

WHO IS A 'WORKER'? PROBLEMATISING 'ABILITY' IN THE CONCEPTUALISATION OF LABOUR

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This paper focuses on the worker with disabilities, and argues for the urgent need to problematise the notion of 'ability' in an attempt to situate the worker with disabilities in the labourscape. The paper is divided into two parts. Part A presents an analysis of the opacities in labour studies and law relating to disability, employment and labour in India. Part B of this paper focuses on the following question: What are the possible ways of breaking out of the circle of misrecognition?

Keywords: *Disability, Non-labouring poor, Workmen's compensation, NREGA, Complex equality, Vikalanga kooli, Labour laws*

I. INTRODUCTION

This paper focuses on the worker with disabilities, and argues for fulfilling the urgent need to problematise the notion of 'ability' in an attempt to situate the worker with disabilities in the labourscape—a project that holds possibilities not only for workers with disabilities but also for all workers across the most diverse spread. The term 'worker with disabilities' refers to any person with disabilities within the broad category of the poor, above the age of 18 years, and one who is not engaged in full-time education. A point to be noted is that the cohort of 18-60 year old persons with disabilities who are not in need of high support is the cohort that falls out of social protection nets and is not counted as part of the 'labouring poor.'

The context for this discussion is set by the deliberations around the UN Convention on the Rights of Persons with Disabilities and its ratification by India on 01 October 2007; and by the consequent deliberations around a thorough re-drafting of disability law in India, which is now awaiting enactment in the form of the Rights of Persons with Disabilities Bill. The participation of persons with disabilities, collectives of persons with disabilities, and advocates of disability rights in these deliberations at every level, has resulted in the emergence of a new common sense on the issue of disability rights, and in new measures of capabilities, human diversity, and full participation. The United Nations Convention on the Rights of Persons with Disabilities (hereafter UNCRPD) was adopted,

“Recognizing the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental

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freedoms and of *full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty.*"¹

The paper is divided into two parts. Part II consists of three sections that present an analysis of the opacities in labour studies and law relating to disability and employment in India. Standards are critical to the understanding of labour rights—in the era of globalisation especially, the focus is on standards that are internationally relevant and applicable. The first section briefly explores the debates around the rights of the poor, especially in the context of the growing informalisation of labour and shrinking of social security, and studies the separation between the labouring and non-labouring poor in terms of its implications for the recognition of the person with disabilities as a worker. The second section assesses the jurisprudence on the employment of persons with disabilities within the framework of the *Persons with Disabilities Act, 1995*, and the inadequacies therein in recognising the person with disabilities as an employee with an autonomous right to equal opportunity. The application of this principle in courts and judicial processes through the interpretation of legislation is a complex one, and for the most part, fraught with pitfalls that arise from the lack of comprehension of the specific experience of vulnerability of persons with disabilities. The third section, in continuation from the second, presents a critical examination of the framework of the *Workmen's Compensation Act* as the single 'labour legislation' focused entirely on 'disablement' and injury.

Part III of this paper contains four sections—that are focused on the question: "What are the possible ways of breaking out of the circle of misrecognition?" The fourth section examines the framework within which we might understand the standards for the treatment and recognition of persons with disabilities as workers by drawing connections between two generations of rights—civil and political rights, on the one hand, and economic and social rights, on the other. This discussion helps us elaborate on the consequences of the negation of the status of worker for persons with disabilities. The fifth section evaluates the inaugural moment of recognition of the 'worker with disability' [*vikalanga kooli*], and the import of this moment. The sixth section presents the shift in the legal normative effected by the new draft legislation on the rights of persons with disabilities, which is followed by the conclusion.

II. DISABLED LAWSCAPES

1. Ability and the Labourscape

The foundational position of disability in the labourscape arises from its inarticulate presence in imagining work performance, physicality, and embodiment of certain kinds, where capacity and capability are measured on a ladder that drops from the normative. The 'infirm' body in the labourscape, by this token, may be female/transgender (the frail/congenitally unproductive sex), Scheduled Caste [(SC), unskilled with a predisposition to inefficiency in all but the most repetitive tasks], scheduled tribe [(ST), 'primitive' and habitually delinquent—an incarcerated labour force that must be reined in through the multiplicities of bondage and surveillance], disabled (not-worker, in need of care and social security but not wages).

While research on labour in India has unpacked three of the four categories listed above [there may be more]²—the presumption of ability, and its definition in ideal terms outside of the life worlds of workers across a range of social locations, have resulted in the exclusion, exploitation, devaluation and misrecognition of the place of labour in the social order. And yet, the person with disability as *the* embodiment of the oppressed worker has not entered the account. An immediate result of this is that persons with disabilities are treated as bearers of entitlement to social security, while workers suffering disablement are treated as bearers of entitlement to reparation. This paper argues that the treatment of persons with disabilities as full bearers of the right to work—*not* as essentially non-workers who must be 'accommodated' within a beneficial scheme—merits serious reflection.

In a recent essay on social security, Breman and Kannan provide an illuminating analysis of the inadequacies of social security in India, and draw a distinction between the labouring poor and the non-labouring poor, arguing persuasively that social security must be made accessible to both categories (Breman and Kannan, 2013). Without in any way detracting from the rich insights that this essay provides, I use the distinction between the labouring and non-labouring poor as my point of departure in opening out the field for a fresh look at the intersections between disability and labour. This will help us revisit the rich corpus of existing work on the informal sector and trace continuities between this body of work and the rapidly growing concern with disability rights.

Commenting on the exemption from state benefits of "[p]hysically or mentally disabled persons older or younger than the age limit set (18-60 or 64 years) and still 'able' in body and mind for more than 20 per cent," they observe that "[i]t is this kind of logic which completely *disregards that non-labouring poor are, by and large, related to households belonging to the labouring poor*, who may or may not have enough to satisfy their own basic needs" (Ibid., p. 19, emphasis added). Elsewhere in the same essay, the authors refer to "the losses incurred with the household breaking up and able-bodied adults and minors going off, sometimes in different directions, while *members without labour power* stay put and cope as best they can" (Ibid., p. 17, emphasis added). The fact of high morbidity among the labouring poor "caused not only by income deficiency...but also related to the *abominable conditions* of employment *which have a debilitating effect* on their well-being" (Ibid., p. 8, emphasis added) is certainly cause for concern. However, the observation that state benefits are "doled out to overcome the *improvidence to which the disabled are prone*," (Ibid., p. 19, emphasis added) sidesteps the key premise of disability rights, which is that it is the abominable conditions in the physical, built and social environment that are responsible for the destitution of persons with disabilities as an undifferentiated class of the non-labouring poor.³

Drawing a connection between disability and poverty, Harriss-White argues that the intersection between caste, family size, parental/adult care, and poverty create conditions for simultaneous deprivation that is "further compounded by a syndrome composed of ideological reinforcement, punitive experience, psychological extinction, stimulus deprivation and a cognitive and verbal development which especially affects what is beautified as the

'participation' in the economy of low caste groups: the terms and conditions on which they are forced to labour." This sets up barriers for the participation of women and all persons with disabilities, but especially those with psychosocial and intellectual disabilities (Harriss-White, 2003). Yet, even her account assumes an able-normative position where disability must be accommodated, and speaks of disability as the exacerbating circumstance in the context of poverty.

There is substantial evidence from studies on the informal sector, and research on occupational health, for instance, which points to the fact that disability (or debility, or 'handicap') is indeed a defining condition of labour, especially in the informal sector. This may be signalled by chronic morbidity, early mortality, and psychosocial morbidity, leading to suicides, arising directly from the relations of production, as for instance, with farmers and weavers in India in recent years.

Disablement and even death are seen as resulting from unfair work conditions and the absence of decent work standards. Compensatory moves have been directed against exploitative processes and forces in the neo-liberal, globalised economy. While disablement as harm resulting from inequity is recognised, disability is not yet conceived of as a starting premise for the recognition of human dignity of the worker. Disablement is thus 'presenced' through the removal of 'disability' as a *pre-existing condition* in the labour market. And yet, all studies on the informal sector—degrading forms of labour, footloose labour, contract labour, new and increasing forms of unfree labour, unpaid labour—foreground precisely the fact of disability as a *pre-existing condition* to participation in the informal labour market, that is, social disability. Why do persons with disabilities not figure as actors and agents in the deliberations on the multiple and cumulative vulnerabilities that beset the labouring poor? As Harriss-White (2003) observes, perhaps the issue of disability hitherto stayed unarticulated because persons with disabilities lacked a political platform and voice for the longest time.⁴ What is the cost of shutting workers with disabilities out of the labourscape?

Research in Canada has pointed to the fact that it is not severity of disability that obstructs participation in the labour force, it is instead the barriers and obstacles that impede the effective and full participation of such people. In Nussbaum's words, "all capabilities have a material aspect and require material conditions" (Nussbaum, 2006, p. 179). However, where persons with disabilities are concerned, "whatever the cost of support that promotes inclusion, this is still smaller than the costs of exclusion, particularly when the costs of exclusion include the productivity foregone" (Rioux, 1998).

The understanding of labour power (including its reproduction and recuperation) and labour cannot be taken as given but need to be problematised in a way that emphasises the greater variety of ways of organising each. Labour power, as per this argument, is not a given capacity but contains within it an unrealised/unrecognised potential, the contours of which are as yet unknown but are socially produced. The same applies to labour itself and the forms of work organisation. In the context of the negation of an entire class from the very category of worker, how might we begin to pose the question of rights, entitlements, inclusion, and indeed justice itself?

These are questions that need urgent deliberation, if for no other reason than that we must understand the roots of disability oppression. Young proposes the deployment of oppression as a structural concept that “designates the disadvantage and injustice some people suffer...[the causes of which] are embedded in unquestioned norms, habits, and symbols, in the assumptions and underlying institutional rules and the collective consequences of following those rules” (Young, 1990, p. 41). This concept has five faces: exploitation, marginalisation, powerlessness, cultural imperialism, and violence. Placing oppression as a central category in looking at disability is useful because it involves an analysis and evaluation of social structures and practices which are incommensurate with the language of liberal individualism—structures and practices that constitute discrimination in its most extreme forms (Young, 1990).

This project holds the promise of “envisioning real utopias” by generating knowledge that will help challenge oppression. We could, after Eric Wright, extend this to delineating a vision for an emancipatory social science that would consist, in the main, of three tasks: elaborating a systematic critique of the world as it is; envisioning viable alternatives; and understanding the difficulties in transformation (Wright, 2010, p. 10).

At a more immediate level, if the challenge before us is to create “an environment at the national and international levels conducive to generating full and productive employment and decent work for all” and thereby to strengthen the possibilities of sustainable development (Ocampo and Jomo, 2007, p. xvii), how does disability force us to revisit the definition of ‘full and productive employment’ and ‘decent work’? In a context in which the norm distributes all individuals along a continuum from abnormal to normal, arising from the social practices of a social group, and is therefore constitutive of the individual’s subjectivity (Golder and Fitzpatrick, 2009, pp. 43, no. 43), what are the praxiological strategies for recognising disability as a dynamic, heterogeneous, and productive category? The figure of the worker with disability forces us “to put reason and humanity before fear, habit and prejudice; to test our unexamined assumptions regarding some of the basic elements of human life...” (Sen, 2007, p. 15)

2. Prosthetic Moves in Employment Jurisprudence

An attempt has been made in the foregoing section to point to some ways in which disability serves as a metaphor for marginality and exclusion.⁵

The foregoing discussion is of relevance because of the urgent need to break with a specific strand in the history of trade unionism and labour rights during the early industrial era wherein the most vocal protagonists were also eugenicists—the assumption of a ‘fit’, ‘strong’ body that is able to work to pre-determined rhythms [the standardisation of the worker and the product of labour] is the starting point of the rights talk that surrounds the worker—the fear of increasing the ranks of “paupers, syphilitics, epileptics, dipsomaniacs, cripples, criminals and degenerates” (Davis, 2010, p. 10) is all too familiar.

The Indian Constitution, in its benevolent articulation, follows a comparable enumeration to different effect:

“Article 41: Right to work, to education and to public assistance in certain cases: The State shall *within the limits of its economic capacity and development*, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.” [Emphasis added]

The suggestions for amendments in the *Unorganised Workers’ Social Security Act, 2008*, reproduce a similar list in para 8:

“The Act should pay special attention to those individuals and groups, who have traditionally faced difficulties in exercising rights. Additional measures...for Adivasis...for dalit workers...for women...and for other excluded categories like *sex workers, eunuch, handicap, abandoned old people/sick people*.”⁶

With respect to the right to work, in general, Indian courts have consistently insisted on enforcement of the provisions included in the *Persons with Disabilities Act, 1995*, upholding a comprehensive ‘right to work’. However, while the *Persons with Disabilities Act* protects the rights of those who have developed a disability to continue as an employee at the same establishment in a position of equal benefits and pay, thereby protecting their right to work, other labour laws (like the *Industrial Disputes Act* and *Workmen’s Compensation Act*) at best, award compensation, and at worst, provide for complete termination of service without any payment. Since provisions in these laws remain intact even after the passage of the *Persons with Disabilities Act, 1995*, the status of the right to work remains uncertain.

It is not the purpose of this essay to provide a detailed account of the interpretive twists and turns in courts on the legislations pertaining to disablement or disability. The attempt is, in fact, even more basic. How do normative assumptions about ability rupture the very construction of the category of the worker with disabilities?

The embodiment of discrimination—the ‘infirm body’—disables the articulation of a right through the language of incapacity and impairment that pushes disability out of the social and into the ‘natural’ (read physical/mental) world. This places a direct restraint on constitutionalism as the following Rule 12 of the *Andhra Pradesh Judicial Services Rules*, currently in operation, demonstrates:

“Rule 12: General Qualifications: No person shall be eligible for appointment to the service unless:

...

(iii) He is of sound health and active habits and free from any bodily defect or infirmity making him unfit for such appointment” (emphasis added).

The conflation of ‘sound health’, ‘active habits’ and ‘bodily defect or infirmity’ typically represents the dominant construction of disability.⁷ The expulsion of disability from the very conceptualisation of work, labour, governance, and justice ensures that the standard setting norm is able-normative, which is then applied jerkily to persons with disabilities, to

varying degrees, in a back and forth movement that does not add up to a new or radically different standpoint.

Cases concerning employment of persons with disabilities foreground the problems therein, especially those arising from the prosthetic move wherein the disabled body defines the able one.⁸ Typically, these are central to dominant able-normative conceptions of the capabilities of disabled workers.

“[E]quality is not degraded or neglected where special provisions are geared to the larger goal of *the disabled getting over their disablement consistently with the general good and individual merit.*”⁹

Special and enabling provisions are at the heart of disability-based entitlements. A plain reading of the court’s reflection above points to the fact that the responsibility of overcoming disablement rests with the disabled—with the successful claims being dependent on individual merit. We have echoes of the arguments regarding merit in the context of caste, tribe, and gender as well. However, a subversive interpretation is also possible—the able-bodied norm that is responsible for the disablement of the disabled needs to be overcome in the interests of the general good—preserving and caring for the diversity of abilities that make for a plural society, and merit, which may well be located outside the able-bodied norm—utopian, without doubt, but not impossible.

In a case that goes to the heart of the matter, so to speak, 2 per cent reservation was provided for ‘handicapped persons’ in all services under the Uttar Pradesh (UP) government, but the following instruction was added as a limitation:

“The physical disability should not be of the nature, which may cause interference in discharge of duties and obligations attached to the concerned service. Accordingly if the service is as such that it require [sic] continuous use of eye, then in such case reservation cannot be given to the blind persons. In the same manner if some services specifically involves the hearing faculty then no reservation can be given to the deaf persons in such services and in a service where the use of a particular organ of the body is to be used then the person disabled of that particular organ cannot be given reservation in that service.”¹⁰

The problem is not as much in the setting out of ‘an eye for an eye’ or ‘an ear for an ear’ approach, but in the able-bodied imagination of the tasks that require an eye or an ear or a limb, the tasks that are suitable for the disabled, and the ways in which they may be ‘accommodated’. The Supreme Court’s insistence that the state government provide an opportunity for employment to the person with disability in this instance ends with the observation that:

“The State Civil Service ... is a large enough service which can easily *accommodate* physically handicapped persons *in suitable posts*”¹¹ (Emphasis added).

A circular issued by the Government of India in 1986 set out the degree of deviation from the able-bodied norm that would be accommodated in the banking sector:

1. “BL—Both legs affected but not arms;
2. OS—One arm affected (R or L);

3. OL----- One leg affected (R &/OL);
4. MW—Muscular weakness and limited physical endurance.”

Given the nature of the job of a probationary officer in a bank, who has dealings in cash, account management, signature verification, transactions with customers, and the diversification of tasks consequent on the liberalisation of the economy, it required “greater alertness, presence of mind and maximum utilisation of all his/her physical and mental facilities (sic).” Therefore, the bank argued, this job was not identified for ‘blinds’ by the government.¹² The positioning of sighted persons with physical disabilities as closer to the norm of alertness and ‘mental capacity’, and the distancing of the ‘blinds’, constructs lack of vision or sight as impaired comprehension, using the norm of comprehension through sight as equivalent to mental alertness and capacity. The Standing Committee set up by the Ministry of Welfare to identify jobs for the disabled in the public sector observed unequivocally that:

“[i]t would not be possible to generalise that blind persons can do most jobs as we have found for those with locomotor and hearing disabilities.”

The report then goes on to mark the shortfalls of blind persons against the norm:

“To compensate ‘reading deficiency’, readers’ allowance can be provided to blind employees to enable them to engage a reader. Similarly, to compensate for ‘writing deficiency’, the blind employee should be required to know typing. Adequate knowledge of typing should be prescribed as an essential qualification for blind employees for public employment. Where mobility may also be one of the main ingredients of a job it is difficult to compensate blind employees for this ‘deficiency’. The Committee would also emphasise that the blind employees should be fully responsible for the duties assigned to them, despite the provisions of reader’s allowance and typing skill.”¹³

Very clearly, the blind constitute the Other—what the able-bodied are not. The other striking aspect of the discourse on disability is the problem that ‘sightlessness’ poses to the imagination of the sighted. In a nutshell, the able-bodied are not ‘deficient’ and, therefore, need not be compensated. However, interestingly, they are also not deficient and, therefore, need not possess additional skills like typing. There is an inversion here of the dominant assumption that disability is possessed of deficiency, which includes a diminished capacity to acquire skills that are necessary for efficiency. Here, deficiency necessitates a higher acquired skill on the part of the disabled. And the language of ‘deficiency’ marks the exclusion of those who cannot read and write without assistance. There is, in this framework, no space for literacy skills or languages of competence that are measured differently. What is even more interesting is the description of the lawyer arguing the case for the National Federation of the Blind as follows:

“Mr. Rungta—(himself visually handicapped)—has argued his case *with utmost clarity*. Mr. Rungta was *fully conversant with all the relevant annexure* to the petition. He referred to the relevant pages in the bulky paper book with *perfect ease*. *We did not feel even for a moment that the case being argued by a visually handicapped lawyer*. Mr. Rungta’s performance before us amply proves the point that the visually handicapped persons can perform the jobs entrusted to them with *equal efficiency*”¹⁴ (emphasis added).

While forcing the State to open up public employment to the visually challenged, the Supreme Court situates itself in the able-bodied norm to determine ability and capability, which, in an important sense, does not dislodge the discriminatory basis of such an assessment. The domain of activity and contestation are both constructed in terms of a 'normality' that is pre-determined. The assessment of ability and efficiency (both distinct terms that again collapse together in this framework) is made on the basis of the ease with which a person with disability negotiates a 'normal' environment. The fact that this assessment itself is deeply discriminatory has not yet begun to enter the account of disability rights jurisprudence.

In 2001, the Delhi High Court found that with respect to providing employment opportunities to persons with orthopaedic and visual disabilities, "notwithstanding clear, unambiguous and laudable objectives sought to be achieved by a decision [of the University of Delhi], ... it remains only on paper because of apathy, lack of will and lackadaisical approach of the authorities who are supposed to implement such decision."¹⁵

And yet, the court found that there was no dearth of persons with disabilities, who not only met the general standard but excelled it as well, throwing into sharp contradiction yet again, its own delineation of disability as 'handicap', or 'deficiency':

"The petitioner, who is a handicapped person, as she was born with congenital blindness, *has not allowed this disability to disable her*. Even without any vision or proper vision since birth, *the petitioner not only pursued her studies but proved to the world at large that what a normal student could do she could do the same equally well or even better*. This is clearly demonstrated by the testimony of her academic record."¹⁶

What was the measure of ability? Was it dependent on specialised training, or was it dependent on being 'able-bodied'? Could, for instance, persons with disabilities who were trained in physical education be disqualified on immutable grounds that "a physically disabled person could not perform this job"? At what point must the assessment of ability be made? The court held that with the disabled person concerned having received the requisite training and acquired the formal qualification necessary to meet the general standard of the job, the government [in this case, the 'benefactor' and the violator both] could not at a later stage declare unsuitability. Training institutions must determine suitability prior to selection for training.¹⁷ This is not, however, only a question of discourse. It points to the way in which public institutions, public employment, indeed the entire public domain, are organised outside of and in opposition to the entire diversity of disability and also the entire diversity of ability.¹⁸

Finally in 2013, the Supreme Court of India, took on board the spirit and specific arguments put forth by Santosh Rungta—within the framework of the Constitution, the decision in *Indra Sawhney*, the 1995 enactment (as distinct from its interpretation) and the *Rights of Persons with Disabilities Bill 2012*—to confirm that the correct interpretation of the 3 per cent reservation rule is 3 per cent of cadre strength in *all groups* in the Civil Services—A, B, C, and D. This, according to the Supreme Court, was not subject to the 50 per cent ceiling that was explicitly set out in *Indra Sawhney* for vertical reservation not for disability, which is horizontal reservation. This judgement marks a significant shift in

judicial discourse on employment and disability rights, bringing it in tune with the spirit of the campaign for disability rights.¹⁹

The definition of ‘disability’ cuts across a very wide range of physical, mental, and social disabilities, many of which might co-exist with sound health and ability, thereby throwing into question the homogenising of disability and its opposition to the able-bodied norm evident in judicial discourse on physical disabilities.

The right to work, which includes the creation of assistive devices to enhance work capacity, physical access to enable mobility to and in the workplace, development of collateral skills to make optimum use of productivity, and importantly, the treatment of the worker with disability as an independent, *autonomous* worker with a right to livelihood, is conspicuous in its absence in the conceptualisation of State policy, and in the interpretation of the constitutional right to livelihood for persons with disabilities.²⁰

3. Disablement, Labour and Law

The *Workmen’s Compensation Act*, 1923 (WCA), provides an excellent illustration of the central point of this paper, which may be delineated as follows.

“‘Partial disablement’ means where the disablement is of a temporary nature such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement and where the disablement is of a permanent nature such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time:

Provided that every injury specified in Part II of the Schedule shall be deemed to result in permanent partial disablement;” [Section 2(g) of the WCA].

Schedule I of the WCA sets out the ‘list of injuries’ and corresponding disablement in finely calibrated percentiles: for instance, loss of four fingers—50 per cent; loss of three fingers—30 per cent; loss of two fingers—20 per cent; and so on, starting of course, with the amputation at the shoulder joint at 90 per cent.

Schedule II lists 48 occupations that are covered by the WCA, of which workers with disabilities can perform at least 35 on an equal footing with workers without disabilities. Of the remaining, handling of animals (spread through three other items) is again work that would have a range of people with diverse abilities. Even if we do not take these into account, on a plain reading, workers with disabilities might quite easily perform 73 per cent of the occupations listed in the WCA.

The WCA clearly contemplates compensation for workers without disabilities who acquire disability in the course of work. It denies compensation to workers who are callous of safety measures at the workplace, or those who are irresponsible and inebriated at work. There is no indication, however, that the safety measures in place include measures which meet the special needs of workers with disabilities, even though this might well mean exposing such workers to increased risk in the same conditions. Secondly, assuming that a worker with disabilities is employed, will occupational disablement be computed in the same terms? For instance, the loss of an eye for a sighted worker and for a visually

impaired worker or the loss of a leg for a worker who already uses one prosthetic leg results in very different outcomes.

Even if one looks within the quantified measures of disability that lie at the core of this legislation, the injuries listed in Schedule I could result in total disablement (within the meaning of the WCA) of the worker with disability, while they might result in partial disablement of the worker without disabilities. Further, if total ability is the starting point of the WCA, is it even conceivable within the parameters of this legislation to posit the possibility of the disablement of a disabled worker? How might we then approach the question of compensation?

The resolutions to these questions will show the way towards building a more inclusive and plural foundation for our understanding of decent work. As Somavia observes, “[n]ormative action is an indispensable tool to make decent work a reality”.²¹

III. THE IDEA OF A WORKER WITH DISABILITIES

1. Rethinking the ‘Social Floor’

Impairment and disability raise a distinct and urgent problem for our conception of social justice: that is, i.e., what is the meaning of fair treatment (Nussbaum, 2006, p. 99)? The tension for instance between ‘equal treatment’ and ‘reasonable accommodation’ and the tendency towards isomorphism in social arrangements underwrites popular and juridical understanding on fair treatment, especially evident in legislation, case law, and research on labour rights and conceptions of the worker in India. Michael Walzer’s observation that “the principles of justice themselves are pluralistic in form”, challenging the idea that a singular principle is even possible, is especially relevant to an understanding of disability (Walzer, 1983, p. 6). The ‘social floor’, in Nussbaum’s view, is human dignity.

While re-tracing our steps for a better understanding, it would be useful to reflect on the relationship between civil and political rights, on one hand, and economic and social rights, on the other. Rawls delineates two principles of justice, wherein the full enjoyment of the most extensive scheme of equal basic liberties is the precondition for the distribution of wealth and income (Rawls, 1999 [1971], p. 53). “[I]nfringement of the basic equal liberties protected by the first principle, cannot be justified, or compensated for, by greater social and economic advantages” (Rawls, 1999 [1971], pp. 53-54), nor can there be any “exchanges between basic liberties and economic and social gains except under extenuating circumstances” (Rawls, 1999 [1971], p. 55).

By this token, inequalities are permissible (and fair, or just) only insofar as they are to everyone’s advantage, and more importantly, come into play after the guarantee of liberty is accomplished. Sen interrogates Rawls’ ‘downplaying’ of the possibility that different people “can have widely varying opportunities to convert general resources (like income and wealth) into capabilities—what they can or cannot actually do... [which] reflect pervasive variations... in the human condition and in the relevant social circumstances” (Sen, 2009, p. 261). This obstruction that people face in converting resources into opportunities that are embedded in social circumstances is discrimination, not just inequality.

In a manner of speaking, we are here entering the debate on two sets of rights—social and economic rights, on one hand, and civil and political rights, on the other. Supiot, in asserting the centrality of social and economic rights, argues, for instance, that people concern themselves with the defence of freedoms only when minimum physical and economic security is assured: “Freedom is impossible where physical or economic insecurity prevail” (Supiot, 2007, p. 199). Yet, physical insecurity itself is the loss of freedom—the loss of liberty. And if economic insecurity engenders dependence, is insecurity—economic and physical—itsself not the loss of liberty? This is a view that has been adopted by constitution-makers and jurists in South Africa as well, where, as Justice Yacoob has persuasively argued, “All rights [civil and political or first generation, socio-economic or second generation, and environmental or third generation] were in fact indivisible and interrelated... At the risk of overstatement it might be as well to say that a human being without clothes, food, water or work could hardly be said to have inherent dignity which is both respected and protected” (Yacoob, 2002).

When may we consider that the guarantee of liberty has been established? Challenging the liberal understanding of freedom that force or the coercive threat of it constitute the only forms of constraint that interfere with individual liberty, Skinner invokes the insistence of neo-Roman writers that “to live in a condition of dependence is in itself a source and a form of constraint. As soon as you recognise that you are living in such a condition, this will serve in itself to constrain you from exercising a number of your civil rights...[T]o live in such a condition is to suffer a diminution not merely of security for your liberty but of liberty itself” (Skinner, 1998, p. 84). By this argument, the anticipation (or danger) of coercion erodes liberty.

It is not out of place to speak about liberty in the context of disability, to recall Bauman’s analysis of Bentham’s panopticon, as a model of a mini society precisely because it details for us the specific ways in which discrimination restrains liberty:

“Some actors are freer than others: discrimination in the degree of freedom allotted to various categories of actors is the very stuff of which the social system is moulded. Discrimination precedes action...Instead of being an unanticipated outcome of the interplay between ‘phenomenologically equal’, similarly free agents, social order is something which some people set for others...If it is true that ‘men make society’, *it is also true that some men make the kind of society in which other men must live and act. Some people set norms, some other people follow them*” (Bauman, 1997 [1988], p. 23. [Emphasis added]).

This precisely then, is the predicament of workers with disabilities in an able-normative labourscape.

The second aspect of re-visioning the labourscape has to do with evaluating care. What is the place of care in the conception of justice for persons with disabilities—especially the profoundly disabled? The need for good care for the asymmetrically dependent would focus on support for life, health, and bodily integrity, thereby stimulating the senses, imagination, and thought in the process. The need for good care for the care-giver is reflected in the need for social and institutional arrangements that allow for care-giving as a real choice, enabling it and providing every support that it requires, ranging from the cultural/emotional to the

economic (Nussbaum, 2006, p. 168). What are the ways in which the construction of the care-giver as worker (with a claim to care-giving as an employment guarantee) displaces settled notions of 'the worker'? (Bremen and Kannan, 2013, p. 8).

It is pertinent at this point to recall Pothier's delineation of the social construction of disability:

"The 'social construction' of disability refers to the way an able-bodied conception of disability magnifies its consequences. The social construction of disability assesses and deals with disability from an able-bodied perspective. It includes erroneous assumptions about capacity to perform that come from an able-bodied frame of reference. It encompasses the failure to make possible or accept different ways of doing things. It reflects a preoccupation with 'normalcy' that excludes the disabled person" (Pothier, 1992, p. 526).

The disability framework, in Rioux's view, helps us step away from tinkering with existing systems, structures, and mindsets, to re-shaping in fundamental ways, the manner in which social and human relations are organised, with disability serving as one measure of diversity, for which accommodations are made not on an individual level but at a systemic level (Rioux, 1998).

2. The Emergence of the '*Vikalanga Kooli*'

Picture this:

Case 1: Malik has one leg, while the other leg is small and non-functional. He ploughs his own field—while ploughing, he wraps his second bad leg around the stick and uses the stick as his leg in the mud. His hands are thus free for the plough.

Case 2: Achali has one hand and a stump for the other, which she uses with the armpit to hold crop and wields the sickle with her good hand. She sows and harvests with one hand and is active in paddy cultivation.

Case 3: Shanthi uses calipers for one leg and is active in cotton fields with the caliper on.

Case 4: Amrutha has two non-functional legs and supports herself with two short sticks. She picks cotton and works in the fields in a sitting position.

Case 5: Building anicuts, clearing stones from fields in preparation for cultivation, clearing mud after digging trenches and wells are all done by persons with disabilities in Mahbubnagar district.

Case 6: Visually challenged people carry headloads, build bunds, and clear mud and earth after digging.

Case 7: A large group of workers with disabilities—visually challenged, physically challenged, intellectually challenged—have been given the task of digging pits in an afforestation drive in Mahbubnagar district. They have done this so well that they are now being given the job of planting trees as well.

Case 8: Bhavani in Srisailam Integrated Tribal Development Agency (ITDA) has one hand and no legs. She uses her thigh and one hand to stitch leaves together for the temples (*istari*) at an unimaginable speed. At any time, you can see her with a pile of unstitched

leaves on one side and a pile of stitched leaves on the other (*istari*). She supports herself and her old mother with the income.

Case 9: Hussain, with two stumps for legs, stands on the base of the plough and directs the bullocks to plough the field.

Case 10: Yasin, with no hands and one leg, asked for goats in a livelihood drive by a newly emerging political party. He was given 20 goats—his flock has since increased to 30. He takes them out to graze, and instead of going ahead of him, which is the scene we usually see, they follow him. They move ahead only when he asks them to, and he has to give only one unique call and they all return to him and follow him home.²²

We, of course, have the classic description of Hippolyte in *Madame Bovary*:

“But on the equine foot, wide indeed as a horse’s hoof, with its horny skin, and large toes, whose black nails resembled the nails of a horse shoe, the cripple ran about like a deer from morn till night. He was constantly to be seen on the Square, jumping round the carts, thrusting his limping foot forwards...by dint of hard service it had acquired, as it were, moral qualities of patience and energy.”²³

We have seen in several contexts—notably through the scholarship of feminist economists—that actual work participation does not automatically confer the status of worker. As Tokman observes, “[t]he legal and explicit recognition of the employment relationship is crucial because it constitutes a pre-requisite for the recognition of rights to labour and to social protection” (Tokman, 2007, p. 262). The UNCRPD accomplishes this through Article 27, which speaks of the rights of persons with disabilities to work and employment:²⁴

States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive, and accessible to persons with disabilities. ...

States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

In the discussion in the preceding section on the centrality of social and economic rights to the enjoyment of life with dignity and personal liberty, we have examined, in fair detail, the relationship between the condition of dependence and the loss of liberty. Testimonies from persons with disabilities point to the direct relationship between abject dependence and abuse within families and communities (Menon-Sen and Kannabiran, 2010).

While ‘participation’ in the economy is a euphemism for acquiescing to conditions of forced labour for the entire range of persons who suffer the most aggravated forms of simultaneous deprivation (Harriss-White, 2003) and cumulative discrimination, the cases cited above demonstrate ways in which persons with disabilities adapt and accommodate themselves to hostile environments (in a reversal from the mandatory provision of enabling environments under internationally accepted standards) in order to define themselves as workers. The fact that this constitutes a sizeable section is evident in the Census figures from 2001 onwards—these are workers with disabilities who push themselves in through the fault lines in the exclusionary labourscape, working as the non-disabled do, under the same terms and conditions.

A second illustration of workers with disabilities moving a step further in negotiating a space in and recognition for themselves in the labourscape, is contained in the deliberations around employment guarantee.

How should we approach the question of the social organisation of labour and the definition of labour power using a disability standpoint? We need to move from looking at the differently-abled and destitute as the non-labouring poor in need of social security (Breman and Kannan, 2013, p. 27), to analysing how we might transform the labourscape so as to recognise the different and diverse abilities through which workers—both with disabilities and without—might contribute to a more robust and representative collective voice for human dignity and the right to decent work.

The focus of this section would be on the definition of work, labour power, capabilities, and reasonable accommodation that crystallise around the emergence of a new category of 'worker'—the '*vikalanga kooli*' or wage worker with disability.

The *National Rural Employment Guarantee Act, 2005*, defines employment guarantee as a provision:

“...for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto.”

Even while there was a cascade of studies, assessments, and audits on the National Rural Employment Guarantee Act (NREGA) in different parts of the country, a storm of a different kind was brewing in the rural labourscape, changing in fundamental ways the contours of 'labour' (see Appendix).

The government of Andhra Pradesh, in a series of Government Orders (GOs) and circulars, outlined the contours of the meaning of the right to work for persons with disabilities. The inclusion of persons with disabilities within the Andhra Pradesh Rural Employment Guarantee Scheme (APREGS) can be traced to a gazette notification in 2006 that stated simply, “Disabled persons may be provided wage employment by entrusting suitable works in the form of services that are identified as integral to the programme.”²⁵ Pursuant to this, the government of Andhra Pradesh issued the *Operational Manual 2006* for the implementation of APREGS.²⁶ A close reading of the manual suggests that there was no major departure in the traditional view/treatment of persons with disabilities: a household with a disabled person was entitled to 150 days of wage employment per year instead of the standard 100 days (para 4.4.5); “If a rural disabled person applies for work, *work suitable to his/her ability* will have to be given. This *may also be in the form of services* that are identified as integral to the programme. Tasks such as water-carrying, *ayah*, village information wall writing, shade arrangements and nurseries may be given to the disabled persons” (para 4.4.9); “and if more than five children below the age of six years are present at the worksite, a person (preferably a disabled woman) should be engaged to look after them...” (para 5.8).

Very soon thereafter, we witness a clear and radical shift in the articulation of the entitlement of the “wage worker with disabilities” (*vikalanga kooli*) in a succession of

communiqués issued by the government, though the clauses cited above were reiterated. And a diktat that all reviews at all levels on the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) must mandatorily include issues concerning persons with disabilities on the agenda.²⁷

As an idea, it was revolutionary and driven by the new consciousness of dignity and full participation triggered by the deliberations around the UNCRPD, the re-conceptualisation of disability legislation, and a re-assessment of the possibilities of the existing law in India. The process was initiated and carried through by rural collectives of persons with disabilities who had been engaged in the protracted debates around disability rights. While making this demand for a special place in the NREGA, disability rights advocates were drawing on two rarely cited provisions in the Persons with Disabilities Act, 1995: Section 68 of the Act speaks of unemployment allowance to persons with disabilities who have registered with the special employment exchange and could not be placed in gainful occupation for two years; the second provision in Section 40 provides for a reservation of not less than 3 per cent of vacancies in all poverty alleviation schemes for persons with disabilities.

i. Who is a Worker?

Persons with benchmark disabilities in accordance with the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*, who had completed 18 years of age, and were able and willing to work were identified as “*vikalanga kooli*”.²⁸ In the multi-tiered system of wage work under the NREGA, the directive that “persons with disabilities are to be given preference in selection of mates, not only for the disabled workers’ collectives, but also for the workers’ collectives,”²⁹ bears significance that can scarcely be understated. Where parents of children with disabilities seek work, a woman with disability is to be appointed as *ayah* (caretaker) for a maximum of 150 days after which another *ayah* would be appointed. Where an *ayah* is found necessary either for the worksite of a workers’ collective or a disabled workers’ collective, a poor woman with disability shall be appointed as *ayah*.³⁰

The relationship between gender and disability in the delineation of work is important and complex, not only because of the unproblematic application of the standard norms of the sexual division of labour to women workers with disability, but also because the allotment of care-giving and ‘service’ responsibilities to men with disabilities might serve to signal the ‘feminisation’ of the disabled workforce.³¹

ii. Dignity of Workers

Given the widespread use of labelling and abusive demeanour in addressing persons with disabilities, a circular specifically addresses the requirement that all workers with disabilities must at all times be addressed by their names and the same along with the family name must be entered in the job cards. Authorities are under obligation to ensure that disabled workers’ collectives shall not be humiliated, or discriminated against in any manner whatsoever in the areas in which they work.³² This communiqué draws attention to the unusual presence of the

disabled worker in the worksite that might trigger social approbation. This particular circular is strongly reminiscent of a memo issued by S.R. Sankaran in the context of widespread discrimination against persons belonging to the SCs: "In relation to Harijans there is the practice of using the suffix '*gadu*' to the names. The government directs that such suffix should be scrupulously omitted in all government records including birth registers hereafter."³³

iii. Disabled Workers' Collectives

The formation of disabled workers' collectives, the identification of persons with disabilities and formation of collectives—the Disabled Shram Shakti Sanghas (DSSS)—facilitates effective access for workers with disabilities to wage work. In Andhra Pradesh, all workers with disabilities who are part of the disabled workers' collectives are entitled to wages that are 30 per cent higher than the rural Standard Schedule of Rates (SSR), an advantage that is not available to workers with disabilities who work alongside non-disabled workers in the workers' collectives.³⁴ Disabled workers' collectives may be allotted the works from the shelf that they choose and feel that they would be able to perform, in addition to managing and growing nurseries—a job reserved for workers with disabilities. If in order to perform the works better, workers with disabilities require implements suited to their use, or training and expertise, the same shall either be provided to them or the costs met if they procure them directly.³⁵ Apart from this, the entire scheme of APREGS for workers with disabilities is mediated, negotiated, and monitored by the Andhra Pradesh Non-governmental organisations' Alliance (Disabled) (APNA(D))— a network of community-based organisations covering every district and *mandal* in the state that are recognised as a bridge between the workers and the government. The primary task of collective bargaining in securing maximum entitlements, as also in defining the conditioning environments, is critical to this endeavour.

iv. The Household

While the Operational Manual adopts the standard definition of the household (and includes households consisting of single women), there is a sharp departure very soon thereafter: whether unmarried, or single, or without family, every adult person with disability who seeks work under the MGNREGS, shall be recognised as a single member household and issued a separate job card. Where there is a single adult person with disability living with other members of the family, and the family has been issued a job card, the person with disability shall be removed from the family job card and issued an independent card. Where there is a person with high support needs in the family, the job card for 150 days of work shall be issued to the family. Where two persons with disabilities are married, they shall be entitled to only one job card.³⁶ The definition of the household is revisited and defined through the medium of wage work and participation in productive activity, with the worker with disabilities simultaneously being defined as an autonomous wage earner and head of the household.

The change in orientation in the regulation of the NREGS was driven by disabled peoples' organisations that persisted with the need to define the person with disability as a worker.

As a result, we have, in a stark reversal, the definition of the worker premised on a situation of unemployment relief, wherein the dependent non-worker (definitionally ‘unemployed’) becomes a bearer of the right to work arising from recognition of unemployment. The fact that till the introduction of NREGA, no measures existed for the quantification of work by persons with disabilities is evident from the extensive time and work motion studies supported by the government in order to arrive at a rural SSR for payment of wages to workers with disabilities. This is also validated by a recent study of NREGA for persons with disabilities in three states which found that an overwhelming majority of the disabled people interviewed had never engaged in wage work prior to the NREGA (Kumaran, 2013). The question with respect to the terms and conditions under which workers with disabilities enumerated in the Census of India, 2001, as main and marginal workers toiled, of course, then remains unanswered.

This initiative of persons with disabilities to access employment guarantee, redefining in the process, the ideas of capabilities, measurement of work performance, and most importantly, the right to work of persons with disabilities points to a crucial way forward. This fact represents a theoretical leap, from a position of absolute non-recognition to the claim of entitlements springing from official recognition.

3. The Disability Standpoint in the Construction of the Legal–Normative

If regulation, collective representation, and protection are at the core of our understanding of labour rights, what would a regulatory order envisioned within a disability framework look like? This section focuses on the labour provisions in the new *Rights of Persons with Disabilities Bill 2012* (hereafter the RPWD Bill), also an initiative driven in the main by persons with disabilities, as a possible way forward in reconceptualising labour—the organisation of work, labour power, and social security.³⁷

The following guiding principles for the proposed legislation are immediately relevant to this exercise: respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; and accessibility, among others. Recognising the diversity within the broad category of disability, the bill draws a broad classification of disability, benchmark disability, and disability with high support needs, within which it delineates and *defines* 18 forms of disabilities in the schedule to the bill. While discussing the right to non-discrimination in employment, equal opportunity, maintenance of records relating to employment of persons with disabilities, and a clearly defined grievance redressal procedure, Sections 25-28, write the disability framework into the fields of employment, thereby re-shaping workplace rights and practices by defining capabilities differently.

Employment jurisprudence foregrounds the insidious ways in which employers, despite a veneer of compliance, defeat disability rights in the workplace. Sections 38-41 speak of the reservation of posts for persons with benchmark disabilities, reservation of

5 per cent of the posts for persons with disabilities (with an internal categorisation and allocation between disabilities), the establishment of special employment exchanges, and incentives and disincentives to employers in the private sector: for compliance with 5 per cent reservation; added incentives for going beyond 5 per cent and disincentives for dropping below 5 per cent. Financial inclusion, a key concern, is set out in Section 7, along with provisions for loans for self-employment in Section 24 and comprehensive insurance in Section 29.

Apart from employment in its recognisable form, the bill provides recognition of care-giving (voluntary and paid) as central to the organisation of labour, thus rupturing the public-private divide in the recognition of labour power, as also the distinctions between reproductive and productive labour, which in this context, become extremely tenuous.

The key principle, which forms the basis of the social organisation of work and labour is non-discrimination, delineated as follows:

“Discrimination on the basis of disability’ means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination, including denial of reasonable accommodation.”³⁸

The barriers are defined in Section 2(e) the RPWD Bill as “any factor including attitudinal, communicational, cultural, economic, environmental, institutional, political, religious, social or structural factors, which hampers the full and effective participation, of persons with disabilities in society.” This is a principle that is at the core of the equality code of the Constitution of India, as part of Article 15. However, what the RPWD Bill, in fact, accomplishes is a cogent definition of discrimination that may then serve as a benchmark for the definition of discrimination under Article 15 of the Constitution, which has so far been restrained in application to its special provisions clauses, possibly because of the absence of clear definition.

IV. CONCLUSION

This essay began by examining the ways in which persons with disabilities are situated in the discourse and practice of social security, particularly relating to the labouring poor in informal sector employment in India. With social security being an area that is primarily concerned with counterbalancing and compensating the negative consequences of social vulnerability and poverty, the discussion on this issue is particularly relevant to an understanding of the predicament of persons with disabilities, since their categorisation as the non-labouring poor is at the root of their exacerbated vulnerability to poverty and destitution.

While analysing case law on the employment of persons with disabilities, I have attempted to underscore the ways in which the ends of justice are disabled through a mis-alignment between the purpose and text of enabling legislation and its interpretation, which reproduces the rhetoric of able-normativity. This is finally reversed in the case of reservations in public

employment at all levels brought to the Supreme Court of India by the National Federation for the Blind:

“Employment is a key factor in the empowerment and inclusion of people with disabilities. *It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce.* As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.”³⁹

There is a disjuncture between disability legislation, and labour legislation compensating disablement, which prompts the following questions: What is the position of a worker with disabilities who suffers disablement? How may we redefine socially necessary labour time in a manner that represents the contribution of the worker with disability, and the contribution of the care-givers of persons with high support needs, instead of defining the norm independently and outside of her/his experience, and thus setting up barriers? And how might we assess skill, intensity, and magnitude of value in terms of the range of diversities in abilities and the range of disabilities? I return here to Walzer’s delineation of *complex equality* where distributions of social goods must be different across differences – “when we see why one good has a certain form and is distributed in a certain way, we also see why another must be different” (Walzer, 1983, p. 318).

The fact that this is a clear possibility is demonstrated to us through the work participation of persons with disabilities, not just in formal employment, but also importantly, as part of the labouring poor. How might we use the *interstitial strategy* crafted by persons with disabilities in the NREGA scheme to revisit the deliberations on workers’ rights with a view to opening out a space for workers with disabilities—in government spending in all spheres of development and social sectors; and in deliberations around social security for the labouring poor.⁴⁰ The starting premise for a new beginning is the redefinition of the “social floor.”

The wisdom of the movement for disability rights has undoubtedly played a key, constitutive role in terms of revisiting the discourse on the labourscape. This is a defining moment that holds the possibility of catalysing a radically different understanding of disability in the labourscape, reinforcing Wright’s statement that “if emancipatory visions of viable alternatives are to become the actual real utopias of achieved alternatives it will be the result of conscious strategies of people committed to democratic egalitarian values” (Wright, 2010, p. 28). To the extent that the disability standpoint shines the torch on a ‘real utopia’, and redefines democratic egalitarian possibilities, the concern with disability is not limited to persons with disabilities, but proliferates from there to encompass resistance to all forms of discrimination and creates a different language for law and justice.

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Abbreviations in the Case of Citations

AIR: All India Reporter; DLT: Delhi Law Times; SCC: Supreme Court Cases; SC: Supreme Court.

Notes

1. Clause (m) in the Preamble. Emphasis added.
2. Harriss-White (2003) observes that social welfare agendas in India have pushed disability to the foot, and intellectual and political engagement on this issue is halting and inadequate.
3. Figures from the Census of India, 2001, indicate that out of a total of 2,19,06769 persons with disabilities (of which 57.5 per cent are males and 42.5 per cent females), 74.8 per cent lived in rural areas, with 47 per cent being in the economically active age group of 20-59 years. Figures for the proportion of workers among the total disabled stood at 21.49 per cent and non-workers to the total disabled stood at 78.51 per cent. However, problematic as this concentration of the disabled in the category of non-workers might be, the proportion of main workers in the total disabled workers stood at 73 per cent, a fact that is significant to the present argument (Census of India, 2001).
4. The case of *Veena Sethi vs. State of Bihar* wherein sixteen prisoners, held in prison for periods ranging from 25 to 35 years, despite having been cleared for release by psychiatrists, were sent off with bus fare

- and a meal allowance for two days by Justice Bhagwati's court, epitomises the situation of workers with disabilities generally.
5. The title for this section is adapted from the discussion on 'narrative prosthesis' in literature, where the authors argue that the person with disability serves as a prosthetic device in defining the "normalcy" (Mitchell and Snyder, 2010).
 6. The proposed amendment among other things suggests: (a) life and disability cover, (e) additional protection to Dalits, women, Adivasis and other excluded groups like sex workers, eunuchs, the handicapped, and abandoned old people/sick people. This residual category conflates an occupational group, a sexual minority, disability, aging and illness. Available at: <http://www.socialsecuritynow.org/SSNOW%20WEBSITE/booklets/amendments%20to%20the%20act.pdf>, Accessed on 13 October 2013.
 7. According to the Constitution of the World Health Organisation (WHO), "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity... The extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health... Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures."
 8. See Mitchell and Snyder (2010) for a discussion on narrative prosthesis, adapted in this paper to look at the law. This is particularly relevant given that law and literature are two major representational forms that imagine bodies, societies and sources of legitimacy in specific ways, serving to discipline them in the process.
 9. Justice Krishna Iyer in *Dr. Jagdish Saran & Ors. vs. Union of India*, 1980 2 SCC 768.
 10. G.O. No. 43/90/66-Apptt. 4 dated 18 July 1972 cf. *Daya Ram Tripathi vs. State of UP & Anr* 1986 Supp SCC 497.
 11. *Daya Ram Tripathi vs. State of UP & Anr* 1986 Supp SCC 497.
 12. *Amita vs. Union of India*, 2005 (13) SCC 497.
 13. *National Federation of Blind vs. Union Public Service Commission*, 1993 AIR (SC) 1916. See also *Swadesh Chandra Majumdar v. Chief Operating Manager, Calcutta Tramways Company Ltd.* Case No. 636/Com-2009 where an employee is assigned light duties owing to low vision and then retired on 'medical grounds'.
 14. *National Federation of Blind vs. Union Public Service Commission*, 1993 AIR (SC) 1916.
 15. *Pushkar Singh and Others vs University of Delhi and Others* 2001 (90) DLT 36.
 16. *Smt. Shruti Kalra vs. University of Delhi and Ors* 90 (2001) DLT 262. Emphasis added
 17. *Government of NCT of Delhi vs. Bharat Lal Meena & Surinder Singh* 100 (2002) DLT 157 (DB).
 18. The case of Ravi Arora brings to the fore the crux of the problem faced by persons with disabilities in the field of employment, in this case, public employment of the most prestigious order, the civil services in the country. In fact the issues in this case are a slide back from the National Federation of the Blind case, with the court forced into a repetitive jurisprudence rather than one that demonstrates a progressive development of the principle of non-discrimination. *Ravi Kumar Arora vs Union of India and Another*, 2004 (111) DLT 126.
 19. *Union of India vs. National Federation of the Blind and Ors.* Civil Appeal No. 9096 of 2013, Supreme Court of India, paras 51-52; *Indra Sawhney vs. Union of India* (1992) Supp 3 SCC 217.
 20. Available at: www.ncpedp.org/policy/pol-res02.htm, Accessed on 3 December 2008. This is evident in the scale and nature of service provision—17 Vocational Rehabilitation Centres run by the Government for disabled people across the country; 30,390 clients admitted during 2003, but only 9,292 rehabilitated; training in non productive skills—spice-making, cane-weaving, candle-making, block printing and the manufacture of stationery items—none of which can assure a viable livelihood. For a more detailed discussion on policy, please refer to Kannabiran, 2012.

21. Juan Somavia, 2001, Available at: www.ilo.org, Accessed on 30 September 2013.
22. I am grateful to Abdul Sajid Ali and Narra Thirupathamma, for accounts of these workers.
23. Cf. Lennard Davis, 2010, p. 12. Of course, Charles Bovary decides to surgically correct Hippolyte's 'deformity', leading to gangrene and amputation.
24. For a detailed and succinct analysis of Article 27, see Ferraina, 2012.
25. 8(4), G.O. Ms. No. 27, Panchayati Raj and Rural Development (RDII), 28 January 2006.
26. G.O. Ms. No. 80, Panchayati Raj and Rural Development (RDII), 22 March 2006.
27. Circular No. 1688/EGS/PM (D)/2010/ dated 7 May 2011.
28. Circular No. 1456/EGS/PM (D)/2010 dated 30.09.2010, Commissioner, Rural Development, Government of Andhra Pradesh. Although this circular stipulates an upper age limit of 60 years, this was subsequently removed vide Circular No. 1456/EGS/PM (D)/2010 dated 20 October 2010. Commissioner, Rural Development, Government of Andhra Pradesh.
29. Ibid. Para IV.
30. Ibid. Para V.
31. The complex intersections between gender, disability and work, especially in the context of the gender division of labour among workers with disabilities is an area that requires greater attention. I can only flag the concern in this essay.
32. Ibid. Para IX.
33. Government of Andhra Pradesh, Employment and Social Welfare (B2) Department, Memo No. 873/B2/74-12 dated 18 July 1974.
34. Ibid. Para VI.
35. Ibid. Para VII. Further detailing of works in Circular No. 395/PM (T)/EGS/2012, dated 30 March 2012. Commissioner, Rural Development, Government of Andhra Pradesh.
36. Circular No. 1456/EGS/PM (D)/2010 dated 30 September 2010, Commissioner, Rural Development, Government of Andhra Pradesh. Para II. Translation by the author.
37. This possibility of using the bill as a vantage point to envision a different labourscape is fulfilled even without the passage of the legislation (though undoubtedly the force of the enactment could be a game-changer).
38. Section 2(l) of RPWD Bill 2012.
39. Union of India vs. National Federation for the Blind and Ors. Civil Appeal No. 9096 of 2013, Supreme Court of India, para 49. Emphasis added.
40. Wright uses 'interstitial strategy' to refer to processes "that occur in the spaces and cracks within some dominant social structure of power" (2010, p. 322) that has the potential to "play a central role in large scale patterns of social change" (2010, p. 323).

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Appendix

Employment Generated for Persons with Disabilities under
NREGA during Financial Year 2013-14 (as on 21 November 2013)

<i>Serial No.</i>	<i>State</i>	<i>Number of Individual Beneficiaries with Disabilities</i>
1.	Andhra Pradesh	1,05,927
2.	Tamil Nadu	69,268
3.	West Bengal	42,695
4.	Maharashtra	15,557
5.	Chhattisgarh	15,024
6.	Tripura	9570
7.	Uttar Pradesh	8366
8.	Gujarat	8178
9.	Madhya Pradesh	6996
10.	Jharkhand	3040
11.	Bihar	2619
12.	Karnataka	2271
13.	Rajasthan	2251
14.	Odisha	2243
15.	Jammu and Kashmir	1901
16.	Assam	1614
17.	Kerala	1286
18.	Himachal Pradesh	1186
19.	Manipur	582
20.	Punjab	277
21.	Haryana	204
22...	Uttarakhand	158
23.	Meghalaya	123
24.	Nagaland	90
25.	Mizoram	88
26.	Sikkim	55
27.	Puducherry	23
28.	Arunachal Pradesh	13
29.	Andaman and Nicobar	8
30.	Lakshadweep	1
31.	Goa	0
32.	Chandigarh	0
33.	Dadra & Nagar Haveli	0
34.	Daman & Diu	0
	Grand Total	3,01,614

Source: Ministry of Rural Development, Government of India., Available at: <http://nrega.nic.in/netnrega/home.aspx>, Accessed on 21 November 2013.

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CONTENTS

Articles

Rupa Chanda and Shahana Mukherjee: Indian Student Mobility to Germany: Trends, Prospects and Implications for the Labour Market 5

Kakoli Borkotoky and Sayeed Unisa: Educational Deprivation of Children in India: Insights from Recent National Level Household Survey 39

Sailabala Debi: Loan Financing to Higher Education: Experiences of Bank Financing in a Less Developed Region 55

Ph.D Thesis Abstract

Medha J. Gupte: Indian Higher Education under the GATS Umbrella with Special Reference to Mumbai and SNDT Women's University (1995-2005) 83

Book Reviews 91

Rahul Mukhopadhyay: School Education, Pluralism and Marginality: Comparative Perspectives (C. Sleeter et.al., eds.); N. Jayaram: Sociology of Education: Changing Contours and Emerging Concerns (Geetha B. Nambissan and S. Srinivasa Rao, eds.); G. Kamalakar: Indian Higher Education: Envisioning the Future (Pawan Agarwal); K.R. Shah: Taiwan Education at the Crossroad: when Globalization Meets Localization (Chuing Prudence Chou and Gregory Ching); Jandhyala B.G. Tilak: Student Financing of Higher Education: A Comparative Perspective (Donald E. Heller and Claire Callender, eds.)

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