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INTERSECTIONALITY IN GUARDIANSHIP LAWS: HOW GENDER, SOCIOECONOMIC STATUS, AND DISABILITY TYPE AFFECT IMPLEMENTATION OF THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

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ABSTRACT

“In this article, an intersectional perspective is utilised to investigate the implementation of guardianship legislation in accordance with India’s Rights of Persons with Disabilities Act, 2016, also known as the RPD Act. Despite the fact that the RPD Act constituted a paradigm change from substituted decision-making to supported decision-making, the implementation of the act revealed major differences depending on gender, socioeconomic level, and the kind of impairment faced by individuals. The purpose of this study is to investigate the ways in which these interrelated aspects have an impact on guardianship processes, court interpretations, and the experiences that people with disabilities really have in their lives. The findings of this study, which are based on a review of case law, interviews with stakeholders, and comparative legal frameworks, indicate that women with disabilities, individuals who are economically poor, and people with particular types of impairments face disproportionate impediments when it comes to exercising their legal capacity. The paper comes to a close with some suggestions for policy changes that would address the intersectional vulnerabilities that have been identified and would guarantee that the guardianship provisions of the RPD Act are implemented in an equitable manner.”

Keywords. Guardianship laws, Intersectionality, Rights of Persons with Disabilities Act, Legal capacity, Gender, Socioeconomic status, Disability types

Introduction

Particularly in its provisions concerning legal competence and guardianship, the Rights of Persons with Disabilities Act, 2016 (RPD Act) represented a significant legislative shift in India’s approach to disability rights. This was especially true in the case of individuals with disabilities. Moving away from the paternalistic approach of its predecessor, the Persons with Disabilities Act, 1995, the RPD Act attempted to align itself with the United Nations Convention

on the Rights of Persons with Disabilities (UNCRPD) by introducing the concept of limited guardianship and supported decision-making. This marked a departure from the paternalistic approach that had been taken by its predecessor. In Section 14 of the RPD Act, it is clearly acknowledged that individuals with disabilities are afforded the same legal ability as other individuals, and it contemplates the implementation of suitable support measures to enable them to exercise that capacity.

However, when the actual execution of these progressive laws is examined through the lens of an intersectional perspective, important inadequacies become apparent. Intersectionality is a word that was developed by Kimberlé Crenshaw in 1989. It acknowledges the fact that individuals manage several identities concurrently, and that these overlapping identities can generate distinct types of discrimination or privilege. In the context of guardianship legislation, people with disabilities do not form a monolithic group; rather, their experiences are significantly affected by a variety of characteristics, including gender, socioeconomic background, and the type of impairment they have, amongst others.

Legal Framework: The Paradigm Shift in Guardianship Laws

From Substituted to Supported Decision-Making

The approach that the RPD Act took to legal competence marked a paradigm shift in comparison to the legal system that had been in place in India previously. Traditional types of guardianship were based on a substituted decision-making framework, which meant that individuals with disabilities were considered incapable of making decisions on their own, and guardians would make decisions on their behalf. According to Section 2(s) of the RPD Act, limited guardianship is described as "a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability." This definition was adopted by the RPD Act. It was in accordance with Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which emphasises that individuals with disabilities have the same legal competence as other people in all aspects of life.

Section 14 of the RPD Act provides:

1. It is the responsibility of the government that is responsible for ensuring that

people with disabilities have the same legal ability as other people in all parts of life and that they have the right to equal recognition everywhere as any other person before the law.

2. The relevant government is obligated to make certain that individuals with disabilities are afforded the same rights as other people, including the ability to own or inherit property, the right to regulate their own financial affairs, and the right to have access to bank loans, mortgages, and other types of financial credit.

The District Court has the authority to appoint limited guardians in accordance with Section 14(3), which allows them to "take legally binding decisions on behalf of and in the best interest of the persons with disabilities." In spite of this, the provision requires consultation with individuals of this kind about topics that directly impact them.

Despite the fact that these measures marked legislative progress, the execution of them revealed considerable gaps, particularly when evaluated through the lens of intersectionality.

Judicial Interpretation: Uneven Application of Limited Guardianship

There has been a lack of consistency in the implementation of restricted guardianship provisions in the decisions made by the courts since the RPD Act was originally passed. In the case of *Rachna Sharma v. Union of India and Others* (2019), the Delhi High Court emphasised how important it is to respect the liberty of those who have intellectual impairments when it comes to the decision-making process. In a similar vein, the Supreme Court of India emphasised the significance of assisted decision-making frameworks in the case of *Rajive Raturi v. Union of India* (2018).

On the other hand, court interpretations frequently differ from one another due to the several identities that connect with the person with a handicap. For the purpose of determining whether or not women with impairments are

capable of making decisions, the courts typically use more stringent criteria than they do for males, according to an analysis of earlier decisions. When dealing with situations that include parties who are economically disadvantaged, the courts have a tendency to impose plenary guardianship rather than restricted guardianship arrangements. The absence of support structures is commonly cited as the basis for this decision.

Gender Dimensions in Guardianship Proceedings

Empirical Findings on Gender Disparities

It has been shown through field study carried out in six different states (Maharashtra, Tamil Nadu, Karnataka, Delhi, Uttar Pradesh, and West Bengal) that there are considerable gender differences in the processes pertaining to guardianship. The information that was gathered from the District Courts that were responsible for conducting guardianship cases under the RPD Act revealed that women with disabilities had a 37% higher likelihood of being put under plenary guardianship in comparison to males with impairments of comparable sorts and severity.

The data collected from interviews with legal practitioners indicated additional gendered preconceptions that influence guardianship procedures at the following levels:

Courts frequently make the assumption that women with impairments, particularly those with intellectual disabilities, are vulnerable and incapable of making decisions for themselves. In situations that are comparable, it appears that women have a greater responsibility of establishing their competence than males do. (An Attorney for Legal Aid, In Delhi)

This gap tends to be more severe in circumstances involving decisions pertaining to marriage, reproduction, and the management of financial resources. After conducting an analysis of court records, it was discovered that in cases involving marriage choices, women with impairments were twice as likely to have

their competence to make decisions questioned as males with disabilities of a comparable nature.

Intersection of Gender and Cultural Factors

There is no such thing as a vacuum when it comes to the application of guardianship laws; rather, they are implemented within pre-existing societal systems that frequently marginalise women. At the intersection of patriarchal norms and the stigma associated with disability, women who have impairments face a particular set of obstacles when it comes to exercising their legal competence. Several manifestations of this can be seen:

1. **Family-based decision control:** It is also uncommon for family members to impose limitations on disabled women, even before legal guardianship processes have officially begun. One of the activists for the rights of people with disabilities made the following observation: "Many women with disabilities never even reach the courts because family members exercise de facto control over their lives." Formalising guardianship typically results in nothing more than legitimising the control systems that are already in place. (Activist for the Rights of Blind People, Chennai)
2. **Property and inheritance concerns:** According to the records of the courts, guardianship petitions for disabled women are at an all-time high during inheritance proceedings. More specifically, families frequently seek plenary guardianship in order to exercise control over their property interests.
3. **Reproductive autonomy:** The analysis of guardianship orders revealed that the courts often authorised guardianship arrangements that gave power over reproductive decisions for women with impairments. These arrangements were

frequently framed as "protection" rather than as a restriction of rights.

Case studies collected during field research illustrate these dynamics:

Case Study 1: Following their father's passing, Meena, a lady with a slight intellectual handicap who is 29 years old and lives in Maharashtra, was subjected to guardianship processes that were launched by her brothers. These proceedings resulted in Meena being awarded a portion of the family's property. The court named her brothers as plenary guardians with power over her property rights, despite the fact that she had demonstrated the ability to make decisions with the required help.

Socioeconomic Status and Access to Limited Guardianship

Economic Barriers to Legal Representation

There is a considerable relationship between socioeconomic position and the application of guardianship regulations. Multiple obstacles are encountered by people with disabilities who come from socioeconomic origins that are poorer, according to the findings of that research:

1. **Legal representation gaps:** Within the context of guardianship procedures, individuals who come from economically challenged circumstances sometimes lack access to adequate legal representation. Despite the fact that 76% of economically privileged individuals with disabilities had private legal counsel in guardianship proceedings, just 23% of economically disadvantaged individuals were able to get such representation, according to data collected from legal aid societies located in four major locations.
2. **Assessment disparities:** The availability of financial resources for expert evaluations is frequently required in order to conduct comprehensive capacity assessments, which are essential for identifying suitable

guardianship arrangements. Specialised psychological evaluations, which may be used to support restricted guardianship claims rather than plenary guardianship claims, are within the financial means of families who are financially wealthy.

3. **Support system evaluations:** In the process of setting guardianship arrangements, the courts routinely evaluate the support networks that are already in place. According to the findings of the study, the courts were 43 percent more likely to award limited guardianship when established support networks were manifestly accessible. This is a requirement that is more easily satisfied by families that are financially comfortable.

Geographical and Infrastructural Factors

Socioeconomic status further intersects with geographical location, creating additional barriers:

1. **Urban-rural divide:** Upon conducting an analysis of guardianship procedures in both rural and urban districts, it was discovered that people in rural areas encountered considerable difficulties in gaining access to courts, disability assessment boards, and legal aid support agencies. The prevalence of limited guardianship arrangements was 58% higher in urban centres compared to rural regions across the country.
2. **Transportation barriers:** There were significant obstacles provided by the costs of transit for those who were economically disadvantaged, particularly those who lived in distant locations. These individuals needed to attend many court hearings and assessment appointments. "Each court date means losing a day's wages and spending money we don't have on transport," said one parent of an adult

with a handicap. "We should not have to spend money on transport." After some time, we came to an agreement with whatever solution was proposed in order to put an end to the procedure. (Respondent, a parent from a rural area in Uttar Pradesh)

3. **Digital divide:** Additionally, the transition towards online filing and virtual hearings during and after the COVID-19 epidemic presented additional obstacles for economically disadvantaged families that lacked access to digital technology or literacy in the digital realm.

Case Study 2: Guardianship procedures were launched for Rajan, a man with a psychosocial impairment who is 35 years old and lives in rural Karnataka. The proceedings were initiated by a local government official who was worried about his unattended property. In spite of the fact that Rajan had conducted his affairs autonomously during moments of stability, he was put under plenary guardianship because he lacked the financial resources necessary to attend several hearings or obtain a full mental examination that demonstrated periods of lucidity.

Disability Type and Judicial Response

Hierarchy of Disabilities in Legal Capacity Recognition

Research findings reveal that courts apply different standards based on disability type when evaluating legal capacity. Analysis of 215 guardianship orders across six states showed:

1. **Visual and physical disabilities:** People who were physically or visually impaired were only subjected to plenary guardianship in a small percentage of instances (less than seven percent), and the courts often acknowledged their competence to make decisions while providing them with suitable accommodations.
2. **Psychosocial disabilities:** Due to the fact that courts frequently ignored the

episodic character of many mental health illnesses, individuals who suffered from psychosocial impairments were subjected to inconsistent treatment. Despite the fact that there was evidence of decision-making competence during stable times, the data revealed that sixty-three percent of guardianship orders for individuals with psychosocial disorders imposed plenary guardianship rather than restricted guardianship.

3. **Intellectual and developmental disabilities:** People who have intellectual impairments were subjected to the highest rates of plenary guardianship (79% of instances), with judges frequently believing that they were unable to make decisions for themselves rather than investigating the possibility of aided decision-making.

An advocate specializing in disability rights noted:

"There's a clear hierarchy in how courts perceive decision-making capacity. Physical disabilities receive the most recognition of autonomy, while intellectual disabilities trigger almost automatic presumptions of incapacity." (Disability Rights Lawyer, Mumbai)

Diagnostic Overshadowing and Medical Model Persistence

Despite the RPD Act's shift toward a social model of disability, judicial decisions frequently exhibit "diagnostic overshadowing," where disability diagnosis overshadows individual capabilities:

1. **Medical certificates as determinative:** An examination of the processes that took place in court found that medical certifications and diagnostic labels sometimes held a disproportionate amount of weight in comparison to functional evaluations of potential decision-making abilities.
2. **Generic capacity determinations:** Rather than determining whether or not

an individual is capable of making particular decisions (such as financial, medical, or personal judgements), the courts commonly issued blanket capacity rulings based on the kind of impairment.

3. **Expert testimony reliance:** As far as capacity decisions are concerned, the courts have shown a larger degree of respect to medical specialists than they have to disability rights experts or to the persons themselves.

Case Study 3: For years, Arjun, a man with Down syndrome who was forty years old and lived in Tamil Nadu, had been able to keep his job and manage his day-to-day life with only a small amount of assistance. During the guardianship proceedings that were launched after the death of his mother, the court focused largely on his medical diagnosis rather than shown ability. As a consequence, the guardianship was more restricted than was required.

Intersecting Vulnerabilities: Compounding Effects

Multiple Marginalized Identities

The junction of various identities that are marginalised has the potential to provide the most substantial obstacles. The analysis of the data showed that women with intellectual disabilities who came from economically disadvantaged backgrounds were the demographic that was most likely to be placed under plenary guardianship. This demographic accounted for 92% of all cases, which highlights how intersecting vulnerabilities compound disadvantages in guardianship proceedings.

Key patterns of intersectional disadvantage include:

1. **Rural women with disabilities:** There were other obstacles that women with disabilities who lived in rural regions had to overcome, including gender discrimination, geographical isolation, and restricted access to legal services. An review of cases revealed that a total

of 89% of women living in rural areas who had intellectual disability were put under plenary guardianship, in contrast to 67% of their peers living in metropolitan areas.

2. **Economic status and disability type interaction:** Particular difficulties were encountered by economically poor persons who also suffered from psychosocial impairments. These individuals frequently lacked the means necessary for appropriate representation or periodic reassessments that might establish their competence to make decisions during stable times.
3. **Educational access and legal capacity recognition:** An examination indicated a significant relationship between the level of education attained and the recognition of legal ability. According to the findings of the study, the courts were more likely to grant limited guardianship to individuals with disabilities who had completed formal education. Those economically marginalised populations who had limited access to educational opportunities were disproportionately affected by this.

Case Study: Intersecting Vulnerabilities

Case Study 4: Immediately after the passing of her parents, Lakshmi, a lady of 32 years old who was born into a Dalit household in rural Uttar Pradesh and had a moderate intellectual handicap, was subjected to guardianship proceedings that were launched by distant relatives. The court processes never provided a proper evaluation of her functional competence, despite the fact that she had maintained her independence in handling home tasks for years. Lakshmi was placed under plenary guardianship, which resulted in her losing control over her personal decisions and her modest inheritance. She was unable to afford legal representation or expert evaluations, she encountered linguistic barriers

during court proceedings, and she was confronted with assumptions based on her gender and caste from court officials.

This case demonstrates how gender, the type of impairment, financial level, caste identification, and geographical location can interact to cause distinct disadvantages in the process of guardianship hearings.

Comparative Legal Frameworks and Best Practices

International Approaches to Intersectionality

Several jurisdictions have developed approaches that better address intersectional factors in guardianship laws:

1. **Sweden's Personal Ombudsman System:** This model provides individualized support based on specific needs rather than standardized guardianship arrangements, allowing flexibility that can better accommodate intersecting identities.
2. **British Columbia's Representation Agreements:** This framework allows different levels of supported decision-making tailored to specific domains, with explicit recognition of cultural factors in decision-making processes.
3. **Irish Assisted Decision-Making (Capacity) Act 2015:** This legislation created tiered support options and explicitly requires consideration of social and economic factors that may impact capacity assessment.

Promising Domestic Initiatives

Some Indian states have developed promising practices that better address intersectional vulnerabilities:

1. **Kerala's Community Support Program:** This initiative provides accessible legal aid specifically for women with disabilities facing guardianship proceedings, with attention to socioeconomic barriers.

2. **Karnataka High Court guidelines:** In *Sumathi v. State of Karnataka* (2021), the court established guidelines requiring consideration of socioeconomic context in capacity assessments and guardianship determinations.
3. **National Legal Services Authority (NALSA) training programs:** NALSA has developed specialized training for legal aid lawyers on intersectional approaches to guardianship cases, though implementation remains inconsistent.

Recommendations for Reform

Based on the research findings, this article proposes several reforms to address intersectional vulnerabilities in guardianship laws:

Legislative Amendments

1. **Explicit recognition of intersectionality:** Amend the RPD Act to explicitly acknowledge how gender, socioeconomic status, and disability type may affect implementation of guardianship provisions.
2. **Proportionality requirement:** Introduce explicit statutory language requiring guardianship orders to be proportional not only to individual functional capacity but also responsive to socioeconomic context and support needs.
3. **Mandatory periodic review:** Establish statutory requirements for regular review of guardianship arrangements, with particular attention to individuals with multiple marginalized identities.

Judicial Reforms

1. **Specialized training:** Develop comprehensive judicial training programs specifically addressing intersectional factors in guardianship proceedings, with emphasis on gender biases and socioeconomic considerations.

2. **Standardized assessment protocols:** Develop judicial guidelines for capacity assessment that explicitly consider how gender, economic, and social factors might influence capacity evaluation.
3. **Accessible court procedures:** Implement accommodations addressing not only disability-specific needs but also socioeconomic barriers to court access, including fee waivers, transportation support, and simplified procedures.

Systemic Changes

1. **Community support networks:** Develop state-supported programs connecting persons with disabilities to community resources that can serve as alternatives to guardianship, with specific attention to economically marginalized communities.
2. **Gender-responsive approaches:** Create specialized supports addressing unique challenges faced by women with disabilities in exercising legal capacity.
3. **Monitoring mechanism:** Establish an independent monitoring system to track guardianship outcomes across different demographic groups and identify patterns of intersectional discrimination.

Conclusion

The findings of this study indicate that the execution of guardianship rules under the RPD Act is greatly impacted by the intersecting factors of gender, socioeconomic position, and the kind of impairment. Even though there has been progress in legislation towards recognising legal capacity, individuals with disabilities who are facing numerous types of marginalisation continue to encounter disproportionate difficulties when it comes to exercising their rights to make decisions.

The mismatch between the progressive aim of the RPD Act and its actual execution brings to light the necessity of intersectional methods in

the legal framework governing disability rights. In order for change to be effective, it is necessary to move beyond general approaches to guardianship and towards frameworks that acknowledge and respond to the specific situations that are generated by overlapping identities and social positions.

By incorporating intersectional viewpoints into guardianship laws and processes, India would be able to better implement the promise made by the RPD Act to provide equal respect before the law to all individuals with disabilities, regardless of gender, economic background, or the type of impairment they have. The only way for guardianship laws to properly progress from protection to empowerment is through the implementation of such changes. This will ensure that assistance for decision-making serves to enhance rather than subtract from human liberty.

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