



SEMINÁRIO INTERNACIONAL DE CAPACIDADE JURÍDICA E TOMADA DE DECISÃO APOIADA

DEFESA E GARANTIA DE DIREITOS
APAE DE SÃO PAULO

Apoio:



Realização:



GOVERNO DO ESTADO DE SÃO PAULO
Secretaria dos Direitos da Pessoa com Deficiência



Resistance to,
And
Struggle for
Universal Legal Capacity
with Support

Amita Dhandra
NALSAR, HYDERABAD, INDIA



What is Universal Legal Capacity ?

- **The principle by which all persons are recognised as equal before the law**
- **Equality not just of status but also action**
- **This capacity was to be presumed as present for all persons with disabilities irrespective of the nature of disability.**



And What is Support?

- **A Duty on States to Put in Place Arrangements of Assistance**
- **Choice to Use or Not Use Such Support with Persons with Disabilities**
- **Taking Support Does Not Negate Legal Capacity**



What Was the Old System ?

- A system where people with certain impairments were seen not to have legal capacity.
- Even if allowed to have rights, denied the capacity to act.
- Substitution arrangements like guardianship e for persons who were considered incapable to act.



Why Did Persons with Disabilities Seek the Change?

- **Old System attributed incapacity depending upon nature of impairment**
- **Persons with the impairment had no right to live their lives according to their choice**
- **A Substitute or Guardian Decided for them**
- **Denied Equality of Opportunity Due to Prejudice Based Discrimination.**



Replacing New with Old in UNCRPD

- Was the Incorporation of the New Model in the UNCRPD Easy? NO
- Has there been Resistance to the New Model? YES
- Has there been Struggle for the New Model? YES
- IS The Struggle Breaking the Resistance? YES



Story of Two Responses

Resistance

- Guardianship as last resort option
- The Exception of the Footnote
- Reservations and Interpretative Declarations
- Domestic Policy and Law

Struggle

- Not Incorporated in Text of CRPD.
- Footnote dropped
- General Comment No 1
- Concluding Observations negating State policies
- Innovation Continues



What From Here ?

- **Any Country who believes in humanism and human rights has no choice**
- **No option but to Struggle**
- **Be it Radical or Gradualist**
- **Radical Will Replace Old with New At Once**
- **Gradualist Will Do Piece by Piece**



What Are The Tasks Ahead?

- **Awareness Raising**
- **Law Reform**
- **Innovating Suitable Models of Support**
- **Educating and Training Implementors (Administrators or Judges) in New Model.**



Acknowledging Resistance is Not Surrender

- Acknowledge to Strategise
- Acknowledge to Break Down
- Struggle is About Resisting the Resistance
- This Struggle is for the Humanity of All
- A Struggle which is Natural to this Country
- Look Forward to Your Innovations.



SEMINÁRIO INTERNACIONAL DE CAPACIDADE JURÍDICA E TOMADA DE DECISÃO APOIADA

DEFESA E GARANTIA DE DIREITOS
APAE DE SÃO PAULO

Apoio:



Realização:



GOVERNO DO ESTADO DE SÃO PAULO
Secretaria dos Direitos da Pessoa com Deficiência