**An India & Ireland Policy Encounter**

 

**Respecting Voice & Choice for People with Disabilities in India & Ireland**

**Sharing Perspectives on the Past and the Future of Legal Capacity**

**NALSAR University of Law, Hyderabad, India.**

**18/19 January, 2014.**

**A Joint Project of NALSAR University of Law, India and the National University of Ireland (Galway) Centre on Disability Law & Policy with the support of the Open Society Foundation.**

[**www.nalsar.ac.in**](http://www.nalsar.ac.in)

[**www.nuigalway.ie/cdlp**](http://www.nuigalway.ie/cdlp)

[**http://www.opensocietyfoundations.org**](http://www.opensocietyfoundations.org)

**1. Rationale for the Encounter.**

Many countries throughout the world are beginning to reflect on reforms, measures and processes needed to enable the will and preferences of persons with disabilities to be identified, expressed and respected. This is happening in part because of the impetus for reform given by the UN Convention on the rights of persons with disabilities (2007). And it is happening because people with disabilities are themselves advocating for change to enable their own voice to be listened to and respected by third parties and by Government.

Reform has been slow to take hold around the world but is beginning to gather pace in some countries. Both India and Ireland are now well advanced in the reform process and have made considerable headway in developing a consensus on the need to move away from guardianship and toward a regime of supported decision making. They are fortunate in sharing a deep legacy of commitment to human autonomy in their respective legal and constitutional orders. In many ways the reform process in both countries builds on these legacy values. Draft Bills are pending in both Parliaments. The reform process – which has yet to start in most countries - has taken 2-3 years. The time is therefore right to reflect on the common journey in the hope and expectation of enriching it as it enters its final phase and in the expectation that others can learn from it.

This Encounter event brings together key players and figures in our respective legal and political systems to reflect together on the legacy of our past (especially the shared commitment to human autonomy), to share perspectives on the political process of reform toward a more support-oriented legal capacity regime, to share perspectives of those charged with drafting modern legislation and on the hopes and expectations of civil society in the process. It is not intended to produce an outcome in terms of a prescription of change elsewhere. It aims to provide an open space for common reflection on the shared journey – its anchorage points, its many surprises and how our political system is responding to the call for change.

Besides the fact that Ireland and India are well along the road toward a re-orientation of traditional legal incapacity law they also share a common legal heritage where concepts of human autonomy are etched deep into our respective legal systems. Our judiciary plays a crucial role in ensuring the rule of law and in honouring human autonomy. Our Parliaments are highly responsive to the needs of the community and can and do reflect deeply on processes of change. Our civil servants and parliamentary draftsmen are of the highest professional integrity and take the process of change seriously. Our civil society movements have matured beyond ritual incantations of rights into policy entrepreneurship and have become highly attuned to the need to interact constructively with Government to ensure a responsible process of change that benefits all. And our academics see themselves as playing a supporting and subsidiary role by bringing comparative perspectives to bear in finding innovative solutions to seemingly insoluble problems.

This Encounter – the first of its kind in the world - will be structured along the lines of facilitated discussions among the different layers engaged on the broad issue of human autonomy and legal capacity. No papers as such will be delivered. The audience is small (maximum 30 people) and mostly comprises those who are directly involved in the processes of change. The main objective is to give people space to reflect deeper –and with their peers – on the legacy value of autonomy in our legal order, on the political processes of change underway in both jurisdictions, on the challenges facing the draftsman in capturing a new paradigm, on the experience of civil society in the process.

**2. The Programme.**

The programme will last a day and a half over Saturday and Sunday 17th & 18th January in Hyderabad**.**

**Saturday 17th January.**

**Registration:**

**Opening & Welcome**:

Professor Faizan Mustafa Vice Chancellor of NALSAR.

**Keynote Address**:

Professor Gabor Gombos - 'Building on the Legacy Value of Autonomy in our Legal Orders - The UN CRPD as a Lodestar for Progressive Change.'

**1. Setting the Scene – Ireland & India: A Common Legal Heritage and a Shared Vision for the Future.**

**Facilitator**: Professor Gabor Gombos.

**Rationale**: This discussion will explore the shared experiences of the legal concept of autonomy held by Ireland and India. It will zoom out to paint a broad stroke picture of the nature of our legal systems, the processes of legal change, the interaction (if any) between treaties and domestic law, the broad field of disability law reform over the past 20 or so years. This provides context for contemporary debates about the past and future of legal capacity law reform. Both the continuities and discontinuities between our respective legal systems will be explored.

**India:**Professor, Amita Dhanda, NALSAR.

**Ireland**:  Dr. Eilionóir Flynn, senior lecturer, Centre for Disability Law & Policy, NUI, Galway, Ireland.

**2. Our Legal Systems – how we think about Autonomy in Law.**

**Facilitator:** Professor Kirsten Booth Glenn, former Judge, New York State.

**Rationale:**  The purpose of this discussion is to explore the notion of human autonomy in our respective legal orders. This will entail a facilitated discussion about the centrality of autonomy in our respective constitutional orders, the image of the person in our constitutional systems, concepts of liberty and correlative obligations of State to create space for human flourishing. It will explore countervailing values such as the limits of autonomy as well as the place of the protective impulse of State.

This session It is not designed to explore the judicial posture toward future reform legislation. Still less is it designed to cultivate a positive judicial demeanour toward reform. It is designed simply to enable us to get at bedrock values in our inherited legal orders to provide a broader context within which to situate current reform efforts in our Parliaments.

**India**:  (Provisionally) Mr Madan Lokur, Judge Supreme Court of India

**Ireland:** member of the senior judiciary [Justice McMenamin of the Supreme Court cannot make the date]....

**3. The Current Process of Reform – Parliamentary Perspectives.**

**Facilitator:** Professor Amita Dhanda.

**Rationale**: All reform ultimately ends up in the Parliamentary process. The relative openness of that process creates learning opportunities for parliamentarians and can have an expressive value for others. The purpose of this session is to take stock of the reform process in our Parliamentary system – as seen through the eyes of our Parliamentarians - and the key role of Parliament in moving reform forward. Both Parliaments have grappled with competing ideas for reform and have seriously engaged with the issues. They have been nudged gradually away from an overly-protective posture toward more supportive and facilitative regimes. This has come in part from the quality and cogency of inputs from civil society. This matters in Parliamentary systems like India and Ireland which are very sensitive to public opionion. The space in this session should afford an opportunity for Parliamentarians to reflect on that journey – the key moments, the impact of new evidence, active listening to new voices not previously heard in the Parliamentary process, etc.

**India:**Mr. Mukul Wasnik, Member of Parliament, (Former) Minister of Social Justice and Empowerment.

**Ireland:**Mr. David Stanton, T.D., Chair of the Justice Committee in the Irish Parliament.

**Social Evening.**

**Sunday 18th January.**

**4. Technical Challenges: The Process of Reform: The Drafters’ Perspective in the Executive Branch.**

**Facilitator**: Professor Gerard Quinn.

**Rationale:** New ideas – or a fresh perspective on old ideas **–** are not easy to give expression to in law. For one thing there is usually a lack of precedent which can hold back innovation. For another, new ideas or new expressions of old ideas, automatically give rise to questions about their balancing (or rebalancing) against old values or countervailing considerations such as the duty of the State to protect which applies to all. The drafters’ task is not an enviable one. Sometimes the obstacles are real – sometimes they are perceptual (which makes them real). Sometimes the new boundaries can be hard to pin down and give statutory expression to. Sometimes constructive ambiguity will be resorted to in order to frame the right issues but effectively postpone their resolution. And sometimes it is hard for drafters to combine competing philosophies in one piece of legislation. And if the legislation is viewed in a broader perspective – as part of an ongoing process of reform – then it is hard to see how the legislation can be configured to ratchet forward reform – and progressively eliminate more traditional ideas.

Drafting is seldom easy – but made even more difficult when old frameworks compete and at least partially survive new frameworks. The purpose of this space is to give the respective drafters an opportunity to reflect together on their journey, the key moments in the process, steps forward and the compromises necessary to hold the draft together.

**India:** Dr. Sudha Kaul, Chair of the multi-sectoral Committee set up by Government of India to prepare a draft bill and to consult on it with the Disability organizations in the country and Ms Stuti Kacker Secretary, Disability Division, Union Ministry Social Justice and Empowerment

**Ireland:** Conan McKenna (TBC)......., Department of Justice, Ireland.

**5. ‘Nothing About Us Without Us’ – the experience and perspectives of civil society in animating reform.**

**Facilitator:** Professor Gabor Gombos.

**Rationale**: No reform can be conceived of, or indeed, made sustainable, without the active involvement and participation of people with disabilities – especially those with cognitive disabilities (including intellectual disabilities, psycho-social disabilities, dementia, and neurological disabilities) who may be most affected by the legislative reform. Civil society in both countries have gone much farther than critiquing the existing law. They have come forward with their own blueprints for change. They have provided examples of good practice at grassroots level on which legislative frameworks can be based. They have actively engaged in critical discussions with parliamentary drafters about the likely impact of the legislation on their daily lives.

This session will bring together activists from Ireland and India to share their experiences of shaping legislative reform. It will enable a common space for them to reflect – together – on their respective journeys. It will bring to the surface what they have learned as well as contributed, the kinds of fears and arguments they have had to deal with and the argumentative strategies that have worked – or not worked.

**India**: Representatives from organizations involved in the public consultation conducted by the Government Committee on the Persons with Disabilities Bill 2011 and National Trust Amendment Bill 2011( Parivaar; Action for Autism; Anjali; Bapu; Banyan ( organizations of and for persons with intellectual and psychosocial disabilities) Human Rights Law Network; National Federation for the Blind; Vidyasagar; National Institute for Cerebral Palsy; Deafway)

**Ireland**: Civil society representatives from the Irish coalition for legal capacity reform (led by Amnesty and CDLP)

**6. Open Round-Table on Learning**

**Facilitated** by Professor Amita Dhanda.

**Rationale**: the purpose of the round-table is to open up the discussion across all strands to all the participants. It provides space to enable the various reflections over the previous sessions to ripen. It is not intended as a space to drive a common view or set an agenda for next steps. Rather it is intended to create space for the learning to come to the surface and be positively expressed.

**Rapporteur**: Professor Gabor Gombos.

The rapporteur draw some strands from the learning together.