

**“IN A CLASS OF MY OWN”
REASONABLE ACCOMMODATION FROM A
DISABILITY PERSPECTIVE**

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ARGUMENT OF PRESENTATION

Reasonable accommodation (RA) in the CRPD cannot be constructed in ableist terms.

It has to be understood from the standpoint of persons with disabilities.

This presentation is an effort in that direction.

RELATIONSHIP BETWEEN EQUALITY AND RA

Providing fair treatment to diverse humans is the challenge of the right to equality

To obtain that objective the right has moved

- from formal to substantive equality
- from equality of treatment to equality of outcome

RA is a principle which aims to ensure equality of outcome for persons with disabilities.

JURISPRUDENCE OF RA IN DISABILITY LEGISLATIONS

Modest effort to acknowledge diversity in disability

Diversity was admitted not celebrated

Reasonableness was judged on an ableist standard

And resources trumped entitlements

Rather, only if accommodation was relatively inexpensive was it considered reasonable.

HOW WAS DIVERSITY ADDRESSED IN HUMAN RIGHTS INSTRUMENTS?

Universal has also been monolithic

Except for CRC, which recognized the double discrimination experienced by children with disabilities

In the main human rights instruments have operated with mainstream standardized constructions.

HOW HAS CRPD HAS BEEN DIFFERENT?

Unlike the other human rights instruments, CRPD has not just acknowledged, it has accepted disability as part of human diversity.

By so recognizing disability, CRPD is not trying to fix persons with disabilities

Thus, persons with disabilities do not make a concessional appearance in CRPD.

REASONABLE ACCOMMODATION IN THE CRPD

Denial of RA has been termed discrimination on the basis of disability.

However the potency of this protection depends on how RA is to be understood.

If the ableist jurisprudence is continued, then RA becomes the space for denying customization to persons with disabilities.

The comparison along with discrimination reinforces the privilege of the non disabled.

HOW SHOULD RA BE UNDERSTOOD IN THE CRPD?

RA in CRPD should be understood on the terms of the CRPD

In acknowledgement of the diversity of disability

In recognition of evolving capacity

RA should be about opportunity

Reasonableness should be assessed from the standpoint of the person or persons with disabilities

THE PROBLEM OF DISPROPORTIONATE BURDEN

Can this argument be sustained, when even the CRPD makes RA available provided it does not cause disproportionate or undue burden?

I would contend yes, because in my view even disproportionate or undue burden need to be construed from the standpoint of persons with disabilities.

BURDEN FROM THE DISABILITY LENS

The burden would be disproportionate if higher resources are demanded to fulfill needs that can be met with lower resources.

At the same time, deprivation of a right to persons with disabilities because it may cost more is not reasonable.

Any computation of burden would need to take into account long term denial.

Jurisprudence of reparation, substantive equality and inclusion should be relevant to weighing burden.

BOTTOM LINE

Inclusion, when on an equal basis with others, would be influenced by the level and kind of development prevailing in a society

Exclusion can never be reasonable

Especially deliberate exclusion, be it of a group or an individual

Even when I am in a class of my own

Exclusion is not an option