia, biological determinism, patriarchal world view, social rules, attitudes and categories and so on and so forth. For us and for anybody, the law/justiciability, science and technology, social rules, attitudes or categories are not static thumb rules to determine justice forever. They are evolving and changing historically from time to time. For example, there no longer are fixed patriarchal norms to determine the role of women. As the women's movement started challenging prejudice, it is time for us to join hands with resistance to prejudice in law along side the democratic political processes.

Critical use of the law and critical use of collective action allows us to explore the prejudice in delineating the limitations of social rules, attitudes and categories, biomedical determinisms and judiciary. As such, the desire for autonomy, non-discrimination, equality, dignity, inclusion and respect for difference of individuals are the key principles of participatory democracy for any progressive nation. Hence the need for progressive resistance/politics of nonconformity incarnate, that of women with disabilities towards building a society of equals with respect to equity and equality before law.

NOTES

1 From http://www.thefreedictionary.com/invalid, The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company, updated in 2009, published by Houghton Mifflin Company. All rights reserved, accessed on 29 July 2009.

2 Ibid, Collins Essential English Dictionary 2nd edition 2006 © HarperCollins Publishers 2004, 2006.

3 ICCPR: International Covenant on Civil and Political Rights was signed by India in July 1979.
ICESCR: International Covenant on Economic, Social and Cultural Rights, was signed by India in July 1979.
CEDAW: Convention on the Elimination of All Forms of Discrimination against Women was signed and ratified by India in August 1993.
ICRPD: International Convention on the Rights of Persons with Disabilities was signed and ratified by India in March 2007.

4 "From our own experiences and from the 1993 United Nations Report on Human Rights and Disability we know that the human rights of disabled people are violated all over the world" – from An International Resource Kit, available at: http://www.empowermentzone.com/womenkit.txt, accessed on 6 July 2009.

5 The International Conference on Population and Development (ICPD) held in Cairo in 1994.

6 Paragraph 46. The Platform for Action recognises that women face barriers to full equality and advancement because of such factors as their race, age, language, ethnicity, culture, religion or disability, because they are indigenous women or because of other status. Many women encounter specific obstacles related to their family status, particularly as single parents; and to their socio-economic status, including their living conditions in rural, isolated or impoverished areas. Additional barriers also exist for refugee women, other displaced women, including internally displaced women as well as for immigrant women and migrant women, including women migrant workers. Many women are also particularly affected by environmental disasters, serious and infectious diseases and various forms of violence against women – from Women with Disabilities: Lessons of Reinforcing the Gender Perspective in International Norms and Standards by Maria-Cristina Sará-Serrano Mathiason, available at www.wwda.org.au/mathiasondoc1.doc, accessed on 2 July 2009.

7 From the 9 June judgment in the case of *Chandigarh Administration vs Nemo* about an intellectually disabled young woman of 19 or 20 years who became pregnant while she was staying in the state run institution of Nari Niketan and whose pregnancy was sought to be terminated by the Chandigarh administration, http://lobis.nic.in/phhc/showfile.php?sn=6, accessed on 9 August 2009.

8 From the medical report submitted to the court by the Expert Body at the court's request, and can be accessed, if needed, from Tanu Bedi, the victim's advocate.

9 From paragraph 19 of the 17 July 2009 final judgment of the Punjab and Haryana High Court in the case of *Chandigarh Administration vs Nemo*.

10 Ibid, from paragraph 31 of the judgment.

11 From paragraph 40 of the 9 June 2009 judgment of the Punjab and Haryana High Court in the case of *Chandigarh Administration vs Nemo*.

12 Ibid, paragraph 38 of the judgment.

13 Ibid, from paragraph 31 of the judgment.

14 The details of the case referred to here and Stay Order by the Supreme Court is available at: http://timesofindia.indiatimes.com/articleshow/4804983.cms, accessed on 3 August 2009.

15 Ibid, see paragraph 13 of the judgment.

16 Ibid, see paragraph 13 of the 9 June judgment.

17 From paragraphs 17 to 22 of the final judgment of the Punjab and Haryana High Court in the case of *Chandigarh Administration vs Nemo* the Order given on 17 July 2009, available at http://lobis.nic.in/phhc/showfile.php?sn=8, accessed on 11 August 2009.

18 See Paragraph 35 of the 9 June 2009 judgment of the Punjab and Haryana High Court in the case of *Chandigarh Administration vs Nemo*.

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