

Chapter 10 (In 'Disabled People in Britain and Discrimination : A case for anti-discrimination legislation', Colin Barnes (1991))

CONCLUSION: THE CASE FOR ANTI-DISCRIMINATION LEGISLATION

This study has highlighted the extent of institutional discrimination against disabled people in contemporary Britain. It paints an alarmingly depressing picture. Because each of the chapters has concluded with a detailed summary there is little need to repeat them here. This conclusion therefore concentrates on the argument for anti-discrimination legislation.

Clearly, the traditional ideological justifications for discrimination are well entrenched within the core institutions of our society. After more than a century of largely state-sponsored education, disabled children and young people are still not legally entitled to the same type of schooling as their non-disabled peers. The overwhelming majority of British schools, colleges and universities remain unprepared to accommodate disabled students within a mainstream setting. Thus, many young people with impairments have little choice but to accept segregated 'special' education which is both educationally and socially divisive, and which fails to provide them with the necessary skills for adult living. Moreover, by producing educationally and socially disabled adults in this way the 'special' education system perpetuates the false assumption that disabled people are somehow inadequate, and thus legitimises discrimination in all other areas of social life, particularly employment.

Discriminatory attitudes and institutionalised practices which work to the disadvantage of disabled people in employment are well established within the British labour market. They are conspicuous in the policies and practices of employers and employment agencies, public and private. As a result, disabled people are more likely to be out of work than non-disabled people, they are out of work longer than other unemployed workers, and when they do find work it is more often than not low-paid, low-status work with poor working conditions, thus accelerating the discriminatory spiral in which many disabled people find themselves.

The overwhelming majority of disabled people and their families are forced to depend on welfare benefits in order to survive. Further, the present disability benefit system does not even cover the cost of impairment and effectively discourages those who struggle for individual autonomy and financial independence. The inevitable outcome is a life of extreme economic deprivation

and excessive bureaucratic regulation and control; in other words, poverty and dependence.

This dependence is compounded by the present system of health and social support services, most of which are dominated by the interests and concerns of the professionals who run them and the traditional assumption that disabled people are unable to take charge of their own lives. While disabled people may no longer be forced to live in residential institutions, their opportunities for economic and social integration are severely restricted due to a lack of information, appropriate technical aids and a comprehensive personal assistant service. Hence, many are compelled to rely on informal unpaid helpers - usually family or friends. Current provision, therefore, denies disabled people not only opportunities to live independently within the community, but also the dignity of independence within the context of personal relationships and the family home.

This cycle of dependence is intensified by a largely hostile physical environment in housing, public transport and the built environment generally. Although the need for personal mobility has become increasingly apparent in recent years for all sections of society, particularly for work, disabled people continue to be confronted with inaccessible homes, transport systems and public buildings.

Moreover, along with unemployment, a lack of money and a heightened and unnecessary dependence on others, environmental factors are crucial in excluding disabled people from the kind of leisure and social activities which the non-disabled community takes for granted; indeed, some sections of the leisure industry are evidently unwilling to cater for disabled people. Discrimination is compounded for disabled people who are women, and members of ethnic minorities and the gay community.

Until quite recently disabled people did not have a credible collective voice to articulate their views and so successive Governments have been able to avoid and even deny the extent of institutional discrimination against disabled people. But a large part of the responsibility for this lies with a succession of British Governments. Although there is a growing consensus in democratic countries that disabled people have the same basic human rights as non-disabled people, and that Governments should ensure that disabled people are able to achieve a standard of living equal to that of their fellow-citizens (UN, 1988), this has not yet come about in the British Isles. Yet Britain was one of the first western nations to establish the notion of basic human rights for disabled people in law with the setting up of the welfare state in the early 1940s; everything that has happened since has been a gradual retreat from this position. Although the British Government endorsed the United Nations Programme of Action Concerning Disabled Persons in 1982, it has

consistently refused to implement policies which would enable disabled people to attain a lifestyle comparable to that of their non-disabled neighbours.

As we have seen, the Education Act 1944 specified that disabled children should be educated alongside their peers and the Disabled Persons (Employment) Act 1944 attempted to secure employment rights for disabled people. But non-enforcement of these tentative rights, coupled with the gradual but intensifying drift from rights-based to needs-based policies, has served to underline the traditional individualistic approach to disability, the very opposite of what is needed. This is evident in each area discussed in this study.

In education, while reiterating the principle of integration, the Warnock Report and the 1981 Education Act both explicitly emphasised the importance of the concept of Special Educational Needs within the education system as a whole. This is a policy which has justified not only the continued segregation of a substantial part of the student population, but also the exclusion of minority languages and cultures from the mainstream sector, in particular the language and culture of the non-hearing community. In the crucial area of employment, the data show that the Government's lack of commitment to the employment quota scheme and its obvious preference for voluntary policies of persuasion have not only resulted in a failure to provide disabled people with meaningful employment, but also emphasised the traditional divisions between disabled and non-disabled workers.

Although it has been officially acknowledged that disabled people and their families receive significantly lower incomes than the rest of the population (due to institutional discrimination in the labour market and the additional costs which impairment incurs), recent changes to the disability benefits system will not change this situation. Indeed, the shift away from statutory entitlement in favour of discretionary awards distributed by semi-independent organisations with limited budgets, following the introduction of the 1988 social security reforms, signals a significant erosion of disabled people's rights as well as an intensification of unnecessary bureaucratic regulation and control.

A similar situation exists regarding health and social support services for disabled people. Although the transition from rights-based to needs-based provision can be traced back to the 1948 National Assistance Act, it has intensified in recent years. Although the 1948 Act placed a duty on local authorities to provide residential accommodation and some services for disabled people, it also acknowledged the historical involvement of charities in these areas and so permitted the local authorities to designate responsibility for provision to voluntary agencies if they so wished. An inevitable outcome of this was a proliferation of residential institutions of one form or another run by charitable trusts and private agencies, and the failure

of local authorities to develop appropriate community-based services. Moreover, contrary to the views of some non-disabled observers (Topliss and Gould, 1981), the 1970 Chronically Sick and Disabled Persons Act did little to change this situation.

The 1980s saw a further retreat from the notion of rights as a result of the inclination toward voluntary rather than statutory-based services of a succession of policy-makers in both local and central Government. While the introduction of the 1986 Disabled Persons (Services, Consultation and Representation) Act paid lip-service to the idea of meaningful collaboration between service users and providers, there is evidence of widespread disregard for the law within local authorities which has hitherto been ignored by central Government (see Chapter 6). Moreover, it has recently been announced in the House of Commons that key sections of the 1986 Act which would have secured the right of disabled people to have an advocate had they needed one, and given them the right to ask local authorities for services and to have a written statement on their needs assessment (see Chapter 6), are not to be implemented (*Hansard*, 1991a). Clearly, despite the talk of choice and consultation emanating from a growing number of politicians of both left and right, current provision is still controlled by mainly non-disabled professionals who decide what services disabled people should have, when they should have them, and how they should be delivered.

Although there is an increasing shortage of accessible homes, there are no policy initiatives to remedy this in either the public or the private sector, and segregated special-needs housing remains central to the Government's community care programme. The prevalence of special-needs transport systems is also likely to remain the norm rather than the exception because, even though the Department of Transport supports the desirability of accessible public transport systems in principle, it is clear that it will be well into the twenty-first century before they become anything like a reality. Moreover, although policy-makers have endorsed disabled people's rights of access to public buildings with the recent amendments to the Building Regulations, it is clear that these measures will not eradicate discrimination within the context of the built environment, particularly in the leisure industry where inaccessible buildings exclude disabled people to a large extent from mainstream recreational pursuits.

Indeed, the rhetoric of individual needs is central to the arguments of those who have successfully opposed measures to reinforce the rights of disabled people. First, it has been suggested that defining disability would present major problems in disagreements over equal rights. In 1983, for example, one Government supporter noted that to establish that discrimination had taken place the 'extent of the disablement would have to be proved, which can be very distressing' for a

disabled person (*Hansard*, 1983, p. 1250). Such a position seems somewhat hollow since until recently policy-makers appeared content to allow disabled people to have their impairments measured in this way in order to receive the benefits and services to which they are entitled. Nonetheless, given the strength of feeling against discrimination among disabled people and their desire to remove it this is likely to be one test that many would welcome.

Secondly, on discrimination in perhaps the most important area of all, employment, the Department of Employment's consultative document *Employment and Training for Disabled People* reiterated an argument which has been repeated constantly by opponents of anti-discrimination legislation throughout the 1980s. It states: 'A major difficulty is that disability, unlike race or sex, can be relevant to job performance and what to some might seem like discrimination may in reality be recruitment based on legitimate preferences and likely performances' (DE, 1990, p. 30). This implies that discrimination is indeed acceptable on the grounds that disabled workers are not as productive as non-disabled workers.

Such arguments are difficult to understand particularly when, since the early 1970s, successive Governments have spent a large amount of public money telling employers the opposite, namely that given the appropriate equipment (which the Government is willing to provide - see Chapter 5) disabled workers are as productive as non-disabled workers. Further, the same publication reports: 'There is clear evidence that most people with disabilities can be as productive as the general population. Even severe handicap, whilst clearly giving rise to difficulties, has frequently been overcome' (DE, 1990, p. 14).

Thirdly, it has been suggested that an anti-discrimination law would be complex to draft and therefore uncertain in its application (DE, 1990). This point is difficult to understand in the light of developments abroad and the fact that, as noted in the Introduction to this work, there is support for the drafting of such legislation within the legal profession. If this type of legislation would present major problems for those charged with interpreting it, this would surely not be the attitude of lawyers.

There is a fourth argument that anti-discrimination legislation would exacerbate traditional divisions between disabled and non-disabled people; this point is often used in relation to employment, for example 'the relationship between people with disabilities and employers might be damaged and the task of persuasion made much harder' (DE, 1990, p. 39). However, it is difficult to see the logic in this, considering that all the evidence hitherto has shown widespread support for anti-discrimination legislation among the general public (see Chapter 1). Also, since most employers have proved particularly unresponsive to policies of persuasion

(see Chapter 5), it is probable that anti-discrimination legislation could only have a positive effect on the employment of disabled people.

This continual denial of equal rights to disabled people by successive British Governments is all the more astonishing when other disadvantaged groups have some protection under the law, and when legislation to combat institutionalised disability is becoming increasingly common throughout the western world. The overtly unequal treatment accorded to disabled people in Britain has prompted an almost universal demand from disabled people and their organisations for similar legislation in Britain, and it is a demand which is likely to increase in strength.

What these organisations are demanding is comprehensive anti-discrimination legislation which (a) establishes a suitable framework to enforce policies ensuring the integration of disabled people into the mainstream economic and social life of the community, such as the employment quota scheme, and (b) provides public confirmation that discrimination against disabled people for whatever reason is no longer tolerable. This would be legislation emphasising social rights rather than individual needs, and focusing on a disabling society and not individual disabled people.

For such legislation to be truly effective, disabled people would inevitably need access to the kind of medical and other information which historically has been used to justify their economic and social subordination. Thus an essential addition to anti-discrimination legislation would be laws facilitating freedom of information going beyond providing access to information held on computers and in local authority files. Locked medical cabinets would need to be opened and the unofficial documents which are kept as ways of avoiding information disclosure, as with current practices which require information to be provided to parents under the statementing regulations of the Education Act 1981, would need to be made available.

There will also be a need for some kind of mechanism offering disabled people individual and collective redress. This can only be accomplished by the adequate funding of the nationwide network of organisations controlled and run by disabled people themselves. As we have seen it is these organisations which have put the issue of institutional discrimination on to the political agenda, and which are best fitted to ensure its eventual eradication.

The abolition of institutional discrimination against disabled people is not a marginal activity; it strikes at the heart of social organisations within both the public and the private sectors. It would not be possible to confront this problem

without becoming involved in political debate and taking up positions on a wide range of issues. It is imperative, therefore, that any mechanism for enforcement should remain independent of Government influence and control. Indeed, as Gregory (1987) has shown, one of the chief reasons for the relative failure of the Sex Discrimination Act 1975 and the Race Relations Act 1976 to remove sexism and racism in Britain has been the semi-autonomous status of the Equal Opportunities Commission and the Commission for Racial Equality. Their semi-autonomy has become a double-edged weapon in the hands of unsympathetic Governments: because they are independent, they can be ignored, and because they are not independent, they can be subdued through Government control of funds and appointments. Hence, both organisations have been forced to concentrate on policies of education rather than enforcement - the opposite of what is needed.

However, none of these policies by itself is likely to prove successful. First, anti-discrimination legislation without freedom of information and a supportive network of disabled people will simply benefit the legal profession. Secondly, access to information by itself will almost certainly expose disabled individuals to further professional mystification and exploitation. Thirdly, support for organisations of disabled people without an appropriate framework guaranteeing basic human rights would effectively neutralise the only collective voice that disabled people have in this country. But an integrated policy similar to that suggested above would provide a means of addressing institutional discrimination effectively and thus eliminating it.

It could be argued that institutional discrimination against disabled people is so entrenched within British society that it is unrealistic to think that its eradication is possible. Those who take this view need to be reminded that no-one in contemporary Britain lives in the 'real world'. They need to be made aware that all human beings live in a socially created world and that institutional discrimination is nothing more than a social creation and as such can be got rid of. While the policies outlined above might not remove institutional discrimination overnight, they would certainly contribute significantly to its demise.

APPENDIX

CHRONOLOGY OF ATTEMPTS TO INTRODUCE ANTI-DISCRIMINATION LEGISLATION RELATING TO DISABILITY

1. On 6 July 1982, the Rt Hon Jack Ashley MP introduced the Disablement (Prohibition of Unjustifiable Discrimination) Bill, under the Ten-Minute Rule. It was given an unopposed first reading but was lost, along with all other uncompleted business, at the end of the session.

2. On 11 February 1983, the Disablement (Prohibition of Unjustifiable Discrimination) Bill, a Private Member's Bill introduced by Mr Donald Stewart, failed to secure the necessary 100 votes for the Closure (77 voted in favour, none against, but 100 votes were needed to end the debate and vote for or against giving the Bill a second reading).

3. On 18 November 1983, an entirely new Bill, the Chronically Sick and Disabled Persons (Amendment) Bill, Part 1 of which was concerned solely with making discrimination against disabled people unlawful, failed to be given a second reading. It was another Private Member's Bill, and was introduced by Mr Robert N. Wareing. This time there were more than 100 voting for the Closure but a Government whip ensured defeat -164 for and 210 against - and no vote was therefore taken on the question of the Bill being given a second reading.

4. Also on 18 November 1983, Lord Longford announced that he would take over the Bill and introduce it in the House of Lords. Lord Longford's Chronically Sick and Disabled Persons (Amendment) no. 2 Bill was given an unopposed second reading on 16 December 1983. Amendments were made to the Bill and it was given an unopposed third reading on 3 April 1984. Minutes later, however, it was defeated by 68 votes to 49 on the motion that the Bill do not pass.

5. Lord Longford's Bill sought to make discrimination against disabled people unlawful and to set up a commission to investigate cases of alleged discrimination, to conciliate where necessary and to issue guidance on avoiding discrimination. Following the blocking by the Government of Mr Wareing's Bill, Lord Campbell of Croy introduced his Disabled Persons Bill to establish a commission to investigate cases of disadvantage and discrimination without making discrimination unlawful.

6. Lord Campbell's Disabled Persons Bill was given an unopposed second reading with Lord Longford's Bill on 16 December 1983, passed through all its stages with minor amendments, and was given an unopposed third reading and passed on 12 April 1984. Lord Campbell made it known that he did not propose to promote his Bill any further; it was therefore lost at the end of the session.

7. Mr Wareing introduced a Ten-Minute Rule Bill, the Disabled Persons Rights Bill, on 3 April 1987. It was not opposed, but did not get a second reading.

8. On 6 June, 1989, Mr Wareing also attempted to include a new clause into the 1989 Employment Bill to prohibit discrimination against disabled people.

Although the motion was given a second reading, its inclusion was rejected by a majority of 90 votes -169 MPs voted for and 259 against.

9. On 6 February 1991, Mr John Hughes presented the Disability Discrimination Bill (Bill 78) before the House to make certain kinds of discrimination on grounds of disability unlawful. The Bill was given a first reading and ordered to be read a second time later in the year. At the time of going to press the Bill had not been written and a date for its second reading had not been fixed.

(Data supplied by Peter Large and Mike Oliver)