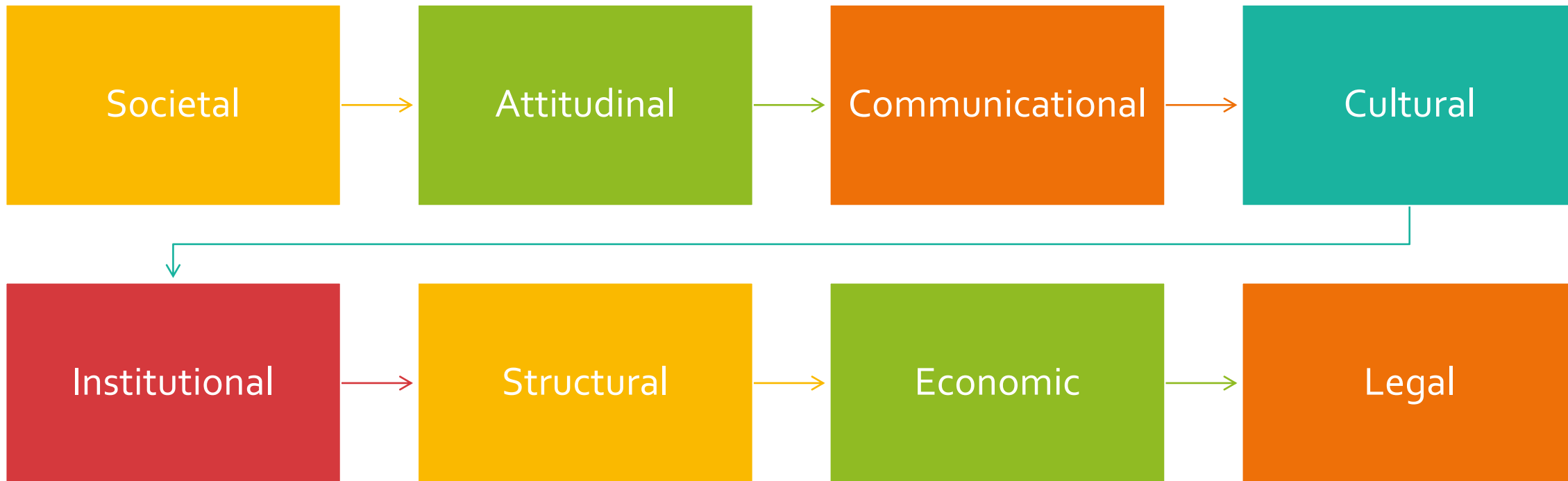


PROTECTING THE RIGHTS OF PERSONS WITH DISABILITY

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Encountering barriers

Understanding Equality- Formal Equality Or Sameness

Formal equality regard all persons as being the same and therefore sets out to treat everyone in the same way.



Its principal aim is to achieve same treatment

This form assumes that certain categories of persons are different, and need to be treated differently

Rather than focus on the external, structural or systemic cause for subordination and stereotyping of women, this approach endorses rather than corrects it.

The approach is dis-empowering as it perpetuates the differences and the disadvantages that come with it.

Protectionist equality or Differences

In both formal and protectionist equality there can be indirect or defacto discrimination.

Does not understand differences, capability and need.

DISCRIMINATION

SUBSTANTIVE EQUALITY

Substantive equality approach recognizes that some people are in an unequal position & have to be treated differently from others in order for them to benefit equally.

Concerned with not just equality of opportunity but also of results

Substantive equality

Stipulates not only formal legal equality but correction of historical, systemic and structural barriers to enable equality of results in real terms

Equality of opportunity

Equality of access and

Equality of results

- It takes into account and focuses on diversity, difference, disadvantage and discrimination. It deploys affirmative action through use of temporary special measures to accelerate social change.

Substantive equality in the context of disability rights

Not to expect persons to conform to existing norms

Equality laws ought to recognize disability as a relevant characteristic

Equality laws should facilitate a regime of change and accommodation to existing norms.

Provide for full participation.

EQUALITY IN THE INDIAN CONSTITUTION

BASED ON SUBSTANTIVE APPROACH

ARTICLE 14 that grants equality to all

ARTICLE 15 that prohibits discrimination on grounds of religion, race, caste, sex or place

(3) does not treat as discrimination any special provision for women and children

ARTICLE 16 equality of opportunity
in matters of public employment

Article 21 where right to life has
included a host of rights developed
in Public Interest litigation.

RIGHTS OF
PERSONS
WITH
DISABILITY
ACT 2016
(RPWD Act)

Section 2 (h) discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is 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 and denial of reasonable accommodation;

Section 2 (y)

“reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;

REASONABLE ACCOMODATION

Obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society.

Denial of this amounts to discrimination under Section 2 (h)

Examples- workplace accommodations

Educational accommodations

Transportation accommodations

Public service accommodations

COURTS, LAWYERS, LITIGANTS AND THE LEGAL SYSTEM

Section 12 -Government shall ensure that persons with disabilities are able to exercise the right to access any court, or any judicial body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.

Steps to be put in place for suitable support measures for persons with disabilities specially those living outside family and those disabled requiring high support for exercising legal rights.

- The National Legal Services Authority and the State Legal Services Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987) to make provisions including reasonable accommodation to ensure that persons with disabilities have access to any scheme, programme, facility or service offered by them equally with others.

The appropriate Government shall take steps to—

ensure that all their public documents are in accessible formats;

ensure that the filing departments, registry or any other office of records are supplied with necessary equipment to enable filing, storing and referring to the documents and evidence in accessible formats; and

make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communication

LEGAL CAPACITY

13. Legal capacity.—(1) The appropriate Government shall ensure that the persons with disabilities have right, equally with others, to own or inherit property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit.

(2) The appropriate Government shall ensure that the persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other person before the law.

PROVISION FOR GUARDIANSHIP

- Section 14- Where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government:

The District Court or the designated authority, may in a given case grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature and manner of support to be provided. "limited guardianship" means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall operate in accordance to the will of the person with disability.

<https://ccpd.nic.in/>

Office of Chief Commissioner of Persons with Disabilities web site

The site has all orders relating to cases that come before it in Hindi and English and provide a rich understanding of the concerns and issues that are raised.

INCLUSIVENESS
IN COURTS-
(Handbook
Concerning
Persons With
Disabilities-
Supreme Court
Of India)

Accessible Documents and Communication-

Breaks and adjournments

Support from juniors and Interpreters

Promoting inclusion and Professional Growth

Sensitization of court staff

Accessibility Committees to be established by the District Courts and High Courts.



CASE LAWS PROTECTING THE RIGHTS OF PERSONS WITH DISABILITY

Ravinder
Kumar
Dhariwal and
another vs
Union of India
2021

Disciplinary proceedings against a person of the Central Reserve Police Force who was diagnosed with Obsessive Compulsive Disorder and secondary major depression.

Held- the proceedings were discriminatory under the RPwD Act.

Ravinder
Kumar
Dhariwal and
another vs
Union of India
2021

Ravinder Kumar Dhariwal continued

Persons with mental health disorders have a right against workplace discrimination and are entitled to reasonable accommodation. Examples include quiet office space, change in supervisory methods and permission to work from home

The court also analyzed judgments of other countries and International Conventions, and read them along with the RPwD Act

Smurti
Tukaram
Badade Vs
State of
Maharashtra
2022

Judgment on the creation of Witness Deposition Centre Scheme in Courts for Vulnerable Witnesses-

These include victims of sexual assault of any gender,

Persons suffering from “ mental illness” as defined under the Mental Health Care Act,

Speech or hearing impaired witness or any witness suffering from any disability who in the opinion of the Competent Court is vulnerable.

Vikash Kumar
vs Union Public
Service
Commission
2021

The laid down principles as to what reasonable accommodation would look like to a person with different kinds of disabilities regarding examinations.

Petitioner having a neurological condition called 'Writer's cramp' leading to extreme difficulty in writing.

Was denied a scribe to write the exam on the ground that he did not come within the benchmark disability (40percent of a specialized disability)

Held- an individual having such a disability which is not a benchmark disability is still entitled to a scribe as it constituted " reasonable accommodation"

Patan Jamal
Vali vs State of
Andhra
Pradesh (2021)

Intersection of gender, disability, caste and class

Victim blind and belonging to the Schedule Caste- Court analysed Intersectionality as a form of oppression that arises from the combination of many oppressions which together produce something unique and distinct from any one form of discrimination standing alone.

Patan Jamal Vali vs State of Andhra Pradesh (2021)

Patan Jamal Vali Continued

The Court held that intersection merely urges the Court to have an “open textured” legal approach that would examine underlying structures of inequality. Courts to analyze the law in its socio and economic context allowing it to formulate questions of equality as that of “power and powerlessness” insisted of “differences and sameness.”

Accused vs State of Maharashtra 2019

- Accused sentenced to death for rape and murder of two minor girls
- Death sentence confirmed by all courts including Supreme Court
- He files a review and it is claimed on behalf of him that having been in the death row for 17 years he has developed deep mental illness
- Supreme Court in review commutes his death sentence to life. Subsequent severe mental illness is taken into account.

Rajiv Rathuri
vs Union of
India
2018, 2024

Public Interest Litigation A slew of directions issued that paved the way for protecting the rights of persons with disabilities.

The facilities that one sees today is due to the directions issued in the first case.

In the 2nd case the Supreme Court has directed the Government of India to correct the rules of the Act (15) which incorporated no mandate to comply

THANK YOU