

Human Rights and the Deaf Community in Ireland

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Abstract

Background: Deaf individuals are often subject to legislation expressing deafness in medical or disability terms, which neglects sociolinguistic domains.

Objective: To evaluate Irish legislation relevant to Deaf individuals and the recognition of Irish Sign Language (ISL), in light of international human rights obligations.

Method: The Equal Status Act (2000), The Equality Act (2004), The Disability Act (2005), The Education Act (1998), and The Education for Persons with Special Educational Needs (EPSEN 2004) were evaluated in the light of the Universal Declaration of Human Rights (UDHR, 1948), the United Nations Convention on the Rights of the Child (1990), and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD, 2008), with particular reference to sociolinguistic issues affecting Deaf communities in Ireland.

Results and conclusion: The sociolinguistic rights of Irish Deaf communities are not explicitly safeguarded within current Irish law because lawgivers have failed to adequately consult these communities when constructing legislation.

Key words: Deafness, disability, equality legislation, Irish law

Introduction

Law and legislation form a central component of modern, civilized society and, accordingly, reflect the current values and morality of a society. Law ostensibly aims to protect the best interests of a society. However, who determines the law has a bearing on what legislation is passed. Consequently, law may not always represent the best interests of marginalized members of society, such as those with disabilities when they are constructed from privileged interests. Furthermore, even when legislation is enacted to protect the interests of marginalized individuals, it cannot guarantee civil rights because laws can be interpreted in seemingly obtuse or selective ways. Nevertheless, legislation sets the tone for a more civilized society and generates avenues for redress.

Like many marginalized groupings internationally, Deaf communities have often been denied many human rights (Hogan, 1997; Sacks, 1989). This is no less the case in Ireland (Conama & Grehan, 2001; Conroy, 2006). However, in order to examine these claims more closely, it is necessary to define exactly what is meant by deafness.

Definitions of deafness

It is not a simple matter to define deafness because it is differentially perceived, according to experiential viewpoint. Firstly, it is necessary to distinguish between the terms "Deaf" and "deaf". While the capital letter in "Deaf" refers to the general culture of Deaf people, the small letter in "deaf" refers to the audiological condition of not hearing (Markowicz & Woodward, 1978). However, this distinction should not be oversimplified, as Padden and Humphries (1988) point out that the relationship between these two categories is complex. For example, for a pre-lingually¹ deaf sign language user in a Deaf community, deafness might be understood as a socio-cultural marker of identity (Hintermair & Albertini, 2005). Conversely, this socio-cultural view might be absent in someone with a late onset acquired hearing

¹ This term may not be entirely appropriate, as it is based on an assumption of the sufficiency of medical terminology, vis-à-vis the timing of the onset of deafness, to describe deafness. For example, first language users of ISL could be hearing themselves, if they were born to signing parents. However, for the purpose of this article, the term is used to denote deafness occurring before the acquisition of a primary language.

loss who has a sense of grief in relation to a loss of hearing. Thus, differing viewpoints could determine vastly different constructions of deafness.

Many individuals in Deaf communities emphatically reject the medical model of deafness which constructs deafness as a deficiency. Instead, these individuals prefer to construct deafness as a difference with linguistic and cultural implications (Lane, 1995; Markowicz & Woodward, 1978; Padden & Humphries, 1988). Nevertheless, it is the medical model, focusing on deficiencies, norm differentials and repair of damage, which tends to underpin social and political thinking. Consequently, it is this model which influences legislation. Furthermore, the medical model assumes that the locus of disability exists within the individual's inability to adapt to a disabling impairment (Oliver, 1990), and it is therefore viewed as a personal tragedy. However, many Deaf people reject attempts to "patch them up", which they believe result in the erosion of their Deaf culture and identity (Baynton, 1996). Ladd (2003) suggests that attempts to normalize Deaf individuals and their communities can be compared to colonialist themes such as conformity and oppression. Indeed, Fullwood and Williams (2000) report that the Deaf have always found it hard to be accepted as they are in a world that is constantly trying to make them into "hearing" people. Deaf identity is therefore vulnerable to the hegemony of a hearing world, resulting in a constant struggle for identity (Breivik, 2005; Ladd, 2003; Lane, 1995; Skelton & Valentine, 2003). Breivik believes that this vulnerability relates mostly to the pervasive "phonocentrism" surrounding deaf people (p. 18). This refers to a perception of hearing and listening as central to being human and which consequently peripheralizes Deaf individuals (Breivik, 2005).

The Deaf: Disabled or linguistic minority?

Leeson and Matthews (2002) have called for the collective experiences of Deaf people to be acknowledged as a socio-cultural phenomenon in Ireland, in line with Bienvenu's exclamation:

I cannot agree that Deaf people belong in the disabled group. To me, what lies behind this view is the assumption that there is a defect – a broken-ness... We are proud of our language, culture and heritage, Disabled we are not! (Bienvenu, 1989, p. 1).

However, Sabatello (2004) questions the legal standing of Deaf communities as minority groups under international law frameworks. She argues that, given the high number of deaf children born to hearing families, a shared language cannot be passed from generation to generation which is one of the criteria for minority status. On the other hand, Skuttnabb-Kangas (2008) argues that Deaf communities should be viewed as non-territorial linguistic minorities in order to avail of international conventions (Skuttnabb-Kangas, 2008).

While culturally Deaf parents may make such decisions more easily, this is not at all the case for hearing parents of deaf children. Indeed, many hearing parents of deaf children discuss the emotional dilemma of being forced to make cultural decisions for their deaf child when they themselves are hearing (Gregory, 2002; Lane, 1995; Lynas, 2005; Sabatello, 2004). This is a real dilemma because only five to ten percent of deaf children are born to Deaf parents (Goldin-Meadow, 2002; Lane, 1995; Mitchell & Karchmer, 2004). Therefore, the vast majority of parents of deaf children probably have little or no experience of the socio-cultural and linguistic norms of local Deaf communities (Hindley, 2005); and consequently find issues regarding the socialization of their children very complex and problematic.

Many deaf people are involuntarily deprived of an accessible language model essential for conceptual development, the development of literacy and access to further education. Indeed, Matthews reported that, in Ireland, as many as twenty-five percent of Deaf adults learn sign language only after leaving school (Matthews, 1996). This implies that sign language is not placed in the path of deaf individuals as a matter of course in Ireland. This may be increasing, since educators of mainstreamed deaf children do not, according to Matthews (2011), prioritize access to ISL language-peers and models (Matthews, 2011). Perhaps this lack of accessibility to Irish Sign Language (ISL) can be linked to the repeated and unchanging reports of most profoundly Deaf school leavers only ever achieving 9-year-old reading levels (Conrad, 1979; James & O'Neill, 1991; Powers, Gregory & Thoutenhoofd, 1998).

Lane (1995) suggests that if society were to adopt a disability construction of deafness for late-deafened children and adults, and a sociolinguistic minority construction for Deaf people who need to sign, things might improve. However, Skelton and Valentine highlight that there are some Deaf individuals who struggle to locate themselves in this disability/minority discourse and find themselves in an "in-between position" (2003, p. 454). In order to address

such struggles, Ladd (2003) proposed Deafhood – in order to describe the existence of Deaf people and their experience of being Deaf. It is a process of becoming which is not static and which does not take its reference from medicine. It reflects both the individual and the collective struggles of Deaf people to explain and name their existences. Most importantly, Ladd believes that the championing of sign languages is central to this process (Ladd, 2003, pp. 3–4). It is therefore relevant to evaluate, among other things, the legal status of ISL within Irish and international frameworks.

Accordingly, the aim of the current discussion was to evaluate Irish legislation, relevant to Deaf individuals and with particular regard to the recognition of ISL, in light of international human rights obligations. Specifically, the following legislative frameworks were evaluated in the light of the Universal Declaration of Human Rights (UDHR, 1948), the United Nations Convention on the Rights of the Child (1990) and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD, 2008):

The Equal Status Act (2000) and The Equality Act (2004)

The Disability Act (2005)

The Education Act (1998)

The Education for Persons with Special Educational Needs (EPSEN) Act (2004).

Method

Firstly, the authors familiarized themselves with the above-mentioned international human rights frameworks, identifying clauses relevant to the sociolinguistic and occupational lives of Deaf individuals. Next, Irish legislation was evaluated against principles propagated in these internationally recognized human rights texts.

Results and discussion

The Universal Declaration of Human Rights (UDHR, 1948) recognizes in its opening "the inherent dignity" and "equal and inalienable rights of all members of the human family" and states that "everyone is entitled to all

the rights and freedoms” in the declaration “without distinction of any kind” (Article 2). It also declares that everyone “has the right to social and cultural rights indispensable for dignity and the free development of personality” (Article 22); and that all people “have the right to education” (Article 26 (1)). It continues: “education shall be directed to the full development of the human personality” (Article 26 (2)); and that “parents have the right to choose the kind of education” (Article 26 (3)). Moreover, Article 23 states: “everyone has the right to work, to free choice of employment” (Article 23). Accordingly, the authors of this discussion have synthesized these universal rights as they apply to Deaf individuals as follows:

Recognizing the dignity of, and inalienable rights to membership of the Human family, every Deaf person has social and cultural rights indispensable for his/her dignity and the free development of her/his personality; that Deaf people have the right to an education that is directed to the full development of their personalities; and that parents of Deaf children have the right (and corresponding duty) to choose such education for their children; and that consequently the Deaf individual might exercise his/her right to a free choice of employment.

Similarly, the United Nations Conventions on the Rights of the Child (UNCRC, 1990) supporting the UDHR (1949) has the following articles which are relevant to the particular interests of Deaf children: “The child shall have right to freedom of expression” (Article 13); “the child has the right to education” (Article 28); “the education of the child shall be directed to the development of the child’s personality and the development of the child’s own cultural values” (Article 29); and “children from a linguistic minority are allowed community with other members of his or her group, and to enjoy his or her own culture and use his or her own language” (Article 30). Again, the authors synthesized these rights as they might pertain to Deaf children as follows:

Deaf children have the right to express themselves freely and to be educated in such a way that takes

into consideration the deaf child’s personality and the development of his or her own cultural values, including the cultural values of the Deaf community. Furthermore, deaf children, whose first language might be a natural sign language, should be free to have community with other Deaf sign language users, expressing themselves freely, and thereby enjoying Deaf culture and the use of a sign language.

The United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13 December 2006 by the United Nations. While Ireland signed the convention, it has not been made legally binding in Ireland as it has not yet been ratified by the Oireachtas (Siggins, 2010).

This convention was completed after years of negotiations between states, international agencies and non-government organizations. The convention is comprehensive, wide-ranging and contains four particular articles referring to the status of sign languages. It therefore provides an ideal benchmark for evaluating Irish legislation in relation to ISL. For example, Article 9 relates to accessibility and recognizes the right to independent living and full participation in societies. To wit, the clause provides for provision of intermediaries such as professional (trained as opposed to informal) sign language interpreters, to facilitate public accessibility. Similarly, Article 21 relating to freedom of expression and access to information promotes the use of sign languages and indicates that the state is obliged to ensure in official interactions the provision of sign language and communication in a mode familiar to individuals with disabilities.

Moreover, Article 24 obliges the state to both facilitate and promote the linguistic identity of Deaf communities and the learning of sign languages.

Furthermore, it binds the state to ensure that Deaf children are taught by individuals sufficiently qualified in sign languages.

Finally, Article 30 relating to participation in cultural and recreational life, emphasizes the State's obligation to support the right of Deaf individuals to assert their sociolinguistic identities, including sign languages and deaf culture.

Equal Status Act of 2000–2004

In Ireland, the Equal Status Act of 2000 was amended in 2004 (as the Equality Act of 2004). The Equal Status Act was a precursor to the Equality Act in 2004 and together the two are referred to as the Equal Status Act 2000–2004. This Act has been criticized for adopting a medical model of disability (Leeson & Matthews, 2002); in other words, disability is constructed from the perspective of non-disabled individuals. This is in contrast to the United States Rehabilitation Act and the Americans with Disability Act, which has been widely acclaimed because of its human rights basis, its focus on a social model of disability and its acknowledgment of how structural and attitudinal barriers disadvantage individuals (Doyle, 1995; Goss, Goss, & Adam-Smith, 2000). To a lesser degree, this perspective also exists in the Irish legislation:

Discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service (Section 4(1)).

However, the Act promotes these values on the basis that refraining from accommodating people with disabilities can only be considered unreasonable if there are only nominal cost implications:

A refusal or failure to provide the special treatment or facilities to which subsection (1) refers shall

not be deemed reasonable unless such provision would give rise to a cost, other than a nominal cost, to the provider of the service in question (Section 4(2)).

Unfortunately, Deaf individuals who wish to avail of this prohibition against discrimination (for example, in educational settings) must prove that the reason for the discrimination was disability rather than linguistic. Consequently, this forces the Deaf individual to accede to a disability construction of deafness rather than a sociolinguistic one, thereby contravening the basic human right to identify as part of a linguistic community. This contravention is all too obvious in the limited recognition of ISL by the Irish State. Interestingly, Burns (1998) compares this subjugation of ISL in many schools for the Deaf in Ireland to the subjugation of spoken Irish in recent Irish history.

This subjugation of ISL continues unabated. Indeed, on numerous occasions representatives of the Irish government have stated that there are no plans to make ISL an official language: "The position is that the Government has no proposals to give increased recognition to Irish Sign Language as a third official language..." (Moloney, 2011, Dáil Eireann debates, written answers). This lack of valuing of ISL results in Deaf individuals who wish to become teachers (of Deaf children) being prevented from doing so, because proficiency in Irish is a prerequisite for attendance at any college of teaching in Ireland (Leeson & Matthews, 2002); and as Deaf children are exempt from learning Irish as a second language, they are therefore in effect barred from later on becoming teachers. This appears to contravene Article 23 of the UDHR (1948), which states that everyone has the right to work, and to a *free choice of employment*. Accordingly, Leeson and Matthews proposed that the Irish language requirement for entry into teaching in Ireland be dropped in favour of an ISL prerequisite for deaf candidates (Leeson & Matthews, 2002). In addition, they proposed that ISL should be afforded the same examinable status as any other European language. However, while the Education Act (1998) makes reference to the possible use of ISL with Deaf children, it does so by conceiving of ISL as a support tool for learning spoken language, and a last resort (Leeson & Matthews, 2002). These authors state the following regarding ISL in Ireland:

... the use of a sign language is considered as a last resort, and [is] explored only when other interventions are not possible (e.g. cochlear implantation) ... If ISL is considered a “last resort” ... how can it have status and how can it really be a “proper language”? And, if one doesn’t know a “proper language”, how can one be considered intelligent? How can a Deaf person who uses ISL therefore be considered to be eligible to continue to third level and become a professional? (Leeson & Matthews, 2002, p. 9).

Conama argues that this conceptual location of ISL, as a *support tool* (as opposed to a language) and within the same category as speech and language therapy and assistive technology, is highly problematic (Conama, 2010). Similarly, the Education Policy for Deaf and Hard of Hearing People in Ireland, jointly published by The Catholic Institute for Deaf People, The Centre for Deaf Studies, Trinity College Dublin, DeafHear.ie and The Irish Deaf Society, has recommended that both deaf and hard-of-hearing students should be facilitated in developing fluency in both signed and spoken languages at as early a stage in the child’s development as possible. In addition, it strongly suggests that ISL must be recognized by the Department of Education and Science as the first language of the Deaf community and that the Irish language requirements should be replaced with the more appropriate requirement for fluency in ISL for deaf applicants who wish to become teachers (Education Policy for Deaf and Hard of Hearing People in Ireland, 2009, pp. 31–32).

One constructive aspect of the Act is that it provides permission for institutions to engage in positive action (affirmative action) to allow preferential treatment or the implementation of positive measures which are genuinely intended to: (i) promote equality of opportunity for disadvantaged persons; and (ii) cater for the special needs of persons or a category of persons who, because of their circumstances, may require facilities, arrangements, services

or assistance. However, in terms of the UNCRPD clause on education, the State clearly contravenes by failing to implement such measures.

The Disability Act of 2005

The Disability Act has an impact on a wide range of individuals with disabilities aside from the Deaf. In this Act, disability is narrowly defined as follows:

Disability means a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment (Section 2(1)).

In this definition, disability is located in the “person”. In other words, it does not acknowledge the relational/relativistic dimension of disability that is prevalent within, for instance, Deaf communities. In fact, most Deaf individuals do not consider themselves “disabled” within their own Deaf communities; but only when they seek to interact with the wider, non-Deaf community (Ladd & John, 1991, cited in Gregory, 2002). This definition therefore excludes the idea of participation restriction caused by a disabling environment. The Act furthermore states in relation to disability that:

Substantial restriction shall be construed for the purposes of this Part as meaning a restriction which is permanent or likely to be permanent, results in a significant difficulty in communication, learning or mobility or in significantly disordered cognitive processes, and gives rise to the need for services to be provided continually to the person whether or not a child or, if the person is a child, to the need for services to be provided early in life to ameliorate the disability (Section 7(2)).

Here, the solution to the problem of disability is conceived of in terms of services, rather than in the restructuring of disabling environments. The

Act therefore does not accommodate a sufficiently wide conceptualization of d/Deafness, particularly in relation to users of ISL.

Furthermore, the Act attempts to ensure a timely assessment of need for the individual but does not provide for any definite service implication for the individual. Similar to the “get-out” clauses of the Equality Act, the wording in the Disability Act allows for the withholding of services to such individuals on the basis of economic practicability.

With regards to the education of Deaf children, the Disability Act provides for those identified with disability to fall under the jurisdiction of the Education for Persons with Special Educational Needs Act (2004).

Education for Persons with Special Educational Needs (EPSEN) Act of 2004

This Irish Act was intended to cater for individuals with special educational needs between the ages of 0 and 18 (Subsection 15 (3)), and also instituted a national council for special education that had the power to confer certain functions on Health Boards, where the council deemed that the need was medical and not educational. The Act was designed to ensure education in an inclusive environment, equal opportunities for education for individuals with special needs, and aimed to ensure that school leavers were able to participate in social, economic, political and cultural life in an independent and fulfilled way. Inclusive education in this Act meant that children with special educational needs could be educated in a mainstream school and would be provided with the necessary supports for success.

Therefore, the Education Act (1998) and Education for Persons with Special Educational Needs (EPSEN) Act of 2004 acknowledged the right to education as a constitutional right, which was recognized under Article 42 of the Irish Constitution. The Act stated its function was:

To make provision in the interest of the common good for the education of every person in the state, including any person with a disability or who has other special education needs, and to provide generally for primary, post-primary, adult and

continuing education and vocational education and training (Article 42).

This Act appears to be the most rights-based of all the legislation, stating that it “Respects the diversity of values, beliefs, languages and traditions in Irish society” and that the function of the school is “to provide education to students appropriate to their abilities and needs” (Section 9). With regard to Deaf children, the Act states that support services shall include “provision for students learning through Irish sign language or other sign language, including interpreting services” (Part I, Section 2(e)). However, in Part I, Section 6 (b) this Act also refers to “as far as practicable” and “having regard to the resources available” as conditions for making available “a level and quality of education appropriate to meeting the needs and abilities of those people” (p. 10).

Also, the focus of the Act on mainstreaming children with disabilities could potentially threaten Deaf children’s access to communication with their language peers or other members of the ISL language community, and therefore threaten their linguistic rights under Article 30 of the UNCRC (1990).

With regard to bilingualism in Irish society, the Education Act (1998) gives the Irish language (Irish Gaelic) particular protection and recognizes the need to “Promote the language and cultural needs of students having regard to the choices of their parents” (6(i)–(k)). If ISL were officially recognized as a native language of Ireland, it could be argued that the legislative structure for its protection is already in place and, arguably, if ISL and the Bilingual education approach were given due recognition, then there is a structure in Irish legislation for the provision of Deaf teachers, classroom assistants and ISL interpreters.

Despite the usual appeal to practicability, the Act does impress as a strong piece of legislation which charges the Ministers for Health and Children to make resources available; thereby placing an onus on the government to make the necessary resources available (Section 13).

In accordance with the suggestions of Leeson and Matthews (2002), the Act also recognizes the importance of consultation with voluntary bodies to ensure their expertise and knowledge would inform future policies (Section 20).

Conclusions

The needs and rights of Deaf communities, while clearly protected under international human rights legislation (UDHC, 1948; UNCRC, 1990; UNCRPD, 2006), are not as explicitly safeguarded within current Irish law. Current Irish legislation could potentially further alienate the Irish Deaf communities because it does not sufficiently recognize linguistic issues and communication barriers arising in relation to Deaf people.

It is clear that definitions of disability and deafness, due to differing paradigmatic perspectives, are at the heart of misunderstandings about the relationships between deafness and disability. When disability is viewed through sociolinguistic and cultural lenses, it takes on a quality not evident through the lenses of privilege or prejudice. Accordingly, it is necessary to deconstruct these perspectives and to do so with reference to the people on whom these understandings have most impact, namely the Deaf community. It is for this reason that McQuigg (2003) advocates that we view Deaf cultures from multiple perspectives, from within and from outside, although Conama (2010) suggests the perspectives of those who are the main beneficiaries of Deaf culture should be prioritized. Accordingly, legislators should ensure that there are minority group representatives in politics to provide these insider perspectives when major decisions are being made. Similarly, professionals, and those involved in legislation, need to be careful not to inadvertently encourage conformity to one way of being, based on a privileged perspective, but instead to develop a relativistic understanding of culture and a valuing and respect of diversity. To do this, legislators need to create public forums, with Deaf leaders at the forefront of these discussions.

Although the Irish legislation as outlined above does not measure up fully to the standards of international human rights law, it does reflect that Irish society is concerned with justice for those with disabilities. Nevertheless, an apparent lack of consultation with Irish Deaf communities appears to be evident in the legislation, which may therefore not reflect what members of Deaf communities think, need or want. Consequently, the legislation may, in fact, contribute to the denial of some universal human rights, rather than protecting this native Irish community's special identity and language.

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