

An Analysis Of The UK Disability Discrimination Act And The Inadequacy Of Its Definitions Of “Disability” And “Disabled Person”

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Abstract: My research will focus on some of the more pertinent changes that need to take place on a societal level in order to better serve disabled people and allow them to participate in all facets of community life. I will argue that three of the most significant changes that must take place include: educating society on disabilities and disabled persons, creating and enforcing better laws that truly help disabled persons, and expanding the definitions of disability and disabled person to include a broader spectrum of ailments, inflictions, and handicaps. The changes, which I support, will be presented in a research-driven paper. I will highlight the current UK disability laws in place and point out some of their shortcomings. Then, I will explore the worldview of society, as a whole, as it pertains to disabled peoples, and suggest changes that need to take place and how educators can help facilitate these changes. Finally, I will explain the shortcomings of the most common definitions used for disability and disabled persons and offer alternatives that incorporate a broader range of people and ailments. My audience will be any citizen whose political jurisdiction is under the UK disability mandate, although, anyone, from any society, would benefit from reading my paper due to the universality of this topic.

1 INTRODUCTION

The UK Disability Discrimination Act (DDA) provides the framework for how the nation, as well as many of its commonwealths, understand, label, categorize, treat, and define disability and disabled persons (UK Government "Disability Discrimination Act 1995"). This document sets the status quo and helps to establish the basic rules and regulations all businesses, organizations, and groups must follow to remain in compliance with British law. While the act, as a whole, has greatly improved the treatment of disabled people by helping to disband some of the stereotypes surrounding disabilities and disabled persons, and making it harder for companies and organizations to outwardly discriminate against people with disabilities, there is still much room for improvement. Unfortunately, the various first-hand testimonies and studies show that these laws are inadequate and do not sufficiently ensure that disabled people are not discriminated against. Part of the problem with the laws and mandates is that they are based on a very limited and narrow-sighted definition of “disability” and “disabled person.” These definitions need to be broadened to encompass more people who have a variety of disabilities and medical conditions. This paper will carefully look at the current definitions of disability and disabled persons, per the UK Disability Discrimination Act, to better understand the depth and breadth of these terms, highlight some of the shortcomings of these definitions by showing how narrow sighted and exclusive they are, and, finally, suggest possible ways in which the definitions can be expanded to encompass a wider range of people.

2 The UK Disability Discrimination Act: Definitions of Disability and Disabled Person and Their Shortcomings

2.1 Definition of Disabled Person

According to the Office of National Statistics, there were around 10 million disabled adults and 770,000 children in Britain, equivalent to 24% of the adult population and 7% of all children. In comparison with 50 million disabled people who were living in the European Union and 500 million worldwide. So, this led the Conservative government in 1995 to introduce the Disability Discrimination Act (DDA) to

protect the rights of people with disabilities and to make it unlawful to discriminate against them in areas such as disability employment opportunities, education, training, transport and access to buildings. Then DDA updated in 2006 and again in 2010 to be more inclusive and considerate of a broader range of disabilities. According to the DDA, a disabled person is understood as someone who has a “physical or mental impairment that has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities” (UK Government, "Disability Discrimination Act"). Based on this definition, it is essential to dissect three key terms: substantial, long term, and normal day-to-day activities, and show how they are largely arbitrary and inadequate to encompass many disabilities.

2.2 Defining “Substantial”

Per the DDA, “substantial means that the effect of the disability is neither minor nor trivial - it does not have to be a severe effect” (UK Government, "Disability Discrimination Act"). Of course, right away, the question arises as to whom gets to rate whether the disability is minor or trivial. Typically, these decisions are made by a board of physicians and state policy makers who look at each disability (i.e. diabetes, heart disease, lung cancer) to determine if it is substantial. Then, these disabilities are listed on a chart and if a person meets the minimum requirement for one or more, they are considered to be disabled. What the DDA does not take into consideration is that, for different people, the same impairment might bear different weight on their lives. For instance, for someone who whose work requires them to use fine motor skills, such as a carpenter or dentist, even minor carpal tunnel might be a severe hindrance in their ability to perform their job requirements. On the other hand, mild carpal tunnel might pose a relatively insignificant challenge to someone who earns their living working at a daycare or public school. To highlight this point, it is helpful to look at the testimony of a dentist working in rural England. In detailing her life with carpal tunnel, she states: “I could not manipulate my tools properly to examine my patients’ back molars. I was unable to perform surgery because of the precious necessary to do so. But, it was not considered moderate to severe, so I received no benefits” (Vidali). In sum, this part of the

definition is very narrow sighted and assumes that everyone is affected in the same way by the same ailments. Instead, each individual's daily job requirements must be taken into account to see if the ailment, in their situation, is sufficient to classify as a disability. It is unfair for a group of disinterested people to make overarching rules and regulations that only take into account the majority of people without looking at situations on an individual basis.

2.3 Defining "Long Term"

According to the DDA, "long-term means that the effect of the impairment has lasted or is likely to last for at least 12 months and the effect must be a detrimental one - a person with a life expectancy of less than twelve months is covered if the effect is likely to last for the whole of that time" (UK Government, "Disability Discrimination Act"). While 12 months or the rest of one's lifetime, whichever comes sooner, is not an excessive amount of time, there are still problems with this requirement. First, if someone is only expected to live for 6 months but might have a good month or two in them before they are technically classified as disabled, then they are not able to qualify as a disabled person until that month or two has ended. This means that they must resume their daily activities, to include returning to work. This takes precious time away from them – time that they could be using to make end of life arrangements, spend time with family and friends, and to focus on improving their health so that they might extend their lives by some measure of time. Most significantly, medical professionals are not always able to tell how long an ailment will affect an individual. Not everyone recovers at the same rate or to the same degree, even when stricken with the same ailments. One example is my friend's father, Dennis, who had severe impingement of his C-5 and C-6 disks. All available medical studies suggested that, once the pressure was taken off the spinal cord, he would regain most, if not all, of his feeling in his arms, legs, and abdominal region. Unfortunately, Dennis was an outlier and, after two-years, he still did not regain feeling in these parts of his body. He was unable to be classified as a disabled person or receive any of the benefits he was entitled to by the state because the doctors were unable to predict his rate of improvement accurately.

2.4 Defining "Normal Day-to-Day Activities"

The DDA reads: "normal day-to-day activities include everyday things like eating, washing, walking and going shopping" (UK Government, "Disability Discrimination Act"). Also, according to the Disability Discrimination Act, disability affects the ability of the person to carry out normal day-to-day activities only if it affects one of the following capacities; mobility; manual dexterity; physical coordination; continence; ability to lift, carry or otherwise move everyday objects; speech, hearing or eyesight; memory or ability to concentrate, learn or understand; or the perception of the risk of physical danger. This definition is fairly inclusive, but still fails to take into account other pertinent activities that are part of some people or all people's everyday lives to include the type of work an individual does and their ability to fulfill their job requirements. Additionally, sleeping is not included in the definition. Many people, who suffer from chronic pain, sleep disorders, mental disorders, and other ailments are unable to sleep regularly and do not ever feel

fully rested. As a result, they are unable to keep up with the challenges of everyday life and find it very hard to hold a job or even participate fully in family life. These individuals, per this definition, would not qualify as having a disability that impedes daily life. Other day-to-day activities are just specific to some people. A mother or father who is the primary caregiver might not be able to properly accomplish daily activities they are expected to do, to include lifting a child, bending over to fold the laundry, getting food in and out of the stove, walking up and down several flights of steps, and vacuuming the floor. Likewise, a student might not be able to carry their books to class, sit for long periods of time in a chair, or concentrate long enough to read their textbooks. In sum, daily activities are different for each person and, therefore, a new definition must be written to recognize this fact. The overarching problem with the DDA's definition of disabled person is that it completely ignores the context for disability. It creates standard disability categories and attempts to apply these rigid definitions to all people. In doing so, the individual is completely ignored as well as their specific situations and experiences. This overriding mentality is rooted in the way in which the DDA identifies and understands disability. Predominately, it is looked at via a medical model. Instead, a social model must be incorporated to provide a holistic and appropriate definition.

3 Definition of Disability

The 2006 legislature specifically defines a disability as a "physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities" (UK Government, "Disability Discrimination Act 1995"). The government limits what it understands as a disability, significantly. For instance, addictive behaviors, such as alcoholism and drug addiction, and anti-social behavior, such as a tendency to destroy property or ignite fires, are not treated as disabilities, per this legislature. This is extremely problematic because addiction and anti-social behavior is debilitating and greatly influences one's ability to function in society. A very good family friend, who is an alcoholic, is unable to go to work because he cannot go more than an hour or two without a drink. If he does, he has physical as well as mental ramifications, such as excessive sweating and violent tendencies. Certainly, this addiction greatly influences his quality of life and ability to function in the world. Yet, he is entitled to no benefits or aid. In general, while physical and mental challenges and handicaps might be the most obvious ways in which a person is disabled, they are not the only ways disabilities manifest. In fact, there are many different ways in which a person can be disabled, and models have been established to help define these areas. The Michigan Disability Rights Coalition states: Models of Disability are tools for defining impairment and, ultimately, for providing a basis upon which government and society can devise strategies for meeting the needs of disabled people. They are often treated with skepticism as it is thought they do not reflect a real world, are often incomplete and encourage narrow thinking, and seldom offer detailed guidance for action. However, they are a useful framework in which to gain an understanding of disability issues, and also of the perspective held by those creating and applying the models (Michigan Disability

Rights Coalition 1). Therefore, it is essential to carefully examine at least one additional model, the social model, to better understand disabilities and create more well-rounded definitions of disability and disabled person. The social model must be studied to shed light on the ways in which disabilities affect people, socially, and to convince lawmakers to expand the UK's definitions.

4 MODELS OF DISABILITY

4.1 Medical Model of Disability

Importantly, the DDA current definition of disability is based solely off the Medical Model. Undoubtedly, this model is very significant and should be thoroughly understood and taken into consideration when defining disabilities. According to the Michigan Disability Rights Coalition the Medical Model "holds that disability results from an individual person's physical or mental limitations, and is largely unconnected to the social or geographical environments" (2). This model states that one is disabled based on their physical and mental shortcomings or limitations. It does not take into consideration where one lives or their social environment. It is based on the international community's general understanding of three key terms: impairment, disability, and handicap. Impairment is defined as any psychological or anatomical abnormality or loss in structure or function. Disability is explained as a restriction or shortcoming in ability that is the result of impairment. Lastly, handicap results from an impairment or disability that disadvantages an individual and makes them unable to fulfill a norm role in life (Michigan Disability Rights Coalition 2-4). The medical model is essential because there are diagnosable physical and mental ailments that greatly impede one's ability to participate in everyday society. For instance, the essentialness of this model is highlighted by Sirof, a disabilities scholar who wrote the book *The Road Back: Living with a Physical Disability*. In his book, Sirof provides numerous examples of the many ways people are affected and influenced by their physical disabilities by following three disabled teens as they navigate their worlds. It shows, through narrative, the details of disabled people struggles, as they battle life with paralysis, advanced forms of diabetes, and cancer. These struggles make it so that they cannot participate fully in their world and have to miss time away from classes due to medical appointment, rehabilitation and physical therapy sessions, and episodes of severe sickness (Sirof). Another example of how the medical model works can be seen in the memoirs of Sam Davis, a teenage boy who has cerebral palsy. Davis, a British citizen, suffers from an array of medical conditions, most of which stem from his cerebral palsy condition. Not only does he exhibit the classical symptoms associated with this disease – such as limited coordination and an inability to walk – he is also partially blind and prone to seizures. His physical disabilities impact his life, substantially, and limit what he can do and his ability to take care of himself (White). Beyond any shadow of doubt, physical, mental, and other medical disabilities greatly affect one's ability to live happy, healthy, and normal lives, and, therefore, must be considered when defining the concept of disability. While the DDA takes the medical model into consideration, it does not do so adequately. For instance, medical ailments, such as

addiction and anti-social behavior are not taken into account. Therefore, the DDA needs to expand its definition to incorporate all elements of the medical model to create a more appropriate definition.

4.2 Social Model of Disability

The Social Model understands disability as the consequence of attitudinal, social, and environmental barriers that work to prevent or impair people for fully maximizing their participating in society. It is often defined as: "the loss or limitation of opportunities to take part in the normal life of the community on an equal level with others, due to physical or social barriers" (Michigan Disability Rights Coalition 1). This model holds that disabilities are not the result of physical or mental shortcomings but, instead, are the result of society failing to meet the physical, emotional, psychological, spiritual, and mental needs of disabled minority. Unfortunately, the DDA fails to take this model into consideration and, instead, only bases its definition on a limited application of the medical model. The following are environmental, cultural and economical categories in which the social model helps to understand the depth of disabilities and how they negatively impact the disabled person. The environment disables disabled people by not being accessible enough for them to move, function and communicate as effectively as people without disabilities. Great deals of the buildings in the environment are designed by non-disabled people for non-disabled living. Accessible building would probably include ramps, lifts, wide doorways and corridors and accessible fittings such as light switches, and motorized doors. For example, Jacob McCully is a college student attending Oxford University; however, many of the rooms are too narrow to accommodate his wheelchair needs. He finds himself unable to take certain classes in some of the rooms because, despite University policies, they really are not conducive to handicap needs. He estimates that it will take him at least an extra year to graduate because of this restriction. Since the University technically is in compliance with DDA guidelines, he is not eligible to petition the school about this social disadvantage (Vidali). Another example of the social model in practice can be seen in the case of 21-year old British citizen Jana Wilmington. Jana has minor nerve damage to her left leg. While it does not pose much a problem in most aspects of her life, it does affect her reaction time. As a result, she cannot drive her car and has to take public transportation. Unfortunately, she lives in a rural area where public transportation is not available. While she is mentally and even physically capable of working in many capacities, she is socially disabled because she is unable to control her left leg well enough to drive a vehicle. This means that she is homebound and socially ostracized from the rest of society. Currently, the DDA does not recognize her disability as severe enough to qualify for benefits and aid. While it does not, necessarily, meet the definition provided by the DDA, it is still very limiting and excludes her from many aspects of normal life (Vidali). Economically, society does not provide the same job opportunities to people with disabilities. For instance, Jonathan Rigler, a 40-year-old man who worked his whole life in a factory setting. His job was simply to put knobs on stoves as they passed through his assembly line. After over 20 years of doing the same repeated task time and again,

he developed arthritis in his dominant hand. Once more, the ailment is not severe enough to qualify for disability benefits under the DDA's current definition. Yet, from a social disability model, it negatively impacts his daily life and leaves him unemployable and severely economically disadvantaged (Vidali). Culturally, society lets disabled people down because of the prejudiced views and negative shared manners of the community towards people with physical and mental disabilities. One example of how the social disability model enriches the medical model is through a second analysis of 12-year-old Sam Davis. The author explains the daily struggles Davis faces as he tries to negotiate his world and fit into a late-1960s society that is still largely ignorant as to how to interact and appreciate people with disabilities. Thankfully, a few maverick teachers see the potential in Davis and are willing to work with him – one on one – in order to allow him to participate in the classroom and learn (White). Through this story, the reader can see how the social model applies to Davis' situation. He is socially excluded from society and unable to participate in the daily activities most boys his age would enjoy, such as fully participating in the classroom setting. His story demonstrates how the social, as well as the medical, model helps us to better comprehend his disabilities. Not only are they medically disabled, they are socially limited because society, in general, is not willing to take the steps necessary to create inclusive environments. Certainly, in Britain and most of the Western world, situations have improved since the late-1960s, but they are still not ideal. The Disability Discrimination Act defines disability in terms of the medical model "physical or mental impairment". Which leads the DDA to break down the importance of the social model as an active tool for advancing understanding of the barriers faced by people with disabilities, achieving shifts in the way disability is thought about, and improving awareness in the society.

5 The UK Disability Discrimination Act: Rewriting the Definitions of Disability and Disabled Person

After looking at the shortcomings in the definitions currently used by the UK to define disability and disabled person, and incorporating some elements of the two models discussed above, it becomes evident that a better, more inclusive definition could and should be adopted by the UK Disability Discrimination Act. Consideration should be given to the ways in which a disability prohibits or prevents someone from participating fully in society. This addition would help to hold lawmakers accountable for enacting strict laws and regulations to ensure that all people, regardless, of their limitations, could participate fully in society or at least as much as is reasonably possible. Brian Doyle claims in his article, *Enabling Legislation or Dissembling Law*, that the overt usage of terms disability or physical or mental disabilities, and the reliance on ability to carry out normal day-to-day activities, shows continued reliance on the medical model. He also argues that the language of the DDA intends to support only future effects of a presently existing progressive condition thus fails to protect from discrimination those people who have progressive conditions but are not yet presenting the obvious symptoms of illnesses (67). This is show that the medical framework of defining disability needs to be

reconsidered. For instance, the current definition does not include people who suffer from addictions, to include alcohol, drugs, gambling, and sex. Medical doctors recognize these ailments as real, medical conditions that severely disable the sufferer. The DDA definition must incorporate these people's ailments into their definition to ensure that they receive the care and support they so desperately need. The definition should incorporate a dialogue between the health care professionals and the patient. If, combined, these individuals come to the mutual decision that, for this particular person in their particular situation their limitations pose a risk, then these limitations should qualify as a disability. This would mandate that each person receives the individual attention they deserve to properly assess how their limitations affect them. Careful consideration should be given to the ways in which an individual's rights are infringed upon when defining disability. If someone is denied the ability to fully participate in society then, they too, are disabled by social norms. The lack of ability to fully actualize the human rights each person is entitled to by virtue of being human is a disability. Including this into the definition would also force lawmakers to enact stricter laws to ensure that everyone's right is upheld. Low self-esteem and self-worth issues greatly impede one's ability to function in society. If these issues become too severe and go untreated, then they, too, become a disability and work to prohibit the sufferer from being fully included in society. The definition must take these disabilities into account as well. In sum, three major points need to be taken into consideration. First, people are disabled in different ways, depending on their own, individual context. Second, disabilities are very individualized and personal. They cannot be narrowly defined or understood as one-size-fits-all labels. Therefore, the perspectives of disabled persons must be taken into consideration and brought into the discussion. Third, society, as a whole, has to rethink its overarching ideas and stereotypes associated with disabilities and be more willing to include all people into civic life.

6 Conclusions

If the definitions of disability and disabled person are modified to include the suggested additions, then several position outcomes are likely to transpire. First, more laws and regulations will be enacted to mitigate some of the social challenges that stand in the way of disabled persons being able to participate fully in society. This will lead to an atmosphere where people who are suffering for uncontrollable ailments will not be excluded and forced to endure more pain due to their impairments. Second, more people will be able to get the help they so desperately need. Most benefits the state offers, to include rehabilitation programs, medical coverage, and stipends, are based off of the UK DDA's definitions. Because these definitions are insufficient, many people are unable to get the aid they need to improve their situations and lead productive lives. Not only will this benefit the individual, it will lift all of society up. Finally, expanding the definitions will, effectively, give disabled people a voice and allow the rest of society to better understand the depth and breadth of disabilities and how they affect the individual. All of these benefits merit the time and effort it would take to expand the DDA's definitions to be more inclusive. However, it would

be overly optimistic to believe that these changes will, in fact, take place in the short term. Laws take years to be written and approved, and even longer to go into effect. Yet, despite the fact that real change will take years and might not ever come to fruition, critiques of current disability laws, mandates, and definitions are still valid and important. Critically examining problems sheds light on deeper issues that are characteristic not so much of specific laws, mandates, and definitions, but of society in general. It helps to lay out some of the more problematic aspects of how we, as collective members of society, view controversial and polemic topics. Only by showing the shortcomings of our presuppositions and worldviews can there be any hope for change. The more noise we make, the more likely people, from a grassroots level, will change their opinions and create more inclusive society for all to flourish and grow.

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