*Talking Points*

Pitfalls of Discrimination

*Limitation to the understanding of discrimination by association, its scope and impact:*

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1. **Short background:**

The usual understanding of disability based discrimination is limited to the person having a disability; However, the discrimination spams to his/her social, professional and personal circle. The discrimination on the basis of disability not only affects those who have disability; but also their parents, siblings, spouses, colleagues etc.

Discrimination by association covers instances in which an individual is treated less favorably on the basis of another person's status or protected characteristics, such as disability, and can also be committed by indirect discrimination.

1. **How is this addressed in the CRPD?**

* In the preamble of the CRPD (P) mentions that states are “Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, color, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status”;
* This listing of grounds for discrimination is more advanced than previously enacted human right treaties introducing more grounds including national, ethnic, indigenous or social origin, property etc.
* However, this provision doesn’t explicitly state if such discriminations are of concern for state parties when committed over someone who is associated to a person with a disability;
* The definition provided for discrimination on the basis of disability in article 2 of the CRPD comprises of elements such as: any distinction, exclusion or restriction on the basis of disability
* Having the intention or consequence of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others,
* Indicates that it includes all forms of discrimination and implicitly discrimination by association is recognized as one type of discrimination incorporated in the category of “all forms of discrimination”.
* Art. 5 (2) of the Convention also reads “States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.”
* The phrase “all discrimination” should obviously understood in a manner that also encompasses discrimination by association.
* The question here is if equal and effective legal protection against discrimination is guaranteed only for persons with disabilities as stipulated in this sub-article, where do others who face discrimination due to their association with a person with disability fall.
* Are state parties required to extend the same equal and effective legal protection to people who are not persons with disabilities?

1. **Experiences from the work of Light for the World:**

Through our work in Community based rehabilitation in different countries in Africa, we have witnessed that discrimination on the basis of disability also seriously affects families of persons with disabilities

Disability is still considered as consequence of curse, blame and shame and mostly hereditary.

* Marriages end when a child with disability is born;

Social ties dissolve due to someone’s disability in the family;

Kids refrain from playing with a child having a disability;

* Siblings are denied to play with their peers because they come from a family having a member with a disability;
* Neighbors refuse to use communal services with the family having a person with a disability;
* Parents are excluded from social gatherings including religious and social;
* In our CBR programs one of the main tasks to do is organizing coffee ceremony to invite neighbors who are relevant perpetrators as well as contributors of DBD to help me under disability and its consequences.
* An informed community is less likely to commit discrimination on the basis of disability both on the person having the disability and anyone associated to the given individual.

1. **Conclusion and recommendations:**

* Some countries argue that this convention should only provide protection to Persons with disabilities not to their circle like family members, assistants etc; Thus, they deny to recognize discrimination by association as punishable by law.
* Yet, There are a number of encouraging trends by some state parties recognizing discrimination by association as a serious problem and incorporating in to the anti-discrimination legislations.
* Countries like Spain, Ecuador, Ireland and UK have introduced this concept and provided protection for discrimination by association.
* The African Union protocol on the rights of persons with disabilities also recognize discrimination by association and illustrates parties who need to be protected from such discrimination.
* Recent developments in the field of employment also suggest that the duty to provide reasonable accommodation also applies to the relatives of persons with disabilities.

I recommend:

* Discrimination on the basis of disability need to be understood in a broader context as it is not limited to the person having the disability;
* Burden of proof should be shifted to the defendant from the plaintiff in such cases of discrimination;
* It is important not to give an exhaustive listing to parties who should be covered in discrimination by association as the setting may significantly vary;
* Such understanding and remedies to the effect will in turn enhance inclusive development and communities;
* I dream a world where I am accepted as I am and that embraces people around me including my family for who they are, not on the basis of who they are related with!

Thank you!

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