CRITICAL PEDAGOGY OF THE DISABLED IN LEGAL ACADEMY AND POSSIBILITY OF EMANCIPATORY SCRIPT OF DISABILITY MOVEMENTS: A CRITICAL NOTE

Dr. Vijay Kishor Tiwari,
*Arjun Ghosh & Sushanth Gajula**

Is there a possibility of a critical pedagogy of the disabled in law schools where epistemic imagination is colonised by positivism? What would be the framework and trajectory of such pedagogy? The authors try to sketch the oeuvre of this pedagogy by exposing the inherent limits of disability studies and movements that seek their validity in the language of the neo-liberal market and state. In doing so, the paper highlights the intrinsic exclusionary nature of our legal pedagogy, law schools, and legal discourses concerning our disabled embodiment and our lived experiences that get pushed to the periphery due to this aggressive imposition of the positivist framework of pedagogy that gives its uncritical discursive support to neo-liberal agenda. This endeavour necessitates going beyond the clearly delineated, orderly, definite, and precise domain of positivist jurisprudence and critically examine the prevailing liberal discussions regarding accessibility and reasonable accommodation. The authors juxtapose three figures of disabled embodiment, namely, Vikas Kumar, G.N. Sai Baba, and Stan Swamy, and their interaction with our judicial system to expose the limits of liberal legalism, its discourse, and limits of disability movements that have only middle-class concerns into their vision.

Table of Contents

I. *Introduction* 421
II. *Situating the Disabled in Academy and the Need of Radical Intervention for Embodied Justice: Methodological Praxis of Disabled Embodiment* 425
III. *Intervention through Disabled Embodied Methodology in Law*

* Vijay Kishor Tiwari is an Assistant Professor (Law), and Arjun Ghosh and Sushant Gajula are 5th-year students at the West Bengal National University of Juridical Sciences, Kolkata. The authors thank the Editors at NUJS Law Review for their comments and feedback to the drafts of this article. All errors, however, are the sole responsibility of the authors. The authors may be reached at vijaykt@nujs.edu, arjun219034@nujs.edu and sushanth219076@nujs.edu respectively, for any feedback or comments.

Academy: Breaking the Protocol and Telling a Different Story..........*429*
IV. 'Asking the Disabled Question': Learning and Engaging with other Subaltern Movements and their Pedagogical and Methodological Praxis..........*432*
V. Critical Pedagogy of the Disabled in Law School..........*434*
VI. Problematising the Liberal Discourse on Disability and Accommodation..........*440*
VII. Between 'Accommodated' and 'Outlawed': Exposing the Limit of Liberal Inclusionism of Disability..........*444*
VIII. Conclusion..........*447*

I. INTRODUCTION

The Bar Council of India ('BCI') governs legal education in India. §7(1)(h) of the Advocates Act, 1961 states,

> "The function of the Bar Council of India shall be to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the state bar council."

However, one may lament that BCI, through its power to promote and lay down standards, has created a very asymmetrical framework of legal education. Law schools in India are classified into different categories: National Law Universities which specifically focus on law as a discipline, 'traditional law schools' (primarily law departments of various universities), and private law schools. The classification of law schools into various categories has resulted in a notably unequal distribution of legal education opportunities among students. The fortunate and those with access to epistemic privilege can be admitted to National Law Universities or expensive private law schools. In contrast, the deprived or victims of epistemic injustice are forced to choose "traditional law school". National Law Universities are further classified, albeit informally, as Tier-1, 2, and 3 based on placements, faculty profiles, and NIRF rankings. This tier system of law education is often taken for granted by every stakeholder. However, a simple question needs to be asked: Does this hierarchical structure of legal education not contradict the principles of equality embedded in our Constitution? Such a hierarchical state of legal education may present hierarchies and privileges as the natural state of affairs and enforce and enable societal prejudice against subalterns such as Dalits and the disabled.[1]

[1] Sumit Baudh, *Roll Call of Shame*, The Indian Express, January 25, 2016, available at https://indianexpress.com/article/opinion/columns/rohith-vemula-suicide-discrimination-against-dalit-students/ (Last visited on September 30, 2023); *See also* Amala Dasarathi, *Caste in Law Schools, the Elephant in the Room,* Sabrangindia, June 24, 2017, available at https://sabrangindia.in/caste-law-schools-elephant-room/ (Last visited on September 30, 2023).

Law schools, considered sites of valid legal knowledge, are also sites of exclusions. They are sites of ableism, patriarchy, epistemicide, and racism that translates into casteism in the Indian scenario. This thesis may seem radical, but if one scratches the surface of reality, one may find the exclusion of the subaltern and their experiences from the pedagogy, curriculum, and, in several cases, even in the architecture of law schools. Their body, positionality, and knowledges emerging from their embodiment are still absent in law schools' positivist discourse.[2] The claim of law schools' value-neural, objective, and detached positivist pedagogy obscures several truths and realities emanating from subaltern embodiments. Realities of subdued embodiments remain mere white noises for the orthodoxies of law school pedagogy.

The attempt of critical legal scholarship of various hues (Critical Race Theory, feminist, queer, and others) is to unearth the reality of how this value-neutral positivist pedagogy "conceptually and persistently renders certain bodies and space-time untranslatable and illegible".[3]

A claim of positivist neutrality truncates the possibility of the emergence of plural legal meanings as it hegemonises a 'particular' view as universal, erasing all other possible meanings of law emanating from the plurality of positionality of different embodiments. Hence, when a CRT scholar unpacks the reality of this 'neutrality,' she finds that 'white-ness' as a global power structure produces an asymmetrical global and legal power structure that is racially biased. Such neutrality of law imposes a particular set of historical and political realities on erased or silenced embodiments. Every knowledge is embodied, subjectively defined, and situated.[4] The much-celebrated academic objectivity, in its disembodied avatar, has "the power to see and not be seen, to represent while escaping representation", and this particular academic gaze privileges the positionality of Man and White.[5] Disability philosophy scholar Shelley Tremain points out that such neutrality and objectivity of every "traditional" discipline in a university advances certain ontologies, methodologies, and epistemology that present themselves as value-neutral and detached.[6] A critical pedagogy, therefore, must come

---

[2] We use 'knowledges' instead of 'knowledge' to debunk the myth of singularity of objective epistemic vision. We take inspiration from Donna Haraway's formulation of "situated knowledges." Haraway argues that the history of sciences and its allied objectivity is linked to militarism, capitalism, and male supremacy. In this framework of the singularity of knowledge, privileged bodies of white males and abled-bodied get to define the 'objective' frame of knowledge. We use 'knowledges' to assert our agency to know and situated knowledges coming from our lived experiences and to debunk the myth of objective singular knowledge*, see* Donna Haraway, *Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective*, Vol. 14(3), Feminist Studies, 575 (1988).

[3] Folúkẹ́ Adébísí, Decolonisation and Legal Knowledge: Reflections on Power and Possibility, 7 (Bristol University Press, 2023).

[4] Haraway, *supra* note 2.

[5] *Id.*, 581.

[6] Shelley Lynn Tremain, *New Movement in Philosophy: Philosophy of Disability* in The Bloomsbury Guide to Philosophy of Disability, 2 (Shelley Lynn Tremain ed., 2023).

from scholars who are institutionally and epistemically subordinated through the erasure of their experiences. Critical pedagogy must valorise subjugated identities and perspectives as critical theory situates an individual in his/her social and historical context. In these social and historical contexts, facts and ideas are situated. Unlike traditional theories that consider facts as objective and universal, critical theories have the potential to see the social constructs of facts and theories. By situating the theory and theorist in historical and cultural contexts, critical theory unpacks "the conceptual foundations and the politics of knowledge".[7] This intellectual thrust of critical theory offers us a profound epistemic hope.

Attempting to sketch a pedagogy of the disabled also comes from the desire to have an autonomous space for knowledges emerging from disabled embodiment. The question of justice and non-normative embodiment has been at the centre stage of feminist, queer, and CRT discourses. By using their critical methodologies, these discourses have attempted to question the cis-gendered, homophobic, and racist epistemic impulses of 'mainstream' scholarship. However, disability and its discontents are relatively new entrants in the justice discourse, and therefore, disabled embodiment has not been given space in the pedagogical practices of critical schools. In the name of inclusive pedagogy, even critical discourses have haphazardly added the question of disabled embodiment.[8] In this hyphenated epistemic existence, the question of disability remains decentred and obscured. Therefore, an autonomous disability studies discipline and its pedagogical practices must be developed.

There is an immediate political task before us to highlight the exclusion of the disabled embodiments and the knowledges generated from such embodiments in law schools. This task is both political and urgent, as highlighting this exclusion may profoundly impact curricula and legal discourse around us. Having "incredulity towards metanarratives" of law schools unmasks the failure of the ableist positivist paradigm of legal discourse.[9] It highlights its inability to ensure justice for the disabled as political agents who have agency to tell and privilege *petit récit* coming from disabled embodiment. Moreover, a critical pedagogy will also be self-reflective. Though in a truly postmodern sense, now Critical Legal Theories, including Disability Theories, are taught in privileged law schools, they have not been able to address the question of disadvantage in a radical way. Critical Legal Theory has remained a "scholarship of privilege".[10] This is true for contemporary disability studies and movements, too, as they are guided by middle-class, apolitical concerns that have excluded several segments of the disabled and their demands.

---

7 Margaret Jane Davies, Asking the Law Question, 192 (4th edn., 2017).

8 Tremain, *supra* note 6, 3.

9 *See* Jean-François Lyotard, The Postmodern Condition: A Report on Knowledge (Manchester University Press, 1984).

10 Amita Dhanda & Archana Parashar, Decolonisation of Legal Knowledge, 11 (Amita Dhanda & Archana Parashar, 1st edn., 2009).

Therefore, the authors propose a critical pedagogy of the disabled must transgress and question the liberal proposal of inclusion.[11] While arguing for the critical pedagogy of the disabled, we argue that the current trajectory of disability inclusion and its apolitical discourse merely talk about concessional issues and leave aside the question of the disabled, who might have politically dissenting voices. Our proposal of critical pedagogy of the disabled shall include the concern of disabled dissenters and critique and expose the limit of liberal legalism. Liberal debate on the inclusion of the disabled by addressing merely the issue of concession gets co-opted by the national elites, and it never allows a true emancipatory project of disability movement to emerge. Thus, to expose the limit of liberal discourse on disability, we take a particular meaning of 'critique' proposed by Ian Duncanson. Critique enables, celebrates, and valorises doubt. Thus, critique "involves choosing a context to understand, interpret, and confer meaning, and explaining why it seems that one meaning "works" better than another and for whom".[12] Achieving this pedagogical justice should be an urgent task for disability movements in general and disabled stakeholders of the academe. This task becomes more important in a law school as it claims to deal with various dimensions of justice through imparting justice jurisprudence and by producing members of the Bar and Bench who get to define the normative paradigm of justice. Thus, imparting pedagogies of justice in law schools as sites of normative production of justice becomes acutely urgent.

Part II of the paper locates the disabled in academy while highlighting the need for radical intervention for embodied justice within this paradigm as it presents a methodological praxis of disabled embodiment. Following this, Part III of the paper analyses intervention within legal academy through this disabled embodied methodology. Part IV engages with other subaltern movements in addition to their respective pedagogical and methodical praxis. Part V of the paper presents the reader with a critical pedagogy of the disabled in law school. Part VI examines the ongoing liberal discourse on disability and accommodation and its impacts. Part VII analyses and presents a discussion on the reality of liberal inclusionism of disability. Part VII presents a conclusion for the analytical discourse undertaken in the preceding parts of the paper.

[11] In doing so, the authors, who are themselves disabled in different forms, will attempt to highlight the exclusion faced by the disabled by making an appraisal of academia in general and legal academy in particular. All three authors are disabled in some form. Dr. Vijay Kishor has had paralysis in the right side of his body since childhood due to infantile hemiparesis. Arjun and Sushant have visual impairments of varied degrees. We have different disabled embodiments and experiences thereof. However, our epistemic exclusions have been a common thread that binds all three of us. We also see ourselves as political actors, having our political agency and voice. This awareness shapes the very oeuvre of our paper and our attempt to provide a sketch of possible pedagogy inclusive of disabled embodiments and our 'critique' of liberal 'inclusionism' discourse.

[12] *See* Ian Duncanson, *Legal Education and the Possibility of Critique: An Australian Perspective*, Vol. 8(2), CJLS, 59-82 (1993).

II. SITUATING THE DISABLED IN ACADEMY AND THE NEED OF RADICAL INTERVENTION FOR EMBODIED JUSTICE: METHODOLOGICAL PRAXIS OF DISABLED EMBODIMENT

Today's academia is defined by specific markers of excellence, such as rankings, h-index citations, production of papers, etc. Producing this 'excellence' and 'rigor' requires accessibility to academic resources, guidance, and networks that are often unavailable or even denied to the people at the margins. The pursuit of 'Institutions of Excellence' has subdued the pursuit of 'Institutions of Equity'.[13] The question of equity has been pushed to the margins. Instead, they are included only as a performative indicator or score points for scoring good ranking given by ranking and accreditation agencies.

Deconstructing equity is complex. However, for us, equity means not only the accessibility to resources but also ensuring epistemic justice that recognizes the disability as a legitimate site of knowledge. Such construction of equity has neither been understood nor desired. The lived experiences of disability have been at the margins of our pedagogical discourse through the technical markers of excellence that refuse to acknowledge the disabled embodiment as a legitimate site of knowledge production. This epistemic ignorance of the hegemony of normality actively erases the disabled episteme. As Anita Ghai opines: "Both abled and disabled people's knowledge is shaped by their social location. From positions of normality and consequent dominance, ignorance can take the form of those in power either repudiating to allow those who are at the margins to know or of actively erasing knowledge that creates conscious and unconscious anxieties about knowledge that can create vulnerability".[14]

The hegemony of normality in our university spaces has perpetuated epistemic oppression and epistemic injustice against the disabled. The epistemic oppression produces a "persistent epistemic exclusion that hinders one's contribution to knowledge production",[15] cancelling or erasing the epistemic agency of a knower by creating impediments in knowledge production. This erased epistemic agency never allows the disabled to become a full member of a scholarly community defined by peer consensus on normative academic rigor. This complex maze of academic rigor ultimately results in epistemic injustice to the disa-

---

[13] In the First Shamnad Basheer Memorial Lecture, Justice Muralidhar talked about how our pursuit must not be limited to making our universities 'Institutes of Excellence' (IOE) but also to changing them in 'Institutions of equity', *see Law Schools Must Teach Students to Question Abuse of Power & Authority: Dr Justice S Muralidhar*, LiveLaw, September 12, 2020, available at https://www.livelaw.in/videos/law-schools-must-teach-students-to-question-abuse-of-power-authority-dr-justice-s-muralidhar-162828 (Last visited on January 17, 2024).

[14] Anita Ghai, *Ignorance of Disability: Some Epistemological Questions* in Disability Studies in India: Interdisciplinary Perspectives, 79 (Nilika Mehrotra ed., 2020).

[15] Kristie Dotson, *Conceptualizing Epistemic Oppression*, Vol. 28(2), Social Epistemology, 115 (2014).

bled "specifically in their capacity as a knower".[16] Miranda Fricker argues that epistemic justice should be approached from a negative space, i.e., epistemic injustice. Epistemic injustice occurs when someone is wronged in his/her capacity as the knower, thereby enabling stereotyping and silencing of certain voices and experiences. Through the process of epistemic injustice, disabled people, as a non-dominant group, are not adequately believed or consulted.[17] One of the forms of this epistemic injustice is 'testimonial injustice', which represents a credibility deficit emanating from the biases of interlocutors. Amandine Catala provides an example of the dismissal of the contribution of an autistic student by the teacher as he does not make eye contact and takes time to respond.[18] The idea of epistemic injustice against the disabled has come out clearly in *On Blindness: Letters between Bryan Magee and Martin Milligan,* in which Magee designates Milligan as a defective knower who cannot have the experience of colour as an abled-bodied person and, therefore, his experience is greatly limited. Milligan maintained that blindness does not translate merely an experience of darkness.[19] Furthermore, this injustice also comes in the form of 'hermeneutical injustice' that emanates from the inbuilt biases of the society within hermeneutical tools or resources that shape mainstream discursive practices, common sense, and imaginations. The dominant hermeneutical resources thus obscure, erase, or taboo the experiences of non-dominant groups such as persons with disabilities.[20]

As the victims of epistemic oppression and injustice, the disabled are considered decentred subjects or merely an object of study who cannot produce meaningful discourse in the academic sense. This present situation of the predicament of the disabled requires situating the disabled and his/her experience in legal academia in the capacity of being a teacher, student, or researcher.

Foucault points out that power creates knowledge and produces discourse, and thus, it produces truth.[21] The reality thus produced obscures that "Knowledge is neither timeless nor universal, but relative to circumstances and particular (or partial)… It is sought and acquired by individuals for some purpose or another, and as this changes, what they 'know' will also shift".[22]

A privileged position for the epistemology of the abled-bodied is achieved by obscuring the knowledge coming from non-dominant disabled

[16] Miranda Fricker, Epistemic Injustice: Power and the Ethics of Knowing, 1 (Oxford University Press, 2007).

[17] Amandine Catala, *Epistemic Injustice and Epistemic Authority on Autism* in The Bloomsbury Guide to Philosophy of Disability, 248 (Shelley Lynn Tremain ed., 2024).

[18] *Id.*, 248.

[19] Bryan Magee & Martin Milligan, On Blindness: Letters Between Bryan Magee and Martin Milligan (Oxford University Press, 1995).

[20] Catala, *supra* note 17.

[21] Michel Foucault, Power/Knowledges: Selected Interviews and Other Writings, 1972-1977, 109-133 (Pantheon Books, 1984).

[22] Bain Attwood, *Introduction* in Power, Knowledge and Aborigines, 1-2 (Bain Attwood & John Arnold eds., 1992).

embodiment. The provincialised experiences of the abled-bodied are universalised as "common sense" and universally valid knowledge, erasing epistemologies, ontologies, axiologies, and methodology from disabled embodied experiences. In law schools, this non-recognition of disabled personhood is repeated and highlighted through positivist teaching pedagogy and a non-critical view of black letter law, thereby imposing the particular and partial experiences of able-bodies as universally valid truth claims. This hegemony of abled-bodied pedagogy enjoys enormous discursive power in which it presents its partial realities as truth. However, this epistemic power of able-bodied does not emerge in a historical and social vacuum. The near monopolisation over academic resources and networks allows abled-bodied truth to emerge as the 'authentic' reality.[23]

Thus, in a quintessential Kuhnian sense, our truth claims are partial and merely consensus of those considered 'full' and 'competent' members of our academic community. This 'peer consensus' and 'academic competency' is often achieved through access to resources, the right networks, and the right people who are the gatekeepers of knowledge. These networks and gatekeepers enjoy considerable power in academia and produce and enable a particular reality by hiring cadres who support their truth claims and paradigms.[24] These cadres valorise and defend certain academic frameworks through journals and curricula. Access to these networks and people is a matter of privilege that a person from marginalised groups often does not possess. Disabled are hugely disadvantaged by this process of knowledge and discourse production.

In this framework of academia, abled-bodied normativity makes disabled 'ontologically strangers' and 'marginal intellectuals'.[25] The able-bodied gaze disability and its experience through "epistemology of ignorance" thereby erase and forget the knowledge of the disabled knower—such dehumanisation of disabled episteme forces Ghai to ask a very provocative question:[26] Whether the Subaltern (read disabled) can speak or be taken as academic?

In this way, bodily lived experience and epistemes coming from them are erased or given an inferior status. Rod Michalko provocatively asks this question as he opines: "Does a disabled body harbour a particular and valuable pedagogy? Are professors merely 'talking heads,' or do our bodies speak as well, and, if so, what do they say in the classroom, and how are they heard?".[27]

The contemporary markers of academic rigor do not see the disabled embodiment as the site of valid knowledge; the disabled remain a producer of

[23] Dotson, *supra* note 15, 127.
[24] *See* Sandra Halperin & Oliver Heath, Political Research: Methods and Practical Skills, 61 (3rd edn., 2020).
[25] Ghai*, supra* note 14, 84.
[26] *Id*., 82.
[27] Robert C. Anderson, *Teaching (with) Disability: Pedagogies of Lived Experience*, Vol. 28(3-4), Review of Education, Pedagogy, and Cultural Studies, 367-379 (2006).

merely 'naïve knowledge', a disabled teacher merely adds a 'cacophony of voice' incapable of producing discourse, and a disabled embodied episteme, which is valuable and worthy of academic consideration, remains at the periphery. A naïve or disqualified knowledge, Foucault explains, lacks cognition and scientificity. Disqualified knowledge does not meet the criteria of modern scientificity, it remains differential and thereby lacks unanimity. The suppressed voices of sick men, psychiatric patients, or delinquents are such disqualified knowledge.[28] Marking disabled episteme as disqualified the positivist legal pedagogy subjugates the lived experiences of the disabled and their encounter with the law. In the positivist paradigm of teaching, often, the disabled body of the teacher is either ignored, categorised, or marked as 'accommodated' or employed but remains a depository of disqualified knowledge. A disabled teacher is forced to accept his/her continuous erasure by naturalised legal pedagogy and this fact "how the law is consequently understood and predicated on variate technologies of inclusion and exclusion",[29] and not every human embodiment is considered worthy of being protected as 'law's human'.[30]

Such marginalisation becomes more glaring in legal academia, where the law is taught as a neutral discipline. However, it subtly promotes the interests of the powerful. In contrast, the questions of equity, deprivation, and vulnerability do not occupy the primary place in our pedagogy and curriculum. This neutrality of law is treated unproblematic and not problematised sufficiently.[31]

The positivist impulses of having 'uniformity' and 'certainty,' too, exclude disabled experiences. These impulses refuse to see disability as "the category of knowledge and analysis, the absence of which weakens the knowledge base".[32] This singularity of uniformity and certainty privileges and acknowledges the perspective of powerful classes alone. Davies argues that in Western philosophical tradition, the subject of knowledge, the person engaging with the knowledge referred to as 'I', has been a figure of a white male. She points out that until recently, the 'knower' position in the Western philosophical tradition was avail-

---

28 Ghai, *supra* note 14, 81.

29 Adébísí, *supra* note 3, 67.

30 *Id*.

31 In conversation with NUJS Law Review, two Professors, Prof. Amita Dhanda and Saurabh Bhattacharjee, talked about their experiences of teaching 'Law and Poverty' in their respective Law Schools, namely NALSAR and WBNUJS. As Prof. Dhanda pointed out, 'Law and Poverty' is not mandatory under the Bar Council Rules of Legal Education 2008. She argues that law teaching is perceived as an "apolitical enterprise." If a professor decides to teach the question of vulnerability, he/she is accused of being "ideologically driven." Such a course is being considered a course of "socialist enterprise." On the other hand, the supposed apolitical courses such as 'contract law,' 'competition law,' and 'corporate law' clearly advocate, enable, and impose the hegemony of capitalist logic and paradigm, yet their ideological bias is not unpacked in our legal pedagogy. Interestingly, a bare reading of these rules by us to see whether our embodiment features in contemporary law syllabi made it clear that no prescribed mandatory course by the BCI directly touches the question of the disabled, *see* Amita Dhanda & Saurabh Bhattacharjee, *Conversation on the Pedagogy of Law and Poverty*, Vol. 13(4), NUJS L. Rev., 1-21 (2020).

32 S. Linton, Claiming Disability: Knowledge and Identity, 120 (New York University Press, 1998).

able only to white males. Meanwhile, 'other' remains the object of knowledge due to their gender, race, or culture.[33] Moreover, the need for certainty and a clear source of law to achieve order, authority, and predictability allowed positivism to colonise the epistemic imagination of legal academia. The knowledges emanating from disabled embodiment may provide much-needed epistemological anarchism in order to break the shackle of methodological certainty of positivism that forecloses the alternative academic possibilities. Modernity and its allied laws show ambivalent and unsettled feelings for the peripheral embodiment of the disabled. We see a possibility of alternative knowledge possibilities as disabled embodiments challenge the modern construct of the subject profoundly. Disabled face discrimination not only for their difference but also because their embodiment challenges the imagery of the 'subject' within the modern project created on the promise of bodily autonomy and the ability of rational thinking. When the anomalous embodiment of the disabled challenges this project, any compromise to bodily autonomy deeply unsettles the normative majority.[34] Hence, the philosophical impulse of jurisprudence emanating from disabled embodiment also punctures positivism's intellectual frame, which does not see any necessary correlation between law and bodily justice. However, the theory of and from disabled embodiment militates against this positivist claim, asserting that neutral grounds for making truth claims do not exist and that every truth claim is partial, relative, and contextual.[35]

III. INTERVENTION THROUGH DISABLED EMBODIED METHODOLOGY IN LAW ACADEMY: BREAKING THE PROTOCOL AND TELLING A DIFFERENT STORY

Unmasking the façade of the 'neutral' and 'detached' nature of the positivist nature of law becomes the primary methodological concern of critical studies. The positivist outlook of law produces a discriminatory human category, veiling "feigned objectivity and impossible neutrality".[36] Standards set forth by positivist law and its logic inaugurate, validate, and advance the inequitable conditions for the marginalised. For Critical Race Theory scholars, such neutrality of law supported the racial construct of the world and imagination in which a partial perspective of 'white experience' is being imposed on the rest of humanity as a universal one. In this way, 'methodological whiteness' remains deeply pervasive.[37] Mills argues that such imposition of white experience produces a false

[33] Davies, *supra* note 7, 12.

[34] Margrit Shildrick, DANGEROUS DISCOURSES OF DISABILITY, SUBJECTIVITY AND SEXUALITY, 1 (2009).

[35] Steve Smith & Patricia Owens, THE GLOBALIZATION OF WORLD POLITICS: AN INTRODUCTION TO INTERNATIONAL RELATIONS, 274-275 (3rd edn., 2005).

[36] Adébísí, *supra* note 3, 41.

[37] Ros Taylor, *Why are the White Working Classes Still being Held Responsible for Brexit and Trump?*, LSE BREXIT, November 10, 2017, available at https://blogs.lse.ac.uk/brexit/2017/11/10/why-are-the-white-working-classes-still-being-held-responsible-for-brexit-and-trump/ (Last visited on October 1, 2023).

racial framework through which racialised white humanity sees a racially othered segment of humanity.[38] Building on this premise of Mills, Ghai argues that in academia, the normativity of the perfect abled body creates 'epistemologies of ignorance' about disability by ignoring and denying expression within the academic milieu.[39] Disabled, non-white women and queer are treated as the 'problem people' for the methodological lacuna of the supposedly universal and objective methods.[40] Therefore, methodological rebellion and breaking the positivist protocol becomes necessary for subjugated sections of humanity from their respective vantage points to resist the persistent epistemic erasure and silencing.

We propose that a disabled methodological intervention must continue to unmask the unjust blanket provisions of law from the vantage point of disability by radically breaking the positivist methodological protocols. Disabled methodological intervention can have its autonomous methodological thrust as well as solidarity with methodologies of other critical schools. Three established methodological prescriptions can be used to unearth the ableist nature of law, its episteme, and pedagogical practices: extensive use of standpoint epistemology, deployment of "multiple consciousnesses as jurisprudential method," and critical 'misreading' of the text of the law. 'Standpoint epistemology' can highlight the situatedness of knowledge and unpack the reality that our positionality profoundly influences our knowledge. It argues that the marginalised or disempowered people have a better and complete understanding of the oppressive nature of mainstream and dominant discourses. 'A view from below' challenges massively the 'view from nowhere' of positivist pedagogy. Standpoint epistemology has been extensively used by feminist legal theorists to unearth the 'male' nature of law. Disabled legal scholars, too, can deploy it to deconstruct the ableist nature of law.[41]

The other methodological prescription for a critical pedagogy of the disabled can be to promote a "multiple consciousness as jurisprudential method",[42] that is "founded not on the ideal of neutrality, but on the reality of oppression".[43] Mari J. Matsuda gives a very instructive example of a classroom in an American Law School where a woman of colour sits. The dialogic practice of this classroom is directed towards teaching the student lawyering skills that involve narrowing of the issues, finding the relevant evidence and precedence, etc. In this training to find relevant issues and case laws, many critical facts are left out as they are not considered worthy of a lawyer's attention. A woman of colour thinks about whether the defendant is a person of colour and whether the policeman is white.

---

[38] Charles W. Mills, The Racial Contract (Cornell University Press, 2014); Charles W. Mills, *White Ignorance* in Race and Epistemologies of Ignorance (Sullivan et al., eds., 2007).

[39] Ghai*, supra* note 14, 5.

[40] Adébísí, *supra* note 3, 44.

[41] Davies, *supra* note 7, 17.

[42] Mari J. Matsuda, Associate Professor of Law, William S. Richardson School of Law, *When the* First Quail Calls*:* Multiple Consciousness *as* Jurisprudential Method, Keynote Address at the Yale Law School Conference on Women of Color and the Law (April 16, 1989).

[43] *Id*., 10.

However, this fact and thinking do not fit the standard legal discourse. Therefore, she learns the standard discourse by keeping her consciousness from her positionality of being a woman of colour to herself. In law schools, every marginalised student is taught in a 'neutral' way to learn to adopt the standard legal discourse by suppressing critical facts and thinking emanating from their marginalisation in order to survive in law school and the profession. This continuous hammering of standard legal discourse must be resisted, and as Matsuda argues, a choice must be made to see the world from the standpoint of the oppressed. A multiple consciousness of jurisprudence will allow disabled scholars and students to see the asymmetrical world filled with inequities from their vantage point and assert a more equitable world for them. This is not merely conscious shifting but is an attempt to bring a just world by raising the marginalised consciousness.

'Misreading the text of law' is a radical methodology to unearth the real, provincial meaning of the supposed universal truth of positive law. It is breaking the protocol of our positivist orientation to tell the story of the marginalised. It suggests:

"When feminists deliberately and self-consciously read black letter law or critical legal scholars deliberately read judgments…in ways that such texts were generically and institutionally never meant to be read, they do it knowing that they are breaking the rules of the code, knowing that they are endeavouring to challenge those rules and to effect change by making the genres 'mean' differently (that is, making the genres tell a different story)".[44]

By breaking the protocol of the positivist reading of the law and by 'asking woman's question' the feminist scholars have already dismantled the myth of objective and neutral law. After all, Austin's Province of Jurisprudence is a site dominated by white (including abled-bodied) males.[45] This dominance is so near complete that it sees 'knower' as singular and is indifferent towards questions of ability, sexuality, race, caste, and disability. To paraphrase de Beauvoir, abled-bodied males use positivism to make legal academia in their own image and conflate it with absolute truth.[46]

Breaking the protocol for a critical pedagogy of the disabled would involve unmasking how the mainstream philosophical construct of law has left out the concerns of the disabled from its discursive realm. Shelley Tremain points out that mainstream philosophical thinking sees disability as a transcultural and transhistorical objective human defect. This approach refuses to see disability as a historically and culturally specific phenomenon, a complex structure of power.[47]

---

[44] Terry Threadgold, *Book Review: Law and Literature: Revised and Enlarged Edition by Richard Posner*, Vol. 23(3), Melbourne University Law Review (1999).

[45] Davies, *supra* note 7, 225.

[46] *Id.*, 226.

[47] Tremain, *supra* note 6, 4.

Casting disability as the natural and negative human condition, Tremain argues, allowed mainstream scholars to remove disability from the realm of philosophical inquiry. This epistemic apparatus of scholarship does not allow any serious engagement with the question of disability by negating its ontological, epistemological, and political status.

Breaking the code by asking the disabled question is a refusal to accept erased or inferior ontological, epistemological, or political status. An episteme of disability would make legal philosophy more inclusive by providing an alternative jurisprudential framework. Epistemological plurality would be a welcome change. However, we are aware that the demand for a plurality of epistemology makes the defenders of positivism anxious as the grand narrative of certainty, uniformity, and absolute grounding of knowledge is challenged. The plurality and heterogeneity of epistemology are seen as an invitation to epistemological anarchism by the gatekeepers of academia. Shefali Moitra points out:

"There is a fear that the admission of heterogeneity in epistemology will lead to anarchy as well to a communication breakdown. This is a common bogey raised by the mainstream disciplines. The point to be remembered is that pluralism is not synonymous with anarchy".[48]

IV. 'ASKING THE DISABLED QUESTION': LEARNING AND ENGAGING WITH OTHER SUBALTERN MOVEMENTS AND THEIR PEDAGOGICAL AND METHODOLOGICAL PRAXIS

Disability studies share a deep affinity with subaltern scholarships, such as feminist, queer scholarship, postcolonial and other critical scholarships. The epistemic rise and rebellion of critical scholarships have persistently challenged the orthodoxies of mainstream scholarship that come in the form of ableist, cis-gendered, heteronormative, and Eurocentric whiteness. This critical challenge has opened the path for many subjugated identities and their perspective.[49] Critical studies scholarships, using their standpoints, make an inquiry into the conceptualisation of mainstream scholarship by unpacking whose experiences shape the main framework of a discipline. In doing so, they unearth which academic framework gets enabled and which gets constrained or subjugated in the formulation of 'mainstream' scholarship. Critical scholarships, in this particular intellectual thrust, share a deep affinity to expose the façade of neutrality of mainstream scholarship. They highlight that every knowledge bears the imprint of social location and positionality. It is the power of a particular positionality and privilege of location that "epistemologies espoused by the middle class, white, heterosexual, able-

[48] Shefali Moitra, Feminist Thought: Androcentrism, Communication, and Objectivity, 137 (Munshiram Manoharlal Publishers, 2002).

[49] Tremain, *supra* note 6, 2.

bodied males tend to be given more credibility".[50] Scholarships produced from critical positionalities face similar hostility and disenfranchisement as well. This precarious situation necessitates those different critical scholars to share methodological exchanges, solidarities, and their experiences of epistemic subjugation and learning from it.

Therefore, there is much possibility of having dialogue, exchanges, and learning from each other. For example, the authors of this paper strongly feel that there is great potential in "asking the disabled question" along the lines of "asking the woman's question" as formulated by Katharine Bartlett. She explains that 'asking woman's question' in law means:

> "…how the law fails to take into account the experiences and values that seem more typical of women than of men, for whatever reason, or how existing legal standards and concepts might disadvantage women. The question assumes that some features of the law may not be nonneutral in a general sense but also 'male' in a specific sense. The purpose of the woman question is to expose those features and how they operate and to suggest how they might be corrected".[51]

However, such exchanges of methodology and learning do not mean that critical scholarships will not have different trajectories and contestations. Moreover, such exchanges must not result in scientific imperialism of one critical scholarship over the other. Putting the disabled embodiment and its experiences of exclusions at the center of legal discourse can profoundly challenge the ableist positivist paradigm. However, though the disability movement can learn from other subaltern movements, it will not mimic them in their entirety. 'Asking the disabled question' in law may confront 'asking woman's question' as being 'the other of the other,' the disabled find themselves even at the margins of subaltern movements. As Anita Ghai opines, feminist movements in India have subjugated the question of disabled women, which Ghai terms 'aggressive'.[52] Therefore, disability movements and their pedagogical and methodological praxis can learn from other subaltern movements and highlight their exclusions within those movements, too. In this way, they can make movements for equality and inclusion that are accountable to the concerns of the disabled.

---

[50] Josann Cutajar & Casimir Adjoe, *Whose Knowledge, Whose Voice? Power, Agency and Resistance in Disability Studies for the Global South* in DISABILITY IN THE GLOBAL SOUTH: THE CRITICAL HANDBOOK, 503 (Shaun Grech & Karen Soldatic eds., 2016).

[51] Katharine T. Bartlett, *Feminist Legal Methods*, Vol. 103(4), HARV. LAW REV., 829-888 (1990).

[52] Ghai, *supra* note 14, 81.

V. CRITICAL PEDAGOGY OF THE DISABLED IN LAW SCHOOL

To ensure cognitive and embodied justice for the disabled, we must seek the possibility of critical pedagogy of the disabled. In this paper, we are not attempting to provide a manifesto for the critical pedagogy of the disabled. Our attempt is rather modest. We merely attempt to show the inbuilt exclusion of the disabled in the current legal education scenario in India and also highlight the myopic vision of the current discourse on disability inclusion regarding reasonable accommodation and accessibility that dominates and guides gatekeepers of legal knowledge. Critical pedagogy of the disabled must engage with the following critical epistemic and political tasks:

First, the Critical Pedagogy of Disability must expose the exclusion and erasures of disabled embodiment from the oeuvre of the legal education framework. Then, we will attempt to sketch the critical pedagogy of the disabled in a limited sense i.e., 'whose voice' gets included in this pedagogy? Law school curriculum and extra-curricular practices produce obedient cadres among students who willingly participate in the non-equitable hierarchical system. In law schools, the pedagogy of the disabled has to identify the provisions, judicial reasonings, and the language of the law that erases or belittles our agency. Disabled are often considered eternal children who are always in need of protection, which profoundly impacts disabled consciousness.

The exclusion of the disabled starts from the top as the Bar Council of India, the body that regulates legal education in India, has shown profound insensitivity to the question disability. Experiences and even the word disabled are erased from the Bar Council of India Rules for Legal Education, 2008. While mandatory courses prescribed by the Bar Council have their ideological biases,[53] disability studies could not even find the mention in proposed elective courses in the Rules.[54] The Rules also do not mention reasonable accommodation and

---

[53] Alan Thomson, *Critical Legal Education in Britain*, Vol. 14(1), Journal of Law and Society, 183-197 (1987) (Thomson argues that the truth claims of positivist legal knowledge are not problematized sufficiently and are treated as unproblematic. The preoccupations of the core course curriculum make the framework of legal education tilted toward "rich people's law." Similarly, Stanley suggests that the predominance of private laws in the core curriculum "spurns the practical and theoretical, and automatically operates to preclude all but the most basic of academic aspirations, as the ideological framework of the hierarchy requires to do it."); Christopher Stanley, *Training for the Hierarchy? Reflections on the British Experience of Legal Education*, Vol. 22(2), The Law Teacher, 78-86 (1988) (Based on these arguments, Folúkẹ́ Adébísí suggests that such pedagogy and curriculum of law school "suppress critical reasoning and reinforce sociopolitical hierarchies."); *See* Adébísí, *supra* note 3.

[54] *See* Tanishk Goyal & Anchal Bhatheja, *In Law Universities and Beyond, Disability Education is Woefully Lacking*, The Indian Express, August 19, 2023, available at https://indianexpress.com/article/opinion/columns/law-universities-beyond-disability-education-woefully-lacking-8899504/ (Last visited on January 17, 2023).

accessibility of the disabled in the Centres for Legal Education.[55] Such erasures of the question of accessibility and accommodation have yielded law schools whose architectures themselves are markers of injustice to the disabled.[56] This lack of reasonable accommodation is aggressive,[57] subjugating the knowledge the disabled knower creates.

Second, the critical pedagogy of the disabled must highlight and challenge the legal exclusions of the disabled that have legal sanctity. Amita Dhanda points out that if a law excludes persons with intellectual disabilities from entering into contracts, then the capacity of every person with an intellectual disability becomes subject to legal scrutiny. However, the person may understand the nature of the transaction.[58] The complete erasure of disabled and disabled agency is still deeply embedded in law and its positivist patriarchal imagination. Not long ago, the state of Uttar Pradesh proposed The Uttar Pradesh Population (Control, Stabilization and Welfare) Bill, 2021, which erased the existence of a disabled child.[59] The Bill promotes the two-child norm and defines it as "an ideal size of a family consisting of a married couple with two children", it makes an exception if

[55] Bar Council of India Rules on Legal Education, 2008, R. 11 (Sch. III of the Rules is silent on the question of accessibility of persons with disabilities).

[56] The Authors' lived experiences in law schools are shaped by the erasure of their disabled embodiment and epistemic privileges of the abled-bodied. Prof. Vijay Kishor completed his LLB (2008-2011) from Campus Law Centre, which had an abysmal infrastructure. No classes used to happen on the ground floor; it had no lift facility, and therefore, wheelchair-bound persons were not at all seen on the Delhi University Law Campus. Despite securing an excellent rank in the entrance examination, he could not secure a hostel facility due to the severe paucity of hostels at Delhi University. As he lived in Mukherji Nagar, taking DTC buses daily was difficult and dangerous. When he took a job at Alliance University, Bangalore, he realized that the Bar Council of India is simply not taking concerns of the disabled while granting permission and recognition to universities to run LLB Courses. Alliance University Law School was run on the third and fourth floors without any lift facility. Arjun and Sushant, too, face daily exclusion due to their disability. Their struggle to get office orders in readable format for the visually impaired and efforts to get a chance in different competitions and societies of universities often result in futility and frustration.

[57] The effort to make National Law University more accessible has resulted in some success. NUJS has become the first university to have a unique policy for the disabled. Prof. Vijay Kishor is one of the primary authors of this policy. However, its actual realisation is still to be achieved, *see* Jelsyna Chacko, *Project Extensions, Disabled- Friendly Infrastructure and More: NUJS Announces Policy for Persons with Disability*, Bar and Bench, August 1, 2022, available at https://www.barandbench.com/apprentice-lawyer/wbnujs-introduces-policy-for-persons-with-disability-2022-attempt-to-strengthen-inclusivity (Last visited on October 1, 2023).

[58] Amita Dhanda, *Establishing a Disability Studies Centre in a Law University: Recounting the CDS NALSAR Experience* in Disability Studies in India: Interdisciplinary Perspectives, 152 (Nilika Mehrotra ed., 2020).

[59] Uttar Pradesh Population (Control, Stabilization and Welfare) Bill, 2021; *See also* Muralidharan, *Uttar Pradesh's Draft Population Bill has an Ableism Problem*, The Indian Express, July 27, 2021, available at https://indianexpress.com/article/opinion/columns/ups-draft-population-bill-population-control-7423718/ (Last visited on October 1, 2023); *See also* Rahul Bajaj & Anchal Bhatheja, *UP Population Control Bill Promotes Stereotypes Against Disabilities*, The Wire, July 27, 2021, available at https://thewire.in/rights/up-population-control-bill-promotes-stereotypes-against-disabilities#:~:text=The%20provision%20states%20that%20the,entitled%20to%20have%20three%20children (Last visited on October 1, 2023).

the couple has disabled children. Interestingly, the Bill equates the disability of the child with the death of the child as §15 of the draft Bill proposes:

> "Notwithstanding anything contained in this or any other law for the time being in force, an action of an individual shall not be deemed to be in contravention of the two-child norm under this Act if the either or both, of his children, born out of the earlier pregnancy suffer from disability and the couple conceives a third child subsequently."

Such a proposed Bill not only has the potential to produce stereotypes but also can be used to justify Eugenic logic and 'disabledcide'. In a nation where femicide and feticide are realities in the hope of abled-bodied male offspring, the fear of a law enabling disabledcide is not a far-fetched imagination. Thus, a critical pedagogy of the disability must be persistent in highlighting the exclusion of the disabled in our normative legal framework and logic.

Third, the critical pedagogy of the disabled must transgress the current limits set by liberal inclusionism discourse. It must produce a discourse that seeks to humanize the disabled without categorising them in terms of their political beliefs. It should expose the 'false generosity' of contemporary liberal accessibility discourses as they often hide injustices perpetuated by the several apparatuses of liberal governmentality on disabled embodiment. 'Reasonable accommodation' of the middle-class disabled in politically benign concessional issues may obscure the question of the political agency of the disabled. We draw inspiration from Paulo Freire's thesis to suggest that to obstruct the process of liberation, 'false generosity' is used and expressed to support the inherent exploitation of the oppressed. Freire argues that "In order to have the continued opportunity to express their 'generosity,' the oppressor must perpetuate injustice as well".[60]

The critical pedagogy of the disabled travels beyond the questions of reasonable accommodation in jobs and other opportunities and dares to venture into a political realm to seek accommodation of the disabled who might have been at the receiving end of State's wrath due to their political beliefs and disabled embodiment. Liberal inclusionism of the disabled has conveniently silenced the political questions of disability and autonomy of the disabled to have political agency to have 'dangerous discourse'. Drawing from Freire, we argue that contemporary liberal discourse on disability that articulates the question of accessibility merely in middle-class terms has "internalised the image of the oppressor and adopted his guidelines… (and is) fearful of freedom".[61]

Moreover, the disabled learn to subdue his/her consciousness to learn the techniques of law, positivist legal reasoning, respecting precedents of judicial

[60] Paulo Freire, Pedagogy of the Oppressed, 44 (Continuum, 2000).

[61] *Id.*, 47.

orders to survive and become a useful 'human resource' for law firms, and Bar and Bench.[62] This subdued consciousness of the disabled has produced middle-class, liberal, politically benign disability movements that only ask for concessional issues of accessibility and reasonable accommodation in a liberal paradigm. It does not radically challenge the idea of justice defined and articulated from a liberal, abled-bodied prism. It only seeks access and accommodation. Even the question of access and accommodation takes only middle-class concerns into its fold as the disability rights movement in India has followed a trajectory that has three prominent tendencies: The individual-centric organisations that primarily seek services and work on creating awareness, the second type of NGOs that work on rehabilitation programs, and there are disability studies scholars who are devoted to creating knowledge in the realm of disability. However, Anita Ghani argues that disability rights organisations privilege the concerns of middle-class men. Stretching this argument, Mehrotra argues that disability rights have turned into the right of certain privileged disabled with evident class character.[63]

The positivist teaching in law schools erases the bodies and tries to hide the fact that knowledge is situated subjectively and embodied. This denial of the body attempts to colonise the disabled imagination by hammering positivist language, its methodological protocol, and vocabulary in disabled people's minds. While critiquing Euro-modern laws, Black Feminist Law Professor Foluke Adebisi argues, using Crenshaw's idea of 'perspectivelessness', such claims of objectivity "deny the enfolded truth of the world in which its legal education has been produced and transmitted".[64] The pedagogy of the disabled must challenge and transcend such perspectivelessness that produces and articulates politically benign language and demand that merely seeks accommodation within neoliberalism. A pedagogy emerging from disabled experience will expose the neoliberal agenda of our universities and legal system that attempts to domesticate our alterity and colonise our imagination of emancipation. This pedagogy will recognise "how structural oppression manifests itself in the classroom, or what it is to maim and to be maimed?".[65]

---

[62] On this point, the critical theory scholar Duncan Kennedy has made a very sharp comment in his seminal work. For a detailed discussion, *see* Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, Vol. 32(4), Journal of Legal Education, 591-615 (1982)

("To say that law school is ideological is to say that what teachers teach along with basic skills is wrong, is nonsense about what law is and how it works; that the message about the nature of legal competence, and its distribution among students is wrong, is nonsense; that the ideas about the possibilities of life as a lawyer that students pick up from legal education are wrong, are nonsense. But all this is nonsense with a tilt; it is biased and motivated rather than random error. What it says is that it is natural, efficient, and fair for the law firm, the bar as a whole, and the society the bar services to be organized in their actual patterns of hierarchy and domination").

[63] *See* Anita Ghai, (Dis)embodied Form: Issues of Disabled Women (Har-Anand Publications, 2003); *See also* Nilika Mehrotra, Disability, Gender and State Policy: Exploring Margins (Rawat Publications, 2013).

[64] Adébísí, *supra* note 3, 6.

[65] Stephanie Hsu, *Notes on a Pedagogy of Debility*, Vol. 6(3), QED: A Journal in GLBTQ Worldmaking, 81-87 (2019).

Fourth, the critical pedagogy of the disabled can provide an alternative epistemic frame of reality that can correct the limited appreciation of reality coming ableist epistemic privilege. Ableism generates its claim to truth, universalises and valorises it. Critical pedagogy of the disabled coming from a disempowered position can have a fuller picture of the supposed objective realities. It provides an alternative frame to see the reality that is not available to the abled-bodied due to their epistemically privileged position. Epistemic privilege of abled-bodied people does not allow them to see the impediments created by oppressive structures and discourses. On the other hand, a disempowered is always alert and aware of these impediments and obstacles. Terri Elliot gives a very instructive example of a very limited frame of abled-bodied epistemic privilege that can be corrected from an alternative frame of reality coming from a disabled disempowered position as she points out that flight steps that lead to the doorway, seen as 'entrance' by the abled-bodied, are radically seen differently by a person in a wheelchair as a barrier.[66]

Fifth, the critical Pedagogy of the disabled must raise the question of debilitation by transcending the liberal framework of the mainstream disability discourse. Puar uses the term debilitation as distinct from disablement, defining the former as the perpetual process of 'wearing down of population',[67] which leads to the 'becoming' of the disabled. She presents debilitation as the triangulation of the binary of non-disabled/disabled to disrupt the category of disability. Elaborating debilitation as a process, Puar points out that some bodies, though not disabled, are very much debilitated and, consequently, incapacitated, significantly because of being prevented from accessing the resources otherwise available to the disabled; similarly, under the rhetoric of disability rights and empowerment, some bodies are disabled but also capacitated in the liberal framework. She suggests that capacity, disability, and debility are a "mutually reinforcing constellation" in the neoliberal framework of disability rights, where the first two are foregrounded in rights-empowerment-pride narratives of disability while the third, i.e., debility. is kept in the background to feed 'an economy of injury', which "maintains the precarity of certain bodies and populations precisely through making them available for maiming".[68]

It becomes urgent for the critical pedagogy of the disabled to address the question of debility as it deeply unsettles the neo-liberal framework of disability rights. It addresses the endemic bodily exclusion and presents a critical inquiry and reimagination of overarching structures that produce debility, not merely resorting to liberal accommodationist solutions.[69] Conceptualisation of debility, Puar argues, highlights not only the exclusions within the disability imaginaries

[66] Terri Elliott, *Making Strange What had Appeared Familiar*, Vol. 77(4), The Monist, 424-433 (1994).

[67] Jasbir K. Puar, The Right to Maim: Debility, Capacity, Disability, 14 (Duke University Press, 2017).

[68] *Id.*, 17.

[69] *Id.*

and right politics but also the constitutive absences in discourses of disability empowerment, pride, and inclusion.[70]

The liberal framework of disability rights does not question the neo-liberal framework of economic and political order and merely approaches the question of difference through the language of right and empowerment. In this way, it obscures the questions of global injustice, occupation, and colonialism that produce debility.

Not only is there a heterogeneity of disabled experiences, but also there is differential access to governmental schemes, policies, and reasonable accommodation. Those disabled who get access to benefits often become the 'poster disabled' for the state and its benevolent face. At the same time, the disabled political actors and other marginalised sub-segments of the disabled remain subjected to what Jonathan Simon calls 'vicissitudes of law's violence'. The disabled who get reasonable accommodation become part of the normative citizenry, and their accommodation is used to claim to project the state as a welfare state. While disabled political actors, dissenters are continuously denied accommodation as a mode of punishment for their dissent. Therefore, an emancipatory pedagogy of the disabled must highlight that "the category of disability is instrumentalised by state discourses of inclusion not only to obscure forms of debility but also to actually produce debility and sustain its proliferation".[71]

Disability studies is still a metropolitan project.[72] Therefore, the conceptualisation of disability studies has left out many from its incorporated fold in its neo-liberal avatar. It produces its 'outliers' and 'outlawed'. The pedagogy from disabled experiences, therefore, must reject the epistemological policing within disability studies and must challenge its current fealty to a neo-liberal framework. It must talk about the outliers of contemporary disability studies and movements and their civil liberties. When the state "skilfully combines both the rule of law and reign of terror into the hegemonic tasks and apparatuses of governance",[73] disability studies and disability movements cannot limit themselves to seemingly apolitical concessional disability issues.

To break the trap of liberal accommodationist discourse the critical pedagogy of the disabled can learn from postcolonial Black feminist disability theory as it has shown a path to "destabilise the normalising and homogenising impulses found in imperialist and national practices and discourse in the field of disability studies".[74] As Parekh suggests, within this paradigm, the self is continuously

---

[70] *Id.*

[71] *Id.*, 16.

[72] Cutajar & Adjoe, *supra* note 50, 503.

[73] Oishik Sircar, VIOLENT MODERNITIES: CULTURAL LIVES OF LAW IN THE NEW INDIA, 36 (Oxford University Press, 2021).

[74] P.N. Parekh, *Gender, Disability and the Postcolonial Nexus*, Vol. 4(1), WAGADU: A JOURNAL OF TRANSNATIONAL WOMEN'S AND GENDER STUDIES, 142-161 (2007).

constructed by the intersection of multiple, intersectional identities that impact personal agency in a nation, community, and the world.[75] The postcolonial Black feminist disability project does not avoid unmasking the neo-colonial project.

The pedagogy of the disabled, shaped by the critical disability approach, will potentially expose the limits of liberal discourse. By exposing the limits of liberal discourse, critical approaches to disability can seek more substantive justice. There is a truism in that now the questions of the disabled have more visibility, and disability activism has better platforms available. However, the paradigm of this activism is still skewed by middle-class concerns, shaped by apolitical language, and chained by liberal legalism. Therefore, we argue that this skewed activist impulse does not provide an emancipatory script for the disabled. It does not wish to challenge the structures of inequities radically; instead, it merely seeks an accommodation of its difference with immediate and presentist concerns. Therefore, we are required to problematise the buzzwords of contemporary disability discourse.

VI. PROBLEMATISING THE LIBERAL DISCOURSE ON DISABILITY AND ACCOMMODATION

To explain and unpack our point on the limits of liberal inclusionism in contemporary mainstream disability discourse, we problematise the liberal discourse on accessibility and reasonable accommodation. The present-day discourse of accessibility has its deep roots in liberalism. Liberalism places atomized and unencumbered *homo oeconomicus* at the center of liberal discourse. *Homo oeconomicus* is focused on pursuing his self-interest and spontaneously attempts to converge his interests with others. This figure of *homo oeconomicus* is the "protagonist of the neo-liberal drama".[76] In this avatar, liberalism advocates a welfare state that produces equal opportunity for some but fails to produce substantive equality.[77]

---

[75] *Id.*, 144.

[76] Giorgio Shani, Religion, Identity and Human Security, 78 (1st edn., 2014).

[77] The initial critique of liberal rights and their inherent limitation came from Karl Marx as he pointed out that these liberal rights are constructed keeping in mind the egoistic self of a person and his/her self-interest. In this way, an egoistic person is turned merely a bearer of individual rights cut off from community concerns. This individual is seen merely as a thinking person who is a 'customer.' Marx opined:

> "None of these so-called rights of man go beyond egoistic man, man as a member of civil society, that is an individual withdrawn into himself, into the confines of his private interests and private caprice, and separated from the community… society appears as a framework external to the individuals, as a restriction of their original independence. The sole bond holding them together is natural necessity, need and private interests, the preservation of their property and egoistic selves".

For detailed discussion, *see* Upendra Baxi, *From Human Rights to the Right to be Human: Some Heresies*, Vol. 13(3-4), IICQ, 185-200 (1986).

The liberal disability discourse talks of disabled empowerment, visibility, and accommodation in order to fit a disabled embodiment in the image of *homo oeconomicus,* as getting fit into this image becomes the necessary condition to achieve normative citizenship. In this image, the disabled are a potential consumer for the market, a useful resource for the market and the state, and the normative obedient citizens. Liberal Governmentality, Partha Chatterjee argues, makes an instructive distinction between the state and the subaltern domains. Chatterjee argues that mass democracies have produced a new distinction between citizen and population. The 'citizen' has an ethical connotation to participate in the state's sovereignty and claims rights from the state and, in turn, provides legitimacy to the state. He argues, "the state power ensures its legitimacy by claiming to provide for the well-being of the population. Its mode of reasoning is not deliberative openness but rather an instrumental notion of costs and benefits. Its apparatus is not the republican assembly but an elaborate network of surveillance through which information is collected on every aspect of the population that is to be looked".[78] By providing accommodation to certain disabled embodiments, the state claims to project itself as a welfare state while obscuring the liberal failings of ensuring accommodation of every disabled embodiment within its neo-liberal paradigms and agenda.

The origins of critical disability theory lie in the failure of liberalism and its promises.[79] Richard Devlin and Dianne Pothier explain that two political impulses guide the critical disability theory i.e., 'power(lessness)' and 'context'.[80] The question of disability is not merely the question of impairment but also political will and institutional priorities. A critical disability theory questions and exposes the Whiggish progress narrative of globalisation, neo-liberal agenda, and market-oriented policies.

The apolitical inclusion of disability produces a neoliberal tolerance of disability, which critical disability theorists are calling 'inclusionism'.[81] This inclusionism integrates the disabled into rights, obligations, and expectations of normative citizenship,[82] but does not question the exclusionary practices of neo-liberalism. This neo-liberal inclusionism provides visibility to identified and labelled disabled and mimics and celebrates the logic of abled-bodied and normative citizenship.[83] Thus, hitherto, polarities of neo-liberal accessibility movements

---

[78] Partha Chatterjee, THE POLITICS OF THE GOVERNED: REFLECTIONS ON POPULAR POLITICS IN MOST OF THE WORLD, 34 (Columbia University Press, 2004).

[79] *See* Gary Minda, POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY'S END (New York University Press, 1995).

[80] Richard Devlin & Dianne Pothier, *Introduction: Toward a Critical Theory of Dis-Citizenship* in CRITICAL DISABILITY THEORY: ESSAYS IN PHILOSOPHY, POLITICS, POLICY AND LAW, 9 (Richard Devlin & Dianne Pothier eds., 2006).

[81] David T. Mitchell & Sharon L. Snyder, THE BIOPOLITICS OF DISABILITY: NEOLIBERALISM, ABLENATIONALISM, AND PERIPHERAL EMBODIMENT, 4 (University of Michigan Press, 2005).

[82] SHILDRICK, *supra* note 34, 1.

[83] David T. Mitchell & Sharon L. Snyder, *Disability, Neoliberal Inclusionism and Non-Normative Positivism* in NEOLIBERALISM IN CONTEXT: GOVERNANCE, SUBJECTIVITY AND KNOWLEDGE, 178 (Simon

did not see the disabled as independent political actors. The neo-liberal diversity initiatives have a truncated vision of the civil rights approach and the inclusivist praxis. Still, they remain silent on "the active transformation of life that alternative corporealities of disability creatively entail".[84] Thus, a precarious and 'peripheral embodiment' of disability is being produced in which the disabled do not ask for radical reimagination of society, taking their lived experience into account; rather, they merely seek tolerable and reasonable accommodation within the abled-bodied framework. This 'compulsory able-bodiedness' assumes "able-bodied identities, able-bodied perspectives, are preferable and what we all, collectively, are aiming for".[85] In this way, disabled bodies are fitted into the neoliberal policies by making the disabled bodies normative by the language of reasonable accommodation. Thus, such bodies are 'invisible-ised' within the normative framework. These innocuous and invisible disabled bodies accept the logic of the market and the liberal state without any contest and allow themselves freely to become consumers and normative citizens. This inclusionism only seeks tolerance towards disabled bodies and never dares to seek "an excessive degree of change from relatively inflexible institutions, environments and norms of belonging".[86] This exclusionary logic of liberal inclusionism creates its own class, 'able-disabled', who accept the logic of the market and the state, become 'benignly disabled', and get reasonably accommodated by the state and its judiciary. On the other hand, the disabled, who seek to challenge the neoliberal order and resist transforming themselves into consumers, remain at the site of peripheral embodiments and cannot be accommodated even within the liberal urge for accommodation.

An emancipatory approach to disability would require not treating disability as an exception. Treating it as an exception allows neoliberalism and its governmentality to "seize hold of life in order to suppress it".[87] Moreover, the benevolent post-Fordist capitalism and its obedient liberal states may portray some disabled to create a success story of inclusionism by hiding the dark side of this "able liberalism" that supports corporate and governmental interests in actuality and not disabled interests, as Zach Richter points out:

> "When access is put into action in disability policy, its function is not actually to support disabled people but often either to make money from disabled people (and fuel the social services and healthcare industries), to make it look like the government is supporting disabled people or to normalise disabled people."[88]

Dawes & Marc Lenormand eds., 2020).

[84] *Id.*, 178.

[85] *Id.*, 180.

[86] *Id.*, 178.

[87] Martha C. Nussbaum, Frontiers of Justice: Disability, Nationality, Species Membership, 431-432 (Harvard University Press, 2006).

[88] Mitchell, *supra* note 81, 36.

Liberalism has no honest answer to what Martha Minow calls 'the dilemma of difference' on the question of disability.[89] It either tries to erase the difference of disability or accommodate politically benignly.[90] Liberalism, then, by using the language of accessibility and accommodation, produces the alterity of the disabled. Epistemic deployment of alterity in disability discourse would be instructive. The concept of alterity is very important, as used by postcolonial thinkers. Edward Said argued that the European self is being constructed against Africans and Indian Other. The other is considered the "inferior other" as primitive. The other is considered the 'inferior other' as primitive, pagan, and non-modern. Defined and considered as such, these 'inferior others' merely become the object of study who do not possess their agency and subjecthood. Thus, the language and prism of alterity produce stereotypes that justify the colonial oppressions and conquest.[91] Alterity means "the sense of non-self, of something that is outside of, and therefore different from, the self".[92] Thus, alterity enables oneself to distinguish from 'others' and helps the construction of the 'otherness'. Using the concept of alterity, Anita Ghai argues that the production of 'other' in disabled becomes a necessary precondition for abled-bodied rationality in which only the abled-bodied rational subject gets to set the term of the dialogue with the 'disabled other.' Since the humanity of the disabled other becomes fuzzy, they can be taken collectively as "muddled, confused and nameless collectivity" as a mark of plural having no agency of their own.[93]

Furthermore, the liberal discourse on disability tends to occlude the role that global injustices and war machines of colonialism and imperialism play in causing and sustaining the debilitation of certain populations. The constellation of disability, capacity, and debility are components of the "biopolitical control of populations that foreground risk, prognosis, life chances, settler colonialism, war impairment, and capitalist exploitation",[94] says Puar.

Similarly, Nandy provocatively argues that such production of binary logic and alterities are linked with colonialism and positivistic scientific logic. Nandy argues that the current dominant episteme of science, which is called 'modern science' and colonialism are "mutually potentiating forces defining a common domain of consciousness." They come up with the binary logic and put the

---

[89] *See* Martha Minow, Making All the Difference: Inclusion, Exclusion and American Law (Cornell University Press, 1990).

[90] Both utopian and non-utopian versions of liberalism invariably try to abolish the experiences of disability. In a utopian version, though, liberalism would never advocate to reject or abolish race or gender, it seeks to abolish disability as no human being should suffer from disability. In a non-utopian societal meaning it often translates into the routine abortion of disabled foetuses and murder of disabled child, *see* Ghai, *supra* note 14, 11.

[91] *See* Edward W. Said, Orientalism: Western Conceptions of the Orient (Penguin UK, 2003).

[92] Pramod K. Nayar, The Postcolonial Studies Dictionary, 6 (John Wiley & Sons Ltd., 2015).

[93] Ghai, *supra* note 14, 78.

[94] Kennedy, *supra* note 62, 17.

following concepts against each other:[95] Development: underdevelopment; sanity (normality): insanity (abnormality); maturity (adulthood): immaturity (childhood); rationality: irrationality.

This creation of modern binaries has justified the colonial conquest in the past and is still used to domesticate or maim the 'inferior other'. By putting 'sanity' (also read ableism) against insanity (read disability) against each other, disabled and their discourses are either domesticated or accommodated to the extent that their 'muddled collectivity' must think within the paradigm prescribed by abled-bodied liberal discourses. The 'disabled other' needs to be domesticated, reasonably accommodated, and coopted in the liberal nationalist script. In this way, the disabled seek or aspire to achieve abled normativity, logic, and rationality without challenging the structures and intellectual discourses that suppress disabled embodiment and its experiences. Therefore, no serious challenge is mounted against the logic of abled normativity as it remains a threshold to achieve. The liberal discourse of disability does not challenge such constructions as it tends to ignore the question of debility and its linkages with colonialism, neo-liberalism, and imperialist wars.

VII. BETWEEN 'ACCOMMODATED' AND 'OUTLAWED': EXPOSING THE LIMIT OF LIBERAL INCLUSIONISM OF DISABILITY

To elaborate on our point of the urgent need to expose the liberal discourse on disability, we take the cases of Vikas Kumar, G.N. Sai Baba, and Stan Swamy, three figures of disabled embodiment, and differential treatment given to them by our courts on the question of reasonable accommodation. Juxtaposing these examples shows a limit and orthodoxy of liberal discourse of disability and makes a case for having a critical approach that takes into account the question of disability, debility, and state's juridical and biopolitical control over disabled embodiments.

Celebrated as a pathbreaking and welcoming judgment in disability rights, the judgment patronizes the disabled as a "discrete and insular minority".[96] It tells the disabled that the Rights of Persons with Disabilities Act, 2016 ('RPwD, 2016') makes them "assets not liabilities".[97] Such linguistic configuration of the judgment is interesting as it uses the language of the market of assets and liabilities of quintessential liberal discourse. This is not to suggest that the judgment is not progressive. It challenges the medical model of disability, attitudinal problems of society, and the judiciary and provides a better interpretation of disability and reasonable accommodation. The principle of reasonable accommodation is

[95] Ashis Nandy, *Culture, Voice and Development: A Primer for the Unsuspecting* in Bonfire of Creeds: The Essential Ashis Nandy, 313 (Oxford University Press, 2004).

[96] Vikash Kumar v. UPSC, (2021) 5 SCC 370 : 2021 SCC OnLine SC 84, ¶39.

[97] *Id.*, ¶40.

explained in paragraphs 45 and 46, where the Supreme Court acknowledges that if the disability as a social construct is to be remedied, conducive conditions and structures must be created in order to facilitate the development of the disabled. Linking reasonable accommodation with human dignity, the court suggested that within the threshold of reasonable accommodation, "powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realisation of these ends".[98]

Vikas Kumar's case is a triumph of liberal discourse on disability. However, one may ask whether this liberal accommodative treatment is available to every disabled citizen before the court. In recent times, Vikas Kumar, G.N. Saibaba, and Stan Swamy, three disabled, got different treatment from the courts of law of this nation. While Vikas Kumar's case represents the concern of middle-class 'good citizens' and, therefore, gets the empathy of the court, G.N. Saibaba and Stan Swamy's cases represent 'rogue citizens' having 'dangerous minds'.[99] In Saibaba and Stan Swamy's cases the denial of reasonable accommodation for their disability from the courts and political executive can be seen as a mode of punishment for not agreeing with a liberal constitutional framework.[100] The denial of reasonable accommodation can be seen as the state claiming 'the right to maim' not-so-obedient disabled citizens in case their dissent is not tamed and

---

98 *Id.*, ¶¶45, 46.

99 Article 14 reported that while rejecting the plea of G.N. Saibaba for house arrest the Supreme Court commented that "as far as terrorist activities are concerned, the brain plays a very important role[…]A brain for such activity is very dangerous". For detailed discussion, *see* Oishika Neogi, *After SC Stopped his Release, G N Saibaba Wrote he Could no Longer Bear the Pain*, Article 14, November 15, 2022, available at https://article-14.com/post/after-sc-stopped-his-release-g-n-saibaba-wrote-he-could-no-longer-bear-the-pain-6372f94f0f18c (Last visited on October 7, 2023); *See also* Krishnadas Rajagopal, *Supreme Court Suspends Bombay HC Order Acquitting G.N. Saibaba and Others in Maoist-Links Case*, The Hindu, October 15, 2022, available at https://www.thehindu.com/news/national/sc-suspends-bombay-hc-order-acquitting-gn-saibaba-and-others-in-maoist-links-case/article66013558.ece?homepage=true (Last visited on October 7, 2023).

100 Cases of Saibaba and Stan Swamy are examples of imprisoning disabled dissenters and using denial of reasonable accommodation to punish them. The political executive and judiciary ignored the UN Special Rapporteur's call for reasonable accommodation for them. The poly-vocal Supreme Court Benches (as Gautam Bhatia calls it) cancel each other on reasonable accommodation. Parkinson's patient Stan Swamy had to fight for a sipper while NIA opposed his plea for a sipper, *see UN Special Rapporteur Calls G.N. Saibaba's Continued Detention 'Shameful'*, The Wire, October 7, 2023, available at https://thewire.in/rights/u n-special-rapporteur-calls-g-n-saibabas-continued-detention-shameful (Last visited on October 7, 2023); *See also* Shrutika Pandey & Dr. Shamim Modi, *Remembering Fr. Stan Swamy's Life and Death*, The Leaflet, July 12, 2022, available at https://theleaflet.in/remembering-fr-stan-swamys-life-and-death/ (Last visited on October 7, 2023); *See also* Sonam Saigal, *Do not have a Straw and Sipper to Give Stan Swamy, NIA Tells Court*, The Hindu, November 26, 2020, available at https://www.thehindu.com/news/national/do-not-have-a-straw-and-sipper-to-give-stan-swamy-nia-tells-court/article33185647.ece (Last visited on October 7, 2023); *See also Stan Swamy Files Plea for Straw, Sipper in Jail; Court Seeks NIA Reply*, The Indian Express, November 7, 2020, available at https://indianexpress.com/article/india/court-seeks-nia-reply-on-stan-swamy-plea-for-a-straw-6984578/ (Last visited on October 7, 2023).

disciplined.[101] Using the conceptual paradigm of Foucault's biopolitics, Puar situates the 'right to maim', a right of the sovereign, linked to, but not the same as 'the right to kill', as biopower employed by the neoliberal framework of capacitation, the neoliberal disability rights framework, using biopolitics, chooses whom to capacitate and whom to debilitate. The state capacitates Vikas Kumar while further debilitating Saibaba and Stan Swamy for the assertion of their political agency and not having disciplined dissent. Puar sums up this neo-liberal (de)capitation in this manner: "Biopolitics deployed through its neoliberal guises is a capacitation machine; biopolitics seeks capacitation for some as a liberal rationale (in some cases) or foil for the debilitation of many others. It is, in sum, an ableist mechanism that debilitates".[102]

In the biopolitical paradigm, 'the right to kill' uses the binary of living/dying, death being the ultimate assault of biopolitically controlled life, a biopolitical end. Puar claims that in the right-to-maim framework, debilitation, and production of disability are also biopolitical ends in themselves, wherein the sovereign instrumentalizes maiming for value extraction from otherwise disposed populations. The biopolitics of debilitation, which reaches its pinnacle in the right to maim, is a "sanctioned tactic of settler colonial rule, justified in protectionist terms and soliciting disability rights solutions that, while absolutely crucial to aiding some individuals, unfortunately, lead to the further perpetuation of debilitation".[103]

If the "task of Critical Legal Studies could well be that of listening to suppressed",[104] then our disabled embodiment and its pedagogy must talk about Saibaba and Stan Swamy cases to expose the claim of the law of rationality, consistency, and non-partisanship that silences and dehumanises the troubling voices.

[101] Ashis Nandy argues that hegemonic systems allow only well-monitored, controlled dissent that takes prescribed formulations of "constructive political engagement" and "correct paths of protest." Such tamed dissent has a global validity in which political engagement is done in a liberal, friendly, and benign way as prescribed by the liberal system. For detailed discussion, *see* Ashis Nandy, *The Untamed Language of Dissent: A Few Clues to the Rebellions in the World We Have Entered*, Vol. 41(1), India International Centre Quarterly, 1-6 (2014) (G.N. Saibaba and Stan Swamy present examples of disabled embodiment that make state and liberal disability discourses anxious. As their dissents refuse to accept "common sense and consensus of the globalized middle class" and since they have been accused of having a dangerous ideology of 'Maoism' denying reasonable accommodation to them, we argue, is a way to tame their dissent. Furthermore, we argue that the middle-class disability movements are ambivalent about political dissent and the question of disabled embodiment. The 'Jantar Mantar protests' for accommodations, pensions, and concessions by middle-class disability activists can be easily co-opted. Their demands for access to liberal politics can also be accepted till they sharpen their political demands and make power uncomfortable. Using Nandy's insight, we argue that such protest for accommodation within the system of a liberal state as "legitimate, sane, mature dissent" as opposed to the dissent of sharp disabled political actors such as Saibaba or Stan Swamy by terming their dissent as "the illegitimate, irrational, infantile dissent of those who look dangerous and irresponsible").

[102] Puar, *supra* note 67, 18.

[103] *Id.*, 19.

[104] Peter Goodrich, *Critical Legal Studies in England: Prospective Histories*, Vol. 12(2), Oxford Journal of Legal Studies, 195-236 (1992).

The denial of a reasonable accommodation to Saibaba and Stan Swamy suggests the language of law disavows the "trouble some other altogether".[105] The cases of Sai Baba and Stan Swamy highlight the clear delinking between the law and justice. As Derrida succinctly suggested,

> "Law is not justice. Law is the element of calculation, and it is just there be law, as justice is incalculable; and aporetic experiences are the experiences, as improbable as they are necessary, of justice, that is to say, of moments in which decision between just and unjust is never insured by a rule".[106]

This failure of the liberal legal system delegitimises itself, opening an avenue for "possibilities of fashioning a future that might at least partially realise a substantive notion of justice instead of the abstract, right-leaning, traditional, bourgeois notions of justice".[107] To realise this substantive idea of justice for the disabled, one may need to travel beyond the NGO-isation of disability activism and situate the question of disability and debility in a greater political framework of violence of nationalist discourses, colonialism, and biopolitical control over disabled embodiment. This can be done by shaping questions of disability as essentially political questions and not a question of concessions, generosity, and passive empathy. Disabled may seek accessibility in the system and structures and may revolt against this. In any case, their right to have reasonable accommodation cannot be denied. Denial of such accommodation to a political actor within disabled makes us all acutely aware of the limits and hypocrisy of liberal legalism.

VIII. CONCLUSION

The exclusion of the disabled embodiment must be at the heart of legal education as the seeding of the normative formulation of justice happens at the level of imparting legal education. The critical pedagogy of the disabled must mount a profound challenge to the positivist paradigm of our legal education and emancipate the teachers, students, and members of the Bar and Bench from the positivistic epistemic colonisation of their legal imagination. However, we argue that a critical pedagogy of the disabled must not limit itself within the boundaries prescribed by the liberal state and market. It must examine the agenda, procedure, and protocols of neoliberal governmentality in a critical manner. In this way, it differs from several variants of liberal disability discourses of contemporary times. It remains true to the human dignity of all disabled and their political agency. Reasonable accommodation and accessibility must be asserted for all disabled, and denying them must not be used as punitive action against disabled political actors. GN Saibaba and Stan Swamy's examples show that several

---

[105] Shildrick, *supra* note 34, 104.

[106] *Id.*, 120.

[107] Jacques Derrida, *Force of Law: The Mystical Foundation of Authority*, Vol. 11(5-6), Cardozo Law Review, 920-1045 (1989).

apolitical disability organisations and Courts have failed the disabled who assert their political agency. Pedagogy of the disabled must be based on the impulse to expose the failure of the liberal state and its exalted promises to the disabled at several levels. It must examine and call out critically benign disability movements for not being truly inclusive. By exposing the false generosity of such actors, this pedagogy can seek to achieve a more inclusive and emancipatory script for future disability movements.