

# Prohibitions of Discrimination and Three Types of Discrimination in the CRPD

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# Purposes of this presentation

- To clarify the concepts and significance of “the Three Types of Discrimination” under the CRPD
- To examine the interrelationship of “the Three Types of Discrimination” to know how they remedy discrimination against people with disabilities

# Definition of Discrimination under the CRPD, Art.2, Para.3

- 1) any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on any equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field
- 2) all forms of discrimination, including denial of reasonable accommodation

# Criteria of Direct Discrimination

- 1) Direct/obvious distinction, exclusion or restriction on the basis of disability
- 2) Having 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

# Criteria of Indirect Discrimination

- 1) Apparently disability neutral but resulting in distinction, exclusion or restriction compared with other people
- 2) Having the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise of persons with disabilities, on an equal basis with others, of all human rights and fundamental freedoms

# Criteria of Denial of Reasonable Accommodation

- 1) There are necessary and appropriate modification and adjustments.
- 2) They ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.
- 3) They are needed in a particular case.
- 4) They do not impose a disproportionate or undue burden.
- 5) To deny the modification and adjustment above.

# Difference and Similarity of the Three Types

	Behavioral Type	Approach to Identify Discrimination
Direct Discrimination	actions disability specific	focusing on behavioral comparison
Indirect Discrimination	actions disability neutral	focusing on an effect
Denial of Reasonable Accommodation	omission	focusing on an effect

# Discrimination Identification Shift

## Typical/Conventional Discrimination Concept

### “ Discriminator Basis”

- Discriminator’s rights shall be limited, if his/her specific behavior is identified with discrimination.
- Then his/her discriminatory intention will be necessary to limit his/her rights.

# Basic Theory of Conventional Discrimination Concept

- It is obvious that a discriminator's action is blameworthy under direct discrimination.
- A discriminator can expect that his/her action is not admitted under the law.
- A discriminator can not justify his/her action, because he/she knows his/her own intention or nature of his/her action.
- Expanding discrimination concept beyond this will be unexpected or undue burden to general public.

# Discrimination Identification Shift

## New Discrimination Concept “Discriminatee Basis”

- A person distinguished, excluded or restricted is damaged the same, whether a discriminator has discriminatory intention or not.
- Then what is more important to identify discrimination is not a discriminator’s intention or action but result for discriminatee.
- Shift of focus from malicious behavior to remedy for social injustice.

# Basic Theory of New Discrimination Concept

- A discriminator's intention is often vague and hidden in superficial generality.
- Ignorance and indifference to persons with disabilities often cause more serious and problematic discrimination than malice.
- Ignorance, indifference or lack of imagination on diversity/plurality of humankind damages not only a discriminatee but also our society, therefore a discriminator is responsible for a society and its members.

# What dose discrimination shift imply ?

- More essential point on discrimination issue is not in a discriminator's behavior but in effect upon a person with disabilities.
- A behavioral factor should be required,
  - 1) as a easy way to identify discrimination
  - 2) as a plain reason to demand concession from a discriminator

# New thinking way to identify discrimination(1)

- The first step
- 1) Is a discrimination self-evident of a behavioral form ?
- 2) Dose a person with disabilities suffer distinction, exclusion or restriction that can damage his/her human rights and fundamental freedoms?

# New thinking way to identify discrimination(2)

- The second step:
- 1) Can we find any reason why we demand some concession from the other party ?
- 2) Disregarding diversity can be a good and sufficient reason under the CRPD.

# Remedy of Discrimination

## A. Direct/Indirect Discrimination

- 1) in principle: to invalidate an act/a rule concerned and demand compensation
- 2) in some cases: to demand a modification/adjustment to correct a discriminatory situation

## B. Denial of Reasonable Accommodation

- to demand a modification/adjustment

# Overlap and Function

## Direct Discrimination:simple case

A person with visual impairment is denied entry to a music concert because he is accompanied by a guide dog.

- 1) This is direct and self-evident discrimination.
- 2) To invalidate this denial and/or to demand compensation can eliminate this discrimination.

# Overlap and Function

## Direct Discrimination: combined case

A college denies giving an applicant an opportunity to take an entrance exam because the applicant has visual impairment.

- 1) This is direct and self-evident discrimination.
- 2) But to invalidate this denial is not enough to eliminate this discrimination.

# Overlap and Function

## Direct Discrimination: combined case

- 3) An entrance exam in Braille is required as a necessary and appropriate modification and adjustment
- 4) It is not a disproportionate or undue burden for the college.

# Overlap and Function

## Indirect Discrimination:simple case

A company gives preferential treatment to employees with driver's licenses, even though having a driver's license has nothing to do with the essence of the job.

- 1) This is indirect discrimination and we can identify discrimination from effect of this treatment; partially unfavorable against people with visual disability
- 2) To invalidate this treatment and/or demand compensation can eliminate this discrimination.

# Overlap and Function

## Indirect Discrimination: combined case

Office regulations forbid any person who are not an employee of the company entering a workplace.

- 1) This is similar indirect discrimination as the simple case.
- 2) But to invalidate this regulation is not enough to eliminate this discrimination, because some people with mental disabilities need a job coach.

## Overlap and Function

### Indirect Discrimination: combined case

- 3) A job coach is required as a necessary and appropriate modification and adjustment for some workers with mental disabilities.
- 4) It will not be a disproportionate or undue burden for the company.

# Overlap and Function

## Reasonable Accommodation Case

No sign language interpreter is provided at a conference.

- 1) We can identify discrimination from effect of this omission; lack of modification and adjustment excludes audience with hearing disability.
- 2) Some sign language interpreters are required as a necessary and appropriate modification and adjustment.
- 3) It is not a disproportionate or undue burden for the organization.

# Some other important points

- Reasonable accommodation is unique civil rights concept that helps to bridge the gap between civil and political rights and economic, social, and cultural rights.
- Our State's obligation to ensure the equality right and obligation to prohibit discrimination to support the equality rights, are to be implemented immediately, as one of civil and political rights.
- Our state must establish/revise law that provides new discrimination concept, indirect discrimination and reasonable accommodation.

# Conclusion

- Conventional direct discrimination concept is not sufficient to eliminate discrimination.
- The CRPD provides three types of discrimination but there are combined cases.
- Effect and remedy are getting more important than a discriminator's behavior itself.
- We should be good at using the three types efficiently and functionally.
- We should confirm our state's obligation to ensure non-discrimination.